

PART II - LAND DEVELOPMENT CODE

Chapter 101 - BUILDINGS AND BUILDING REGULATIONS

ARTICLE I. - IN GENERAL

Secs. 101-1—101-19. - Reserved.

ARTICLE II. - BUILDING CODE

DIVISION 1. - GENERALLY

Sec. 101-20. - 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 commissioner means the city building commissioner.

Corporation counsel means the corporation counsel or designee.

(Code 1985, § 150.02; Ord. No. 3152, 3-8-1988; Ord. No. 4958, § 1(150.02), 8-15-2005)

Sec. 101-21. - 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 1985, § 150.03; Ord. No. 3152, 3-8-1988; Ord. No. 4958, § 1(150.03), 8-15-2005)

Sec. 101-22. - 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 city, 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 an arbitrary or discriminatory manner.

(Code 1985, § 150.04; Ord. No. 3152, 3-8-1988; Ord. No. 4958, § 1(150.04), 8-15-2005)

Sec. 101-23. - 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 1985, § 150.05; Ord. No. 3152, 3-8-1988; Ord. No. 4958, § 1(150.05), 8-15-2005)

Sec. 101-24. - Adoption of rules by reference.

(a) Building rules of the state fire prevention and building safety commission as set out in the following Articles of Title 675 of the Indiana Administrative Code are hereby incorporated by reference in this article, and shall include later amendments to those articles as the same are published in the state register or the Indiana Administrative Code with effective dates as fixed therein:

(1) Article 13, Building Codes.

a. Fire and Building Safety Standards (675 IAC 13-1).

b. 2003 Indiana Building Code (675 IAC 13-2.4).

(2) Article 14, One- and Two-Family Dwelling Code. Indiana Residential Code (675 IAC 14-4.3).

(3) Article 16, Plumbing Code. Indiana Plumbing Code, 1999 Edition (675 IAC 16-1.3).

(4) Article 17, Electrical Codes. Indiana Electrical Code, 2005 Edition (675 IAC 17-1.7).

(5) Article 18, Mechanical Code. Indiana Mechanical Code, 2003 Edition (675 IAC 18-1.4).

(6) Article 19, Energy Conservation Codes. Indiana Energy Conservation Code, 1992 Edition (675 IAC 19-3).

(7) Article 20, Swimming Pool Code.

a. General Provisions and Definitions (675 IAC 20-1.1).

b. Public Swimming Pools (675 IAC 20-2).

c. Public Spas (675 IAC 20-3).

d. Residential Swimming Pools (675 IAC 20-4).

(b) Copies of adopted building rules, codes, and standards are on file in the office of the city building commissioner.

(Code 1985, § 150.06; Ord. No. 3152, 3-8-1988; Ord. No. 4958, § 1(150.06), 8-15-2005)

Sec. 101-25. - Permit required.

A permit shall be obtained before beginning in construction, alteration, repair, or demolition of any building or structure in the city, the cost of which exceeds \$300.00, or before beginning any other work in the city as described by the various categories of permitted work set forth in section 101-27(a)–(h), hereinafter, using forms furnished by the building commissioner; and all fees required by this article shall be paid to the city.

(Code 1985, § 150.07; Ord. No. 3152, 3-8-1988; Ord. No. 3591, 5-4-1992; Ord. No. 4958, § 1(150.07), 8-15-2005)

Sec. 101-26. - 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 1985, § 150.08; Ord. No. 3152, 3-8-1988; Ord. No. 4958, § 1(150.08), 8-15-2005)

Sec. 101-27. - Fees.

(a) *Permits issued after commencement of work.* Permits required by section 101-25 shall be issued upon prior payment of permit fees according to the schedule currently on file in the city building commissioner's office. For any permits issued and obtained under the authority of this article after the commencement of the work for which the permit is required, the fee shall be equivalent to three times that required for a permit if it had been issued prior to commencement of the work.

- (b) *Demolition bond.* A demolition bond of \$5,000.00 must be filed with the building commissioner before demolition work commences.
- (c) *Length of validity.* Each permit issued shall state the length of time for which it is valid.
- (d) *Loan procurement inspection fees.* Where applicable, loan procurement inspection fees shall be required according to the schedule currently on file in the city building commissioner's office.
- (e) *Late fee.* Before a late fee shall be assessed, each person or entity found in violation of this section shall be given one warning of violation.
- (f) *When construction must begin.* Building permits are valid for one full year from date of issue. Construction must begin within six months from date of purchase or permit becomes invalid. If construction has been abandoned prior to the six months, the cost of the permit may be refunded less a ten percent penalty.
- (g) *Stopping work; start up after permit becomes invalid.* When and if work stops on a project within the 12-month period and is to again start up after the permit becomes invalid a new permit must be purchased based upon the cost to finish the project.
- (h) *Performance bond.*
 - (1) All commercial or residential buildings to be constructed, repaired, or altered by the owner (not a contractor) shall post a cash bond if the estimated construction cost of the project, repair, or alteration equals or exceeds \$5,000.00.
 - (2) A cash bond of \$500.00 shall be posted for all construction projects, repairs, or alterations with an estimated construction cost between \$5,000.00 and \$8,000.00.
 - (3) A cash bond of \$1,000.00 shall be posted for all construction projects, repairs, or alterations with an estimated construction cost of \$8,001.00 or more.
 - (4) The building commissioner shall have the right to determine the estimated construction cost of the project.
 - (5) The cash bond must be in the form of a certified check, made payable to the city. The city controller's office will hold the certified check until the building commissioner or his designee determines that the project has been completed within the date set forth on the signed building permit application, and that all state and city building codes have been satisfied.
 - (6) If the construction project does not meet these requirements without just cause, the cash bond will be forfeited, and the certified check will be deposited into the city's general fund.
- (i) *Right of entry.* Whenever necessary to make an inspection to enforce any of the provisions of the rules of the commission, or whenever the building commissioner or his authorized representative has reasonable cause to believe that there exists in any building or upon any premises any condition or code violation which makes the building or premises unsafe, dangerous, or hazardous, the building commissioner or his authorized representative may enter the building or premises at any reasonable time to inspect the same or to perform any duty imposed upon the building commissioner by 675 IAC 12-1.1, provided that if the building or premises is occupied he shall first present proper credentials and request entry; or if the building or premises is unoccupied, he shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the building commissioner or his authorized representative shall have recourse to every remedy provided by law to secure entry.
- (j) *Fees to be paid to general fund of municipality.* The fees collected by the building commissioner shall be reported and paid to the city controller and become a part of the city's general fund.

Sec. 101-28. - Review of application.

Prior to the issuance of any building permit, the building commissioner shall direct the review of all building permit applications:

- (1) To determine full compliance with the provisions of this article.
- (2) For new construction or substantial improvements, to determine whether proposed building sites will be reasonably safe from flooding.
- (3) For major repairs within 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) 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, and flood damage; and uses construction methods and practices that will minimize flood damage.

(Code 1985, § 150.10; Ord. No. 3152, 3-8-1988; Ord. No. 4958, § 1(150.10), 8-15-2005)

Sec. 101-29. - Inspections.

- (a) After the issuance of any building permit, the building commissioner shall make, or cause to be made, inspections of the work being done as are necessary to ensure full compliance with the provisions of this division 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 division. No work performed under any permit issued under this article shall be closed or covered without such inspection and final approval to close or cover.
- (b) The chief of the fire department or his designated representative shall assist the building commissioner in the inspection of fire suppression and detection and alarm systems, and shall provide reports of such inspection to the building commissioner.
- (c) Upon presentation of proper credentials, the building commissioner or his duly authorized representative may enter, at reasonable times, any building, structure, or premises in the city to perform any duty imposed upon him by this division.

(Code 1985, § 150.11; Ord. No. 3152, 3-8-1988; Ord. No. 4958, § 1(150.11), 8-15-2005)

Sec. 101-30. - Mobile homes; anchorage and tie downs.

- (a) Every mobile home or travel trailer situated on a permanent site within the city shall, within 30 days after it has been so situated, be so anchored and tied down as to enable it to withstand winds of the velocity of not less than 90 miles per hour without shifting upon its supporting blocks or piers or overturning. It shall be the responsibility of the owner thereof to comply with the requirements of this section.
- (b) All mobile home park owners who lease space to persons residing in mobile homes or travel trailers in the city shall provide each permanent parking space for mobile homes or travel trailers with devices to anchor and tie down those units as required by this section. Each mobile home park owner shall furnish to the building commissioner all engineering data necessary to substantiate that the anchor and tie-down devices in his mobile home park comply with the requirements of this section.
- (c) The city shall adopt for the purpose of prescribing standards for anchoring and supporting devices capable of

meeting the requirements of subsection (a) of this section (those standards shall include footings and supporting blocks or piers and anchoring both for the frame and for the above-frame structure of the mobile home or travel trailer), and the Regulations for Mobile Home Anchorage and Tie-Down as promulgated by the city building commissioner, save and except such portions as are hereinafter deleted, modified, or amended; of which not less than three copies have been and are now filed in the office of the city clerk. These regulations are hereby adopted and incorporated as fully as if set out at length herein, and from the date on which this section shall take effect, the provisions thereof shall be controlling within the limits of the city.

- (d) The city building commissioner shall have the authority and be charged with the responsibility of inspecting mobile homes situated in the city to ensure compliance with this section.
- (e) Mobile home owners and mobile home park owners shall have three months after the effective date of the ordinance from which this section is derived to comply with the provisions thereof.

(Code 1985, § 150.12; Ord. No. 3152, 3-8-1988; Ord. No. 4958, § 1(150.12), 8-15-2005)

Sec. 101-31. - 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 1985, § 150.13; Ord. No. 3152, 3-8-1988; Ord. No. 4958, § 1(150.13), 8-15-2005)

Sec. 101-32. - Certificate of occupancy.

No certificate of occupancy for any building or structure erected, altered, or repaired after the adoption of the ordinance from which this division is derived shall be issued unless such building or structure was erected, altered, or repaired 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 1985, § 150.14; Ord. No. 3152, 3-8-1988; Ord. No. 4958, § 1(150.14), 8-15-2005)

Sec. 101-33. - Violations; remedies; stop orders.

- (a) *Unlawful actions.* It shall be unlawful for any person whether as owner, lessee, sublessee, 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 any code, law, or ordinance enforced by the city.
- (b) *Enforcement.* Where no specific enforcement provisions, notices, or penalties, and the like, are provided for in the separate codes herein adopted, and for the enforcement of this article, the following shall apply:
 - (1) *Notices.* Whenever the building official is satisfied that a building, structure, or any work in connection therewith, the plumbing, electric wiring, erection, construction, alteration, or execution of which is regulated, permitted, or forbidden by this article, is being erected, constructed, or altered in violation of the provisions or requirements of this article, or in violation of a detailed statement or plan submitted and approved thereunder, or of a permit or certificate issued thereunder, he shall serve a written notice or order upon the person responsible therefor directing discontinuance of the illegal action and the remedying of the condition that is in violation of the provisions or requirements of this article.
 - a. *Failure to comply.* In case the notice or order is not promptly complied with, the building official shall request the corporation counsel or other proper prosecuting authority to institute an appropriate action or

proceeding at law or in equity to restrain, correct, or remove the violation, the execution of work thereon, or plumbing or wiring work; to restrain or correct the erection or alteration thereof; or to require the removal of or to prevent the occupation or use of the building or structure erected, constructed, or altered in violation of or not in compliance with the provisions of this article or with respect to which the requirements thereof or of any order or direction made pursuant to provisions contained therein shall not have been complied with.

- b. *Stopping work.* Whenever, in the opinion of the building official, by reason of defective or illegal work in violation of a provision or requirement of this article, the continuance of a building operation is contrary to public welfare, he shall order, in writing, all further work to be stopped and may require the suspension of all work until the condition in violation has been corrected.

- (2) *Abatement.* The imposition of the penalties herein prescribed shall not preclude the corporation counsel from instituting an appropriate action or proceeding to prevent an unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; restrain, correct, or abate a violation; prevent the occupancy of a building, structure, or premises; or prevent an illegal act, conduct, business, or use in or about any premises.

(Code 1985, § 150.15; Ord. No. 3152, 3-8-1988; Ord. No. 4958, § 1(150.15), 8-15-2005)

Sec. 101-34. - Right of appeal.

All persons shall have the right to appeal the building commissioner's decision first through the city board of public works and safety and then through the state fire prevention and building safety commission in accordance with the provisions of IC 22-12-7.

(Code 1985, § 150.16; Ord. No. 3152, 3-8-1988; Ord. No. 4958, § 1(150.16), 8-15-2005)

Sec. 101-35. - Penalty.

Any person who violates any provision of this article is subject to citations and prosecution through the ordinance violations bureau. A fine schedule for such violations is located in section 2-2.

(Code 1968, tit. 100, § 8(c); Code 1985, § 150.99; Ord. No. 994, 5-2-1949; Ord. No. 1008, 4-17-1950; Ord. No. 1121, 4-16-1956; Ord. No. 1887, 3-3-1975; Ord. No. 3785, 11-15-1993; Ord. No. 3792, 12-6-1993; Ord. No. 4958, § 1(150.99), 8-15-2005)

Secs. 101-36—101-58. - Reserved.

DIVISION 2. - BUILDING CONTRACTORS

Sec. 101-59. - Purpose.

- (a) The common council hereby finds that there is a need to develop licensing procedures for building contractors doing business in the city.
- (b) The common council declares that the following procedures are established for the purpose of protecting the public health, safety and welfare of the citizens of the city.

(Code 1985, § 150.40; Ord. No. 3785, 11-15-1993; Ord. No. 4958, § 1(150.40), 8-15-2005)

Sec. 101-60. - 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 contractor includes any person engaging for remuneration in the building construction business of new construction, repair, alteration, or remodeling for which a building permit is required by the building code, but excluding electricians, plumbers, and heating, air conditioning and ventilating contractors.

Handyman means any person providing repair or maintenance services for remuneration which would not require a building permit under the building code. A handyman is exempt from the provisions of this division.

(Code 1985, § 150.42; Ord. No. 3785, 11-15-1993; Ord. No. 4958, § 1(150.42), 8-15-2005)

Sec. 101-61. - License required; annual renewal.

- (a) It shall be unlawful to engage in business in the city as a building contractor without first holding a valid annual license as required by this article.
- (b) Annual renewal of the license shall be required of building contractors for each year, defined as January 1 to December 31, if they wish to engage in business in the city.

(Code 1985, § 150.41; Ord. No. 3785, 11-15-1993; Ord. No. 4958, § 1(150.41), 8-15-2005)

Sec. 101-62. - Fees.

- (a) The annual fee for a building contractor's precicensing registration shall be established as part of the schedule currently on file in the city building commissioner's office, the payment of which shall be placed in the general fund of the city. The annual fee shall be valid January 1 through December 31.
- (b) The annual fee for a building contractor's license shall be established as part of the schedule currently on file in the city building commissioner's office, the payment of which shall be placed in a special nonreverting fund to assist in the implementation of this article or other costs within the building department. The annual fee shall be valid January 1 through December 31.

(Code 1985, § 150.43; Ord. No. 3785, 11-15-1993; Ord. No. 3682, 8-1-1994; Ord. No. 4958, § 1(150.43), 8-15-2005)

Sec. 101-63. - Compliance with regulations.

- (a) Any building contractor engaging for remuneration in the construction business for new construction, repair, alteration, or remodeling for which a building permit is required by this article, shall be construed as doing business as a building contractor.
- (b) It shall be the duty of all building contractors to comply with the building codes adopted by the city, and all other ordinances relating to new construction, alterations, repairs and remodeling of buildings.
- (c) Failure to comply with this article and all other applicable local, state and federal laws and regulations shall be grounds for revocation of a building permit, issued hereunder, and may be grounds for refusal by the building commissioner to renew the annual building contractor's license.

(Code 1985, § 150.44; Ord. No. 3785, 11-15-1993; Ord. No. 4958, § 1(150.44), 8-15-2005)

Sec. 101-64. - Licensing procedures.

- (a) *Application and forms.*

- (1) All forms required by this division shall be made available in the office of the building commissioner and shall be kept at that office for a minimum of three years.
 - (2) Every application for a building contractor's license or renewal thereof, as required by this division, shall be filed with the office of the building commissioner. Such license renewals shall be reviewed by the building commissioner as to their content and applicability.
 - (3) Application forms shall provide that applicants provide written proof of workers' compensation coverage and a certificate of insurance for liability.
- (b) *Building contractors licensing and renewal fees.* All building contractors licensing and renewal fees shall be paid to the office of the building commissioner, upon review of the completed application form. A written receipt for payment of said fee shall be given by the city.
- (c) *Surety bond.* Each applicant for a license must also provide a surety bond payable to the city in the penal sum of \$5,000.00, conditioned upon faithful compliance with the provisions of this article as it relates to work performed by the applicant and agreeing to pay all damages, costs and expenses caused by the applicant through failure to comply with such provisions.
- (d) *Terms of license.* All licenses received under this section shall be for a term of one year, and must be renewed each year.
- (e) *Examinations.*
- (1) Applicants shall be examined through a written examination which shall be administered by the building commissioner or his designee. A grade of 70 percent shall be passing to the applicant insofar as the test is used for partial qualification. Testing accomplished by a professional testing company/organization or a current license with similar or greater testing standard may be accepted by the building commissioner in lieu of the testing provisions identified herein at the discretion of the building commissioner or by the policy of an examining board if applicable.
 - (2) Applicants successfully passing the examination are not required to be reexamined insofar as the building contractor's license is continually renewed before expiration, and all other regulations within the application process are satisfied.
 - (3) No person shall be examined for a license unless he has had at least two years' experience as a building contractor or working for a building contractor and provides evidence thereof on the application form.
 - (4) Should an applicant fail to pass the examination a license will not be issued; reexamination will be required.
 - (5) The written examination shall be kept on file for a minimum of three years after the date of examination.
- (f) *Holder of license.* The holder of the license shall be the person and firm or corporation to whom the license is issued. The same person shall not be designated as representative in two or more licenses issued to different persons and firms as corporations.
- (g) *License certificate.* Each license certificate shall specify the name of the person and firm or corporation to whom the license is issued, the name of the person designated as the factory representative, and the expiration date.

(Code 1985, § 150.45; Ord. No. 3785, 11-15-1993; Ord. No. 4958, § 1(150.45), 8-15-2005)

Sec. 101-65. - Nature of interest conferred by permit.

All building contractors licenses issued under this division shall be accepted as a privilege to do business within the city.

(Code 1985, § 150.46; Ord. No. 3785, 11-15-1993; Ord. No. 4958, § 1(150.46), 8-15-2005)

Sec. 101-66. - Transferability.

All building contractors licenses issued under this division are nontransferable.

(Code 1985, § 150.47; Ord. No. 3785, 11-15-1993; Ord. No. 4958, § 1(150.47), 8-15-2005)

Sec. 101-67. - Regulations supplemental.

The registration and license procedures set forth in this division are supplemental to all other regulations set forth in this Code. In the event of conflict, those regulations shall supersede all others.

(Code 1985, § 150.48; Ord. No. 3785, 11-15-1993; Ord. No. 4958, § 1(150.48), 8-15-2005)

Sec. 101-68. - Citations.

- (a) Upon learning that a building contractor is doing business without having a license, a citation shall be issued to said building contractor by the building commissioner, or his designee, for each violation.
- (b) Citations may be issued for each and every violation of the required provisions of this division, and each such violation shall be treated as a separate act for which a citation may be issued.
- (c) Citations issued under this division shall contain the date, time, name and address of the violator, the Code section violated, the nature of the violation, location of the violation, the name of the person issuing the citation and instructions as to the disposition of the citations.

(Code 1985, § 150.49; Ord. No. 3785, 11-15-1993; Ord. No. 4958, § 1(150.49), 8-15-2005)

Sec. 101-69. - Stop work order.

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

(Code 1985, § 150.50; Ord. No. 3785, 11-15-1993; Ord. No. 4958, § 1(150.50), 8-15-2005)

Secs. 101-70—101-96. - Reserved.

DIVISION 3. - HEATING, AIR CONDITIONING AND VENTILATING

Sec. 101-97. - Duties, powers and responsibilities of building commissioner.

- (a) It shall be the duty of the building commissioner or his authorized representative to enforce the provisions of this division. He shall make inspections of all heating, air conditioning and ventilating equipment installations, all as provided in this division, and leave an inspection tag denoting approval or rejection within 72 hours after being notified that heating, air conditioning and/ or ventilating work is ready for inspection. The inspector shall immediately notify the person doing the installation of any reason for rejection of work installed.
- (b) The building commissioner may delegate any of his powers or duties to any of his inspectors.

(Code 1985, § 150.60; Ord. No. 3792, 12-6-1993; Ord. No. 4958, § 1(150.60), 8-15-2005)

Sec. 101-98. - License required; renewal; fees.

It shall be unlawful for any person not holding a valid annual license as herein required to install heating, air conditioning and/or ventilating equipment in any public or private building within the city limits, except by the individual who owns and occupies the property for a one-year period. The building commissioner shall condemn and cause to be immediately removed any and all heating, air conditioning and/or ventilating equipment which he finds to have been installed in violation of this section.

- (1) Class "A" heating, air conditioning and ventilating contractor's license. The holder of a class "A" heating, air conditioning and ventilating contractor's license shall be principally engaged in the business of heating, air conditioning or ventilating contracting, and it shall entitle the holder and his employees, to perform heating, air conditioning and ventilating contracting work and to sell approved heating, air conditioning and ventilating equipment, apparatus and devices.
- (2) The fee for such license shall be established as part of the schedule currently on file in the city building commissioner's office.
- (3) All licenses shall expire yearly on December 31 and must be renewed before January 1 to remain valid.

(Code 1985, § 150.61; Ord. No. 3792, 12-6-1993; Ord. No. 4958, § 1(150.61), 8-15-2005)

Sec. 101-99. - Examination procedures.

- (a) In order to obtain a class "A" license, the applicant must be at least 21 years of age. For purposes of taking the examination required by this division, the term "applicant" shall refer to an individual applicant or a supervisor representing an applicant that is a corporation or other firm eligible to be the holder of a license as hereinafter provided. No such person shall take an examination for a license unless he has had at least four years' experience in the heating, air conditioning and ventilating fields of residential, commercial or industrial construction; and is able to furnish proof of such experience. A certificate or diploma from a recognized school of heating, air conditioning and ventilating will be accepted in lieu of two of the four years' experience hereinabove mentioned. Two years of heating, air conditioning and ventilating experience in the United States military service will be accepted in lieu of one year of the four years' experience stated above. However, not more than two years' credit shall be given for military experience. All applicants must be reviewed by the board of examiners. The applicant must have a letter of reference from each contractor listed on his application, verifying his apprenticeship.
- (b) The applicant shall also be required to obtain a grade of not less than 70 percent on a written examination, which shall consist of questions that will show his ability and fitness for the license desired. Testing accomplished by a professional testing company/organization or a current license with similar or greater testing standard may be accepted by the building commissioner in lieu of the testing provisions identified herein at the discretion of the building commissioner or by the policy of an examining board, if applicable.

(Code 1985, § 150.62; Ord. No. 3792, 12-6-1993; Ord. No. 4958, § 1(150.62), 8-15-2005)

Sec. 101-100. - Examining and review board; appeal.

- (a) *Created.* There is hereby created the Heating, Air Conditioning and Ventilating Examining and Review Board (hereinafter the board) which shall consist of five members, not more than three of whom shall be members of the same political party. The members shall be appointed by the mayor as follows: One shall be the heating, air

conditioning and ventilating inspector; one representative of the board of public works and safety; one representative of the insurance industry; and two representatives of the heating, air conditioning and ventilating contractors holding a valid license.

- (b) *Appointment; terms of office.* Of the five members first appointed, one shall be appointed for a term of one year, one for a term of two years, one for a term of three years, and two for terms of four years, and thereafter each member shall be appointed for a term of four years. The board shall appoint one of its members to act as chairman of the board, and one member to act as secretary to the board. Records of the meetings of the board shall be open to the public for inspection at all times. The board shall keep a record of all licenses and certificates issued by it. The members of the heating, air conditioning and ventilating examining and review board shall serve without compensation.
- (c) *Meetings.* The board shall hold a regular meeting twice during each year, on the first Monday of March and the last Friday of September, except that a special meeting may be called in case of an emergency upon three days' notice given by the chairman of the board or by waiver, in writing, of all members of the board, for the examination of applicants for licenses, providing any such applications are pending.
- (d) *Duties.* It shall be the duty of the board to examine the applications of persons who apply for licenses; to grant licenses; and to issue certificates of qualification to the building commissioner for qualified applicants who have paid the prescribed fees, and to revoke or suspend any license on the grounds set forth in this division.
- (e) *Quorum.* Three members of the board present at any meeting shall constitute a quorum for the transaction of business, but any action taken at any meeting shall require the affirmative vote of a majority of the members present.
- (f) *Appeals.* Any person may register an appeal with the board for a review of any decision of the heating, air conditioning and ventilating inspector, provided that such appeal is made in writing five days after such person, firm or corporation shall have been notified of such decision by the heating, air conditioning and ventilating inspector. Upon receipt of such appeal, the board shall call a meeting and hold a hearing to determine whether the action of the heating, air conditioning and ventilating inspector complies with this division and within 20 days shall make a decision. The decision of the board shall be final, subject to the state administrative review provisions in the state code.

(Code 1985, § 150.63; Ord. No. 3792, 12-6-1993; Ord. No. 4958, § 1(150.63), 8-15-2005)

Sec. 101-101. - Examinations.

- (a) Each application to take an examination shall be made in writing to the board 30 days before the examination date, stating the license applied for, the name and place of business of the applicant or, if the applicant is a corporation or other firm, the names of the representatives of the applicant who will act as supervisors of the work to be done under the license. An examination fee of \$10.00 shall be paid when the application is made.
- (b) An individual applicant or the supervisor designated by an applicant that is a corporation or other firm shall be examined by the heating, air conditioning and ventilating examining and review board as to his knowledge of the rules and regulations for the installation of heating, air conditioning and ventilating equipment, as set forth by the appropriate codes; and to determine the general qualifications and fitness of the applicant for executing the class of work covered by the license applied for.
- (c) The examination shall be in writing and a complete record of every examination given shall be kept on file three years after the date of the examination.

(Code 1985, § 150.64; Ord. No. 3792, 12-6-1993; Ord. No. 4958, § 1(150.64), 8-15-2005)

Sec. 101-102. - License and bond.

- (a) The building commissioner shall issue all licenses required by this article. A class "A" license shall only be issued after examination and qualification of an applicant for such license and the execution of a bond to the city, with security to be approved by the building commissioner, in the sum of \$5,000.00, conditional for the proper performance of an applicant's duties as a heating, air conditioning and ventilating contractor. When issued, such license shall run until December 31 of the year issued, unless sooner revoked. The bond required shall be executed to run concurrently with the license.
- (b) Application forms shall provide that applicants provide written proof of workers' compensation coverage and a certificate of insurance for liability.
- (c) Applicants shall be examined through a written examination which shall be administered by the building commissioner or his designee. A grade of 70 percent shall be passing to the applicant insofar as the test is used for partial qualification.

(Code 1985, § 150.66; Ord. No. 3792, 12-6-1993; Ord. No. 4958, § 1(150.65), 8-15-2005)

Sec. 101-103. - Holder of license and supervisor.

- (a) The holder of the license shall be the person to whom the license is issued. Any person working under the person holding the license may operate under that license as may be directed by the licensee.
- (b) If the business association of the holder of the license shall terminate with a particular business or company, the holder of the license shall immediately notify the board of such termination and said license shall become null and void. A new license shall be issued to the licensee reflecting the change in business status, except that no fee shall be charged for such new license.

(Code 1985, § 150.67; Ord. No. 3792, 12-6-1993; Ord. No. 4958, § 1(150.66), 8-15-2005)

Sec. 101-104. - Citations.

- (a) Upon learning that a heating, air conditioning or ventilating contractor is doing business without having a license, a citation shall be issued to said contractor by the building commissioner, or his designee, for each violation.
- (b) Citations may be issued for each and every violation of the required provisions of this division, and each such violation shall be treated as a separate act for which a citation may be issued.
- (c) Citations issued under this division shall contain the date, time, name and address of the violator, the Code section violated, the nature of the violation, the location of the violation, the name of the person issuing the citation and instructions as to the disposition of the citations.

(Code 1985, § 150.68; Ord. No. 3792, 12-6-1993; Ord. No. 4958, § 1(150.68), 8-15-2005)

Sec. 101-105. - Stop work order.

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

(Code 1985, § 150.69; Ord. No. 3792, 12-6-1993; Ord. No. 4958, § 1(150.69), 8-15-2005)

Secs. 101-106—101-123. - Reserved.

ARTICLE III. - ELECTRIC CODE

DIVISION 1. - GENERALLY

Sec. 101-124. - Penalty.

Any person who violates any provision of this article is subject to citations and prosecution through the ordinance violations bureau. A fine schedule for such violations is located in section 2-2.

(Code 1968, tit. 150, § 22; Code 1985, § 153.99; Ord. No. 1290, 3-2-1964; Ord. No. 1585, 7-21-1970; Ord. No. 1600, 9-30-1970; Ord. No. 1664, 11-16-1971; Ord. No. 4959, § 1(153.99), 8-15-2005)

Sec. 101-125. - Application of article.

The provisions of this article shall apply to all installations of electrical conductors, fittings, devices, appliances, and fixtures, hereinafter referred to as "electrical equipment" within or on private and public buildings and premises, with exceptions as provided in section 101-177 and with the following general exceptions:

- (1) The provisions of the article shall not apply to installations in railway cars, commercial or governmental radio transmission beyond the point of energy to the individual units, nor to installations and equipment employed by an electrical supply or communication agency in the generation, transmission, or distribution of electrical energy, or for the operation of signals or the transmission of intelligence in the exercise of its function as a utility.
- (2) As used in this article, the term "reasonably safe to persons and property," as applied to electrical installations and electrical equipment, means safe to use in the service for which the installation or equipment is intended without unnecessary hazard to life, limb, or property.

(Code 1968, tit. 150, § 1; Code 1985, § 153.01; Ord. No. 1290, 3-2-1964; Ord. No. 1585, 7-21-1970; Ord. No. 1600, 9-30-1970; Ord. No. 1664, 11-16-1971; Ord. No. 4959, § 1(153.01), 8-15-2005)

Sec. 101-126. - General liability for damages.

This article shall not be construed to relieve from or lessen the responsibility or liability of any party owning, operating, controlling, or installing any electrical equipment for damages to persons or property caused by any defect therein, nor shall the city be held as assuming any such liability by reason of the examination authorized herein, or by the license and certificate therefor issued as herein provided.

(Code 1968, tit. 150, § 23; Code 1985, § 153.02; Ord. No. 1290, 3-2-1964; Ord. No. 1585, 7-21-1970; Ord. No. 1600, 9-30-1970; Ord. No. 1664, 11-16-1971; Ord. No. 4959, § 1(153.02), 8-15-2005)

Secs. 101-127—101-150. - Reserved.

DIVISION 2. - INSTALLATION OF ELECTRICAL EQUIPMENT

Sec. 101-151. - Conformance to certain codes and standards required.

- (a) All installations of electrical equipment shall be reasonably safe to persons and property and in conformity with the provisions of this article and the applicable statutes of the state.
- (b) Conformity of installations of electrical equipment with this article and with applicable regulations set forth in the National Electrical Code, 2005 Edition and all amendments thereafter, or electrical provisions of other safety codes which have been approved by the American National Standards Institute, shall be prima facie evidence that such installations are reasonably safe to persons and property. The building commissioner or his designee shall permit trial installations of new methods of installing electrical equipment.

(Code 1968, tit. 150, § 7; Code 1985, § 153.10; Ord. No. 1290, 3-2-1964; Ord. No. 1585, 7-21-1970; Ord. No. 1600, 9-30-1970; Ord. No. 1664, 11-16-1971; Ord. No. 4959, § 1(153.10), 8-15-2005)

Sec. 101-152. - Conduits; other types of installations.

- (a) Rigid conduit, electrical metallic tubing, or other approved raceways shall be used for all wiring installed within the fire and fireproof limits of the city as defined in the city building code on fire limits, and on all public buildings, or commercial garages, all manufacturing concerns, all state, county, and city buildings, schools, hotels, motion picture houses, theatres, hospitals, asylums, storehouses, churches, all stores and offices within the city limits. Type AC (BX) cable can be used only with permission of the building commissioner or his designee. All multifamily buildings of wood frame or brick veneer construction only may use Romex-type wiring, starting from the service box.
- (b) Electrical metallic tubing or flexible metal conduit shall not be used where exposed to weather, wet locations, or refrigerated areas.
- (c) All new service entrance equipment hereafter installed having a capacity of 800 amperes or more shall be housed in an enclosure containing only electrical equipment and proper working space.
- (d) All vertically mounted switches or circuit breakers must be installed with the "on" position at the top and the "off" position at the bottom, and must be so indicated.
- (e) No bare copper will be allowed in the city as a neutral; bare copper may be used for a common ground only. All neutrals shall be white up to #6 wire.
- (f) An emergency lighting system consisting of a battery system or auxiliary engine generator must be installed in places of assembly where artificial illumination is required, such as hotels, theaters, sports arenas, hospitals, and similar institutions.
- (g) On all new wiring or upgrade installations, it shall be the responsibility of the contractor doing the work to comply with the National Electrical Code, and to install a minimum of one UL-approved carbon monoxide detector near the bedrooms of the home or dwelling unit that is being upgraded or built.
- (h) 100-ampere service.
 - (1) All homes or dwelling units with less than 100-ampere service shall be increased to a minimum of 100 amperes and the entire home or dwelling unit's electric system upgraded to present-day code when a change of occupancy is made or the home is sold. All homes or dwelling units not upgraded according to the above rule will be condemned.
 - (2) All homes or dwelling units that have fuse-type service panels must be changed to a minimum of a 100-ampere circuit breakers, and the entire home or dwelling unit's electric system upgraded to present-day code when its existing fuse panel is replaced. All homes or dwelling units not upgraded according to the above rule will be condemned.
- (i) All hollywood risers will have to be a minimum of two feet above the roof of any dwelling or structure, or when in range cable 12 feet above the ground.

- (j) All new residences having more than 600 square feet shall require 100-ampere three-wire entrance switch or electric center multicircuit breaker. Exception can be made to this provision whenever the enforcing authority deems a smaller size justifiable.
- (k) All structures sided or re-sided with any metallic material shall enclose the service lead in the metal conduit from weatherhead to the inside of the home.
- (l) Conversion of existing single-family residences to multifamily dwellings shall require the conformance of each newly created dwelling unit to all applicable sections of this article. Exception to this requirement can be made by the building commissioner or his designee whenever, in his opinion, the requirements of the National Electrical Code have been maintained.
- (m) On multiple-occupancy structures, when first built, or when reconfigured after initial use, it shall be the responsibility of the owner/contractor to mark the address and/or apartment unit number on the meter trim, both inside the box and on the outside on the cover (permanently embossed or engraved tag), and to verify the address and/or apartment unit number for the building commissioner or his designee.

(Code 1968, tit. 150, § 7; Code 1985, § 153.11; Ord. No. 1290, 3-2-1964; Ord. No. 1585, 7-21-1970; Ord. No. 1600, 9-30-1970; Ord. No. 1664, 11-16-1971; Ord. No. 2843, 12-2-1985; Ord. No. 3501, 6-17-1991; Ord. No. 4661, 1-22-2002; Ord. No. 4959, § 1(153.11), 8-15-2005)

Sec. 101-153. - Connections to installations.

- (a) It shall be unlawful for any person to make connection from a supply of electricity or to supply electricity to any electrical equipment for the installation of which a permit is required, or which has been disconnected or ordered to be disconnected by the building commissioner or his designee, until approval has been issued by the building commissioner or his designee authorizing the connection and use of the equipment. All services that have been disconnected shall not be reconnected until approval is issued by the building commissioner or his designee.
- (b) The electric utility shall submit regularly to the building department, the address of each service location where the utility's customer requests a final billing of the account.
- (c) No application shall be allowed more than one service of the same voltage (three-phase or single-phase) in one structure unless the following condition applies: An area separation wall meeting the 2003 Indiana Building Code (675 IAC 13-2.4) requirements for separation of the building.

(Code 1968, tit. 150, § 19; Code 1985, § 153.12; Ord. No. 1290, 3-2-1964; Ord. No. 1585, 7-21-1970; Ord. No. 1600, 9-30-1970; Ord. No. 1664, 11-16-1971; Ord. No. 3501, 6-17-1991; Ord. No. 4959, § 1(153.12), 8-15-2005)

Sec. 101-154. - Final inspection; certificate of approval.

- (a) Upon completion of any installation of electrical wiring and equipment which has been made under a permit, it shall be the duty of the person making the installation to notify the building commissioner or his designee, who shall inspect the installation within 24 hours, exclusive of Saturdays, Sundays, and holidays, of the time the notice is given or as soon thereafter as practicable.
- (b) Where the building commissioner or his designee finds the installation to be in conformity with the provisions of this article, he shall issue to the person making the installation a certificate of approval, with duplicate copy for delivery to the owner, authorizing the use of the installation and connection to the supply of electricity, and shall give written notice of the authorization to the agency supplying the electrical service.
- (c) When a certificate of approval is issued authorizing the connection and use of a temporary installation, the certificates shall be issued to expire at a time to be stated therein and shall be revocable by the building

commissioner or his designee for cause.

- (d) When any electrical equipment is to be hidden from view by the permanent placement of parts of the building, the person installing the equipment shall notify the building commissioner or his designee, and the equipment shall not be concealed until it has been inspected and approved by the building commissioner or his designee. On large installations where the concealment of equipment proceeds continuously, the person installing the electrical equipment shall give the building commissioner or his designee due notice, and inspections shall be made periodically during the progress of the work.
- (e) If, upon inspection, the installation is not found to be fully in conformity with the provisions of this article, the building commissioner or his designee shall at once forward to the person making the installation, notice to make the necessary correction immediately and call for reinspection.

(Code 1968, tit. 150, § 18; Code 1985, § 153.13; Ord. No. 1290, 3-2-1964; Ord. No. 1585, 7-21-1970; Ord. No. 1600, 9-30-1970; Ord. No. 1664, 11-16-1971; Ord. No. 4959, § 1(153.13), 8-15-2005)

Secs. 101-155—101-176. - Reserved.

DIVISION 3. - LICENSES

Sec. 101-177. - Required; exceptions.

- (a) Except as otherwise provided in section 101-125, no person shall in any manner undertake to execute or perform any work of installing, maintaining, altering, or repairing any electrical equipment unless he is the holder of a city electrical contractor's license.
- (b) Despite the provisions of subsection (a) of this section, no license shall be required in order to execute or perform any of the following electrical work:
 - (1) Installations and equipment employed by an electrical supply or communication agency in the generation, transmission, or distribution of electrical energy in its function as a public utility.
 - (2) The installation, alteration, or repair of electrical equipment for the operation of signals or the transmission of intelligence by wire.
 - (3) Any work involved in the manufacturing, testing, servicing, altering, or repairing of electrical equipment or apparatus except that this exemption shall not include any permanent wiring other than that required for testing purposes.
 - (4) The assembly, erection, and connection of electrical equipment by the manufacturer of the equipment, but not including any electric wiring other than that involved in making electrical connections on the equipment itself or between two or more parts of such equipment.
 - (5) Work performed by the owner of any residence in which the owner resides and for which the effort requires a permit by any other section of this article, if the work shall actually be done by the owner or member of his immediate family and the owner furnishes a sworn statement to that effect. In addition, the owner of any building shall not be permitted to perform his own electrical wiring if the building is to be used as a place of business, apartment house, rental unit, or is a house which is to be offered for sale within one year.

(Code 1968, tit. 150, § 8; Code 1985, § 153.20; Ord. No. 1290, 3-2-1964; Ord. No. 1585, 7-21-1970; Ord. No. 1600, 9-30-1970; Ord. No. 1664, 11-16-1971; Ord. No. 4959, § 1(153.20), 8-15-2005)

Sec. 101-178. - Electrical contractor's license.

The holder of an electrical contractor's dealers license shall maintain an office and have a business telephone in the county and shall be principally engaged in the business of electrical contracting. The license shall entitle the holder, any person or his employees, to perform electrical contracting work and to sell approved electrical appliances, apparatus, and devices.

(Code 1968, tit. 150, § 9; Code 1985, § 153.21; Ord. No. 1290, 3-2-1964; Ord. No. 1585, 7-21-1970; Ord. No. 1600, 9-30-1970; Ord. No. 1664, 11-16-1971; Ord. No. 4959, § 1(153.21), 8-15-2005)

Sec. 101-179. - Application; examining fee.

Each application for a license shall be made in writing to the electrical examining board 30 days before the examination date, stating the class of license applied for, and the name and place of business of the applicant. An examining fee of \$10.00 shall be paid when application is made.

(Code 1968, tit. 150, § 11; Code 1985, § 153.22; Ord. No. 1290, 3-2-1964; Ord. No. 1585, 7-21-1970; Ord. No. 1600, 9-30-1970; Ord. No. 1664, 11-16-1971; Ord. No. 4959, § 1(153.22), 8-15-2005)

Sec. 101-180. - Examinations.

- (a) Applicants shall be examined to determine their knowledge of the rules and regulations governing the installation of electric wiring, devices, appliances, and equipment, as set forth in the statutes of this state, or as issued under the authority of the statutes of this state, in ordinances of the city, and in the National Electrical Code, and to determine the general qualifications and fitness of each applicant for executing the work authorized to be performed by the license applied for. Applicants successfully passing the examination are not required to be reexamined. Testing accomplished by a professional testing company/organization or a current license with a similar or greater testing standard may be accepted by the building commissioner in lieu of the testing provisions identified herein at the discretion of the building commissioner by the policy of the examining board.
- (b) No person shall be examined for a license unless he has had at least four years' experience as an electrician in the electrical residential, commercial, or industrial field, and is able to furnish satisfactory evidence of such fact.
- (c) A certificate or diploma from a recognized school of electricity will be acceptable in lieu of two of the four years of experience required.
- (d) Two years' electrical experience in the United States military service will also be acceptable, in lieu of one year of the four noted in subsection (b) of this section. However, not more than two years' credit shall be given for any combination of school work or military experience. The applicant must be reviewed by the board of examiners.
- (e) It shall be the responsibility of the electrical examining board to prepare and approve all written tests for applicants. The tests will have a minimum of 25 questions covering basic electrical theory and ability and fitness for the license desired. A grade of 70 percent shall be passing to the applicant insofar as the test is used for qualification.
- (f) A passing score given by the electrical examining board is valid for 90 days for the purposes of applying for a license.
- (g) The license is granted for a probationary period of 90 days, in which time the license holder by practical application must prove his ability to execute the mechanics of the examination from which he secured his passing grade.
- (h) The examination shall be in writing and a complete record of every examination given shall be kept on file until three years after the date of the examination.
- (i) Should an applicant fail to pass an examination, the applicant may be reexamined upon submitting an application, in writing, at least 30 days prior to the next examination date and accompanied by the examination fee.

(Code 1968, tit. 150, § 12; Code 1985, § 153.23; Ord. No. 1290, 3-2-1964; Ord. No. 1585, 7-21-1970; Ord. No. 1600, 9-30-1970; Ord. No. 1664, 11-16-1971; Ord. No. 4959, § 1(153.23), 8-15-2005)

Sec. 101-181. - License fees; expiration.

- (a) Any person representing a firm or corporation for a license as required by this article, shall, before being granted a license, give, execute, and deliver a surety bond to the city, in the penal sum of \$5,000.00, conditioned upon the faithful compliance with this article and laws regulating electrical work and apparatus, with an agreement to pay all damages, costs, and expenses that may be caused by the negligence of the person and firm or corporation through failure to comply with the provisions of this article.
- (b) Before a license is granted to any applicant, a fee shall be paid according to the schedule referenced in article II of this chapter. Before any expiring license is renewed, a fee shall be paid as referenced in this chapter.
- (c) All licenses shall expire yearly on December 31.

(Code 1968, tit. 150, § 10; Code 1985, § 153.24; Ord. No. 1290, 3-2-1964; Ord. No. 1585, 7-21-1970; Ord. No. 1600, 9-30-1970; Ord. No. 1664, 11-16-1971; Ord. No. 4959, § 1(153.24), 8-15-2005)

Sec. 101-182. - Holder of license; change of representative.

- (a) The holder of the license shall be the person to whom the license is issued. Any person working under the person holding the license may operate under that license as may be directed by the licensee.
- (b) In the event that the business association of the holder of the license shall terminate with a particular business or company, the holder of the license shall immediately notify the board of such termination and said license shall become null and void. A new license shall be issued to the licensee reflecting the change in business status, except that no fee shall be charged for such new license.

(Code 1968, tit. 150, §§ 13, 14; Code 1985, § 153.25; Ord. No. 1290, 3-2-1964; Ord. No. 1585, 7-21-1970; Ord. No. 1600, 9-30-1970; Ord. No. 1664, 11-16-1971; Ord. No. 4959, § 1(153.25), 8-15-2005)

Sec. 101-183. - License certificate; required display.

- (a) Each certificate for a license shall specify the name of the person and firm or corporation to whom the license is issued, the name of the person designated as the factory representative, and the expiration date.
- (b) Each holder of a license shall keep his certificate of license displayed in a conspicuous place in his principal place of business.

(Code 1968, tit. 150, § 15; Code 1985, § 153.26; Ord. No. 1290, 3-2-1964; Ord. No. 1585, 7-21-1970; Ord. No. 1600, 9-30-1970; Ord. No. 1664, 11-16-1971; Ord. No. 4959, § 1(153.26), 8-15-2005)

Secs. 101-184—101-204. - Reserved.

DIVISION 4. - PERMITS

Sec. 101-205. - Required.

- (a) No electrical wiring or equipment shall be installed within or on any building, structure or premises publicly or privately owned, nor shall any alteration or addition be made in any such existing equipment except as provided in

sections 101-125 and 101-177 without first securing a permit therefor from the building commissioner or his designee, or posting a certificate showing a permit has been applied for and authorizing the contractor to proceed with electrical installation.

- (b) It shall be unlawful for any licensee to secure a permit under his or his firm's name to enable any person not a bona fide employee, person or firm holding a license to do electrical work.
- (c) If work is such that the exact number of circuits, or h.p. are unknown, a permit shall be taken for the minimum and a correction made when the work is completed.

(Code 1968, tit. 150, §§ 16, 17; Code 1985, § 153.35; Ord. No. 1290, 3-2-1964; Ord. No. 1585, 7-21-1970; Ord. No. 1600, 9-30-1970; Ord. No. 1664, 11-16-1971; Ord. No. 4959, § 1(153.35), 8-15-2005)

Sec. 101-206. - Fee schedule.

Before any permit is granted for the installation or alteration of electrical equipment, the person making application for the permit shall pay the clerk a fee in the amount as referenced in article II of this Code.

(Code 1968, tit. 150, § 17; Code 1985, § 153.36; Ord. No. 1290, 3-2-1964; Ord. No. 1585, 7-21-1970; Ord. No. 1600, 9-30-1970; Ord. No. 1664, 11-16-1971; Ord. No. 2843, 12-2-1985; Ord. No. 4959, § 1(153.36), 8-15-2005)

Secs. 101-207—101-235. - Reserved.

DIVISION 5. - ADMINISTRATION AND ENFORCEMENT

Sec. 101-236. - Building official, electrical inspector; powers and duties.

- (a) There is created the position of electrical inspector, who shall report to the building commissioner. The person chosen to fill the office of electrical inspector shall be of good moral character, shall be possessed of such executive ability as is requisite for the performance of his duties, and shall have a thorough knowledge of the standard materials and methods used in the installation of electrical equipment. He shall be well versed in approved methods of construction for safety to persons and property, the statutes of the state relating to electrical work, and any orders, rules, and regulations issued by authority hereof, and the National Electrical Code as approved by the American National Standards Institute.
- (b) The electrical inspector shall have police powers restricted to enforcement of this article only.
- (c) It shall be the duty of the building commissioner to enforce the provisions of this article. He or his designee shall, upon application, grant permits for the installation or alteration of electrical equipment and shall make inspections of electrical installations, all as provided in this article. He or his designee shall keep complete records of all permits issued, inspections and re-inspections made, and other official work performed in accordance with the provisions of the article.
- (d) It shall be unlawful for the building commissioner, or any of his designees to engage in the business of electrical contracting in the city, either directly or indirectly, and they shall have no financial interest in any firm which sells, installs, or performs maintenance of electrical equipment within the city.
- (e) The building commissioner or his designee shall have the authority to make electrical inspections, and when any electrical equipment is found by the building commissioner or his designee to be dangerous to persons or to 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 building commissioner or his designee

to place the equipment in a safe condition. If such work is not completed within 15 days or any longer period that may be specified by the building commissioner or his designee in the notice, the building commissioner or his designee shall have the authority to disconnect or order the discontinuance of electric service to the electrical equipment.

(f) In cases of emergency, where necessary for the safety of persons or property, or where electrical equipment may interfere with the work of the fire department, the building commissioner or his designee shall have the authority to immediately disconnect or cause the disconnection of any electrical equipment.

(g) The building commissioner may delegate any of his powers or duties to any of his designees.

(Code 1968, tit. 150, §§ 2—4; Code 1985, § 153.45; Ord. No. 1290, 3-2-1964; Ord. No. 1585, 7-21-1970; Ord. No. 1600, 9-30-1970; Ord. No. 1664, 11-16-1971; Ord. No. 4959, § 1(153.45), 8-15-2005)

Sec. 101-237. - Electrical examining board.

(a) *Created; members.* There is created an electrical examining board of the city, hereinafter designated as the board, which shall consist of the city electrical inspector and four members to be appointed by the mayor, as follows: one member shall be a class "A" electrical contractor, one member shall be an electrical engineer registered in the state, one member shall be a class "B" industrial electrician licensed, and one member shall be a class "A" electrical construction journeyman. Of the four members initially appointed, one shall serve for a term of one year, one for a term of two years, one for a term of three years, and one for a term of four years. Thereafter, each appointment shall be for a term of four years or until a successor is appointed. The board shall elect one of the members a chairman of the board. Any appointed member may be removed from office by the mayor.

(b) *Compensation.* Each appointed member shall receive a sum of \$25.00 for each day during which he has attended a meeting of the board.

(c) *Meeting schedule; duties.* The board shall hold a regular meeting twice during each year on the second Wednesday in March and the second Wednesday in August at the call of the mayor and chairman of the board, for the examination of applicants for licenses provided any such applications are pending. It shall be the duty of the board to examine the reports of persons and firms or corporations who apply for licenses; to issue certificates therefore; and to revoke or suspend any license on the grounds set forth in this article.

(Code 1968, tit. 150, §§ 5, 6; Code 1985, § 153.46; Ord. No. 1290, 3-2-1964; Ord. No. 1585, 7-21-1970; Ord. No. 1600, 9-30-1970; Ord. No. 1664, 11-16-1971; Ord. No. 4959, § 1(153.46), 8-15-2005)

Sec. 101-238. - Board of review; authority to hear appeals, revoke or suspend licenses.

(a) There is created a board of review which shall consist of the four members of the examining board, and a fifth member, other than the city electrical inspector, who is a citizen of the city and a freeholder and who shall be chairman of the board, to be appointed annually by the mayor. The board shall be paid the sum of \$5.00 per member for each day of service. Any person may register an appeal with the board of review for a review of any decision of the electrical inspector provided that such appeal is made in writing within ten days after the person, firm, or corporation has been notified of the decision by the electrical inspector. Upon receipt of the appeal, the board shall proceed to determine whether the action of the electrical inspector complies with this article and within ten days shall make a decision in accordance with its findings. Three members of the board present at any meeting shall constitute a quorum for the transaction of business, and any action taken at any meeting shall require the affirmative vote of at least three members.

(b) No license or certificate issued in accordance with the provisions of this article shall be assignable or transferable.

Any such license may, after hearing, be suspended for a definite length of time, or revoked by the board of review, if the person holding the license willfully or by reason of incompetence, violates any ordinance of the city, or any statute of the state, relating to the installation, maintenance, alterations, or repair of electrical equipment, or any orders, rules, or regulations issued by authority thereof.

(Code 1968, tit. 150, §§ 20, 21; Code 1985, § 153.47; Ord. No. 1290, 3-2-1964; Ord. No. 1585, 7-21-1970; Ord. No. 1600, 9-30-1970; Ord. No. 1664, 11-16-1971; Ord. No. 4959, § 1(153.47), 8-15-2005)

Secs. 101-239—101-269. - Reserved.

ARTICLE IV. - PLUMBING CODE

Footnotes:

--- (1) ---

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

Sec. 101-270. - Applicability of article.

The provisions of this article and any other plumbing ordinance now in force shall not be construed to apply to service piping and connections, meter installations, and repairs to piping made by the water department of the city in the course of its business.

(Code 1985, § 156.01)

Sec. 101-271. - Registration with city.

- (a) Before the building commissioner may issue a plumbing permit to a plumbing contractor as defined in IC 25-28.5-1-2 (as may be from time to time amended), said plumbing contractor shall be required to register his name and address and his business name, name of business owner, and business address, and his current valid state plumbing contractor's license or permit number with the building commissioner.
- (b) The registration will be valid from January 1 through December 31 of each year.
- (c) The applicant for such registration shall pay a registration fee, according to a schedule of fees currently on file in the building commissioner's office, as of the time of issuance of the registration certificate to the applicant.

(Code 1985, § 156.02; Ord. No. 3177, 7-18-1988)

Secs. 101-272—101-290. - Reserved.

ARTICLE V. - PROPERTY MAINTENANCE CODE

Footnotes:

--- (2) ---

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

Sec. 101-291. - BOCA basic property maintenance code.

- (a) *Adoption by reference.* The fifth edition of the BOCA National Property Maintenance Code/1996, promulgated by the Building Officials and Code Administrators International, Inc., is hereby adopted by reference as fully as if set forth herein to govern existing buildings and structures in the city, except for the additions, modifications or deletions which are specified in this section. At least two copies of the BOCA National Property Maintenance Code/1996 shall be kept in the code enforcement department for public inspection.
- (b) *Additions, modifications and deletions.* The provisions of the BOCA National Property Maintenance Code/1996, adopted by subsection (a) of this section shall be modified, added to or deleted so that the following articles, sections or subsections shall read as follows:
- (1) *PM-100.1. Title:* These regulations shall be known as the Property Maintenance Code of the City of Mishawaka, Indiana, hereinafter referred to as the Property Maintenance Code.
 - (2) *PM-101.7 Application of other codes:* Any repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the Building, Plumbing, Mechanical, Electric and Fire Prevention Code.
 - (3) *PM 106.2 Penalty:* Any person who shall violate a provision of this code shall be subject to a fine of not less than \$25.00 nor more than \$2,500.00. Each day that a violation continues after due notice has been served shall be deemed a separate offense.
 - (4) *PM 107.3 Method of service:* Such notice shall be deemed to be properly served if a copy thereof is:
 - a. Sent by first class mail addressed to the property owner or occupant;
 - b. Delivered personally to the property owner or occupant; or
 - c. Left at the dwelling or usual place of abode of the property owner or occupant. Service of such notice in the foregoing manner upon the agent of the property owner or occupant to be notified shall constitute actual service of notice upon the property owner or occupant.
 - (5) *PM 109.3* shall be deleted in its entirety.
 - (6) *PM 110 and 111* shall be deleted in their entirety.
 - (7) *PM 202:* The definitions for the terms "building code" "hotel" and "two family dwelling" in PM 202 General Definitions shall be deleted and replaced with the following:

Building code: The Indiana Building Code in effect at the time of the construction of the building or at the time of the commencement of the present use thereof, Indiana One- and Two-Family Dwelling Code in effect at the time of the construction of the building or at the time of the commencement of the present use thereof, or other such codes and ordinances adopted by the State of Indiana and/or the city that were in effect at the time of the construction of the building or at the time of the commencement of the present use thereof, for the regulation of construction, alteration, addition, repair, removal, demolition, location, occupancy and maintenance of buildings or structures.

Hotel: Every building or structure kept, used, or maintained and advertised or held out to the public to be an inn, hotel, motel, family hotel, apartment hotel, lodginghouse, dormitory, or place where sleep or rooming accommodations are furnished for hire or are used or maintained for the accommodation of guests, lodgers, or roomers.

Two-family dwelling: A building containing two dwelling units.

- (8) *PM 202:* The following definitions shall be added in alphabetical order to PM 202 General Definitions:

Electrical code: The Indiana Electrical Code or other such electrical codes and ordinances adopted by the State of Indiana and/or the city, that were in effect at the time of the construction of the building or at the time of the commencement of the present use thereof.

Fire prevention code: The Indiana Fire Prevention Code or other such fire codes and ordinances adopted by the State of Indiana and/or the city, that were in effect at the time of the construction of the building or at the time of the commencement of the present use thereof.

Mechanical code: The Indiana Mechanical Code or other such mechanical codes and ordinances adopted by the State of Indiana and/or the city; that were in effect at the time of the construction of the building or at the time of the commencement of the present use thereof.

Plumbing code: The Indiana Plumbing Code or other such plumbing codes and ordinances adopted by the State of Indiana and/or the city, that were in effect at the time of the construction of the building or at the time of the commencement of the present use thereof.

- (9) *PM-303.4 and PM-305.4* shall be deleted in their entirety.
- (10) *PM-304.15 Insect screens:* During the period from April 1 to October 1, every door, window and other outside opening utilized or required for ventilation purposes serving any structure containing habitable rooms, food preparation areas, food service areas, or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged or stored, shall be supplied with approved tightly fitting screens of not less than 16-mesh per inch and every swinging door shall have a self-closing device in good working condition.

Exception: Screen doors shall not be required where other approved means, such as air curtains or insect repellant fans are employed.

- (11) *PM-602.2 Residential buildings:* Every dwelling shall be provided with heating facilities capable of maintaining a temperature of 70 degrees Fahrenheit (21 degrees Celsius) in all habitable rooms, bathrooms, and toilet rooms in accordance with the building code and mechanical code.
- (12) *PM-602.2.1 Heat supply:* Every owner and operator of any building who rents, leases or lets one or more dwelling units, rooming units, dormitories or guestrooms on terms, either express or implied, must furnish heat to the occupants thereof and shall supply sufficient heat to maintain the room temperatures specified in section PM-602.2 during the hours between 6:30 a.m. and 10:30 p.m. of each day and not less than 60 degrees Fahrenheit (16 degrees Celsius) during other hours.
- (13) *PM-602.2.2 Room temperature exception:* When the outdoor temperature is below the outdoor design temperature required for the locality by the building code and mechanical code, the owner or operator shall not be required to maintain the minimum room temperatures, provided that the heating system is operating at full capacity, with supply valves and dampers in a fully open position.
- (14) *PM-602.3 Nonresidential structures:* Every enclosed occupied work space shall be supplied with sufficient heat to maintain a temperature of not less than 65 degrees Fahrenheit (18 degrees Celsius) during all working hours.

Exceptions:

1. Processing, storage and operation areas that require cooling or special temperature conditions; and
 2. Areas in which persons are primarily engaged in vigorous physical activities.
- (15) *PM-604.2 Service:* The size and usage of appliances and equipment shall serve as a basis for determining the need for additional facilities in accordance with the electrical code. Every dwelling shall be served by a main service that is not less than 60 amperes, three wires.
- (16) *PM-702.2 Exit capacity:* The capacity of the exits serving a floor shall be sufficient for the occupant load thereof as determined by the building code.

- (17) *PM-702.3 Number of exits:* The number, location and maintenance of required exits shall be in accordance with the building code and the fire prevention code.
- (18) *PM-702.5 Exit signs:* All means of egress shall be indicated with approved "Exit" signs where required by the building code. All "Exit" signs shall be visible and all "Exit" signs shall be illuminated at all times that the building is occupied.
- (19) *PM-702.6 Corridor enclosure:* All corridors serving an occupant load greater than 30 and the openings therein shall provide an effective barrier to resist the movement of smoke. All transoms, louvers, doors and other openings shall be closed or shall be self-closing.

Exceptions:

1. Corridors in occupancies in other than Use Group H which are equipped throughout with an automatic sprinkler system.
 2. Patient room doors and corridors in occupancies in Use Group 1-2 where smoke barriers are provided in accordance with the fire prevention code are not required to be self-closing.
 3. Corridors in occupancies in Use Group E where each room that is occupied for instruction or assembly purposes has at least one-half required means of egress doors opening directly to the exterior of the building at ground level.
 4. Corridors that are in compliance with the building code.
- (20) *PM-702.7 Dead-end travel distance:* All corridors that serve required exits shall be maintained in accordance with the fire prevention code. The length of a dead-end corridor shall be as specified in the building code.
- (21) *PM-702.9 Stairways, handrails and guards:* Every exterior and interior flight of stairs having more than two risers in every open portion of the stair, landing, balcony, porch, deck, ramp or other walking surface which is more than 30 inches above the floor or grade below shall have guardrails. Handrails and guardrails shall be installed in accordance with the building code.
- (22) *PM-702.10 Information signs:* A sign shall be provided at each floor landing in all interior stairways more than three stories above grade, designating the floor level above the floor of discharge. All elevator lobby call stations on all floor levels shall be identified by approved signs in accordance with the requirements for new buildings in the building code.

Exception: The emergency signs shall not be required for elevators that are part of an accessible means of egress complying with the building code.

- (23) *PM-702.11 Locked doors:* All means of egress doors shall be readily openable from which egress is to be made without the need for keys, special knowledge, or effort, except as provided for in the building code and the fire prevention code.
- (24) *PM-702.11.1* is hereby deleted.
- (25) *PM-702.12 Emergency escape:* Every sleeping room shall have at least one operable window or exterior door approved for emergency egress or rescue which complies with the building code.
- (26) *PM-702.12.1 Security:* Bars, grills, grade, or similar devices may be installed on emergency exit windows or doors provided:
1. The devices are equipped with approved release mechanisms which are openable from the inside without the use of a key or special knowledge or effort; and
 2. The building is equipped with smoke detectors installed in accordance with the building code.

(27) *PM-703.2 Hazardous material:* Combustible, flammable, explosive or hazardous materials, such as paints, volatile oil cleaning fluids or combustible rubbish, such as waste paper, boxes, and rags, shall not be accumulated or stored unless storage complies with the applicable requirements of the building code and the fire prevention code.

(28) *PM-707.1 Smoke and heat detection:* Approved smoke and heat detector shall be installed in each recirculating air system with a capacity of 2,000 cfm in accordance with the mechanical code.

(c) *Applicability.* This section does not apply to buildings under construction, but only to buildings after they have been constructed and are in existence. To the extent that the BOCA Property Maintenance Code adopted by this section contains provisions in the nature of building codes or structural requirements, only the building codes that were in existence at the time of the construction of the building in question, or at the time that the present use of the building commenced, are applicable and enforceable under this section.

(Code 1985, § 155.01; Ord. No. 4413, 7-20-1999)

Sec. 101-292. - Unsafe Building Law.

(a) Adopted by reference. Pursuant to the authority granted by the Indiana General Assembly, the city hereby adopts the Unsafe Building Law, being IC 36-7-9-1 through 36-7-9-28, as it may be amended from time to time.

(b) Definitions. The definitions set forth in IC 36-7-9-2 are incorporated by reference herein in their entirety, including the definition of substantial property interest therein; and for purposes of this section, the following additional definitions shall apply:

Dilapidated means no longer adequate for the purpose or use for which it was originally intended.

Public nuisance includes:

- (1) Any physical condition, use, or occupancy of any premises or its appurtenances considered an attractive nuisance to children, including, but not limited to, abandoned wells, shafts, basements, excavations, and unsafe fences or structures; or for which the required precautions against trespassers have not been provided.
- (2) Any premises from which the plumbing, heating, electrical, and facilities required by law have been removed, or from which utilities have been disconnected, destroyed, removed, or rendered ineffective.
- (3) Any structure or building that is in a state of dilapidation, deterioration, or decay; faulty construction; overcrowded, as set forth in this article; open, vacant, or abandoned; damaged by fire to the extent as not to provide shelter; in danger of collapse or failure, and dangerous to anyone on or near the premises.
- (4) Any structure where the paint has been severely removed by time, or where the paint is checked or bleeding.

Unsafe building means, in addition to the definition thereof contained in IC 36-7-9-4, any building or structure which has any or all of the conditions or defects herein described, provided that these conditions or defects exist to the extent that life, health, property, or safety of the public or its occupants are endangered:

- (1) Whenever any door, aisle, passageway, or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.
- (2) Whenever the walking surface of any aisle, passageway, stairway, or other means of exit is so warped, worn, loose, torn, or otherwise unsafe as to not provide a safe and adequate means of exit in case of fire or panic.
- (3) Whenever the stress in any materials, member, or portion thereof, due to all dead and live loads, is more than 1½ times the working stress or stresses allowed for new buildings of similar structure, purpose, or location.
- (4) Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, to an extent that the structural strength or stability thereof is materially less than it was before the catastrophe, and is

less than the minimum requirements for new buildings of similar structure, purpose, or location.

- (5) Whenever any portion, member, or appurtenance thereof is likely to fail, to become detached or dislodged, or to collapse and thereby injure persons or damage property.
- (6) Whenever any portion of a building, or any member, appurtenance, or ornamentation on the exterior thereof, is not of sufficient strength or stability or is not so anchored, attached, or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified for new buildings of similar structure, purpose, or location without exceeding the working stresses permitted for such buildings.
- (7) Whenever any portion thereof has wracked, warped, buckled, or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.
- (8) Whenever the building, structure, or any portion thereof, because of dilapidation, deterioration, or decay; faulty construction; the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting the building; the deterioration, decay, or inadequacy of its foundation; or any other cause, is likely to partially or completely collapse.
- (10) Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.
- (11) Whenever the exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumbline passing through the center of gravity does not fall inside the middle one-third of the base.
- (12) Whenever the building or structure, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting members, or 50 percent damage or deterioration of its nonsupporting members, enclosing or outside walls, or coverings.
- (13) Whenever the building or structure has been so damaged by fire, wind, earthquake, or flood, or has become so dilapidated or deteriorated so as to become an attractive nuisance to children, or freely accessible to persons for the purpose of committing unlawful acts.
- (14) Whenever any building or structure has been constructed, exists, or is maintained in violation of any specific requirement or prohibition applicable to the building or structure provided by the building regulations of this city, or of any law or ordinance of this state or city relating to the condition, location, or structure of buildings.
- (15) Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances has in any nonsupporting part, member, or portion less than 50 percent, or in any supporting part, member, or portion less than 66 percent of the strength, fire-resisting qualities or characteristics, or weather resisting qualities or characteristics required by law in the case of a newly-constructed building of like area, height, and occupancy in the same location.
- (16) Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air, or sanitation facilities, or otherwise, is determined by the county health officer to be unsanitary, unfit for human habitation, or in such a condition that is likely to cause sickness or disease.
- (17) Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, or lack of sufficient fire-resistive construction is determined by the chief of the city fire inspection bureau to be a fire hazard.
- (18) Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure, or whenever any building or structure is abandoned for a period in excess of six months, so as to constitute that building or portion thereof an attractive nuisance or hazard to the public.

- (c) It shall be unlawful for any person or organization with a substantial property interest, as that term is defined in IC 36-7- maintain or permit the existence of a public nuisance or unsafe building within the corporate limits of the city.
- (d) The code enforcement department is hereby designated as the executive department which shall administer the provisions of the property maintenance code of the city. The director of the code enforcement department shall be the person responsible for the administration of property maintenance code of the city.
- (e) The board of public works and safety shall have the responsibility for establishing and fixing the average processing expense as provided in IC 36-7-9-12.
- (f) As provided by IC 36-7-9-14, a fund designated as the Unsafe Building Fund shall be established in the operating budget of the code enforcement department. Any balance remaining at the end of the fiscal year shall be carried over in the fund for the following year and shall not revert to the general fund. Monies for the fund may be received from any source, including appropriations by local, state, or federal governments and donations. As further provided by IC 36-7-9-15, the code enforcement department may take action to transfer to the Unsafe Building Fund all or any part of any money which may exist in the Building, Demolition, Repair and Contingent Fund which may have been created, or which may exist in any similar designated demolition fund in the city budget.
- (g) The administrative hearing procedure provided for in IC 36-7-9-1 et seq. may be utilized by the city in the enforcement of any provision of this Code.

Chapter 105 - DESIGN REVIEW AND DEVELOPMENT PLAN

Footnotes:

--- (1) ---

State Law reference— *Series development plans, IC 36-7-4-1401 et seq.*

ARTICLE I. - IN GENERAL

Sec. 105-1. - Background.

The city recognizes that certain established areas of the city are inherently unique relative to their establishment and physical characteristics; specifically, the following is generally known, understood, and considered in the development of this chapter:

- (1) Development and redevelopment within established areas of the city occur over time based on ever-evolving standards.
- (2) Growth and redevelopment efforts in established areas are organic and occur in a seemingly random pattern based on influences such as availability, adjacent uses, the market, infrastructure, and natural site amenities.
- (3) The diversity of established development types, character, and size contribute to the quality, flavor and essence of the city.
- (4) The quality, flavor and essence of the city play an integral role in property values, as well as the identity, quality of life, and welfare of its citizens.
- (5) The quality, flavor and essence are not restricted to boundaries and could be influenced by adjacent communities, as well as regional or national relative design trends.
- (6) The essence of the city is ever evolving and is made up of a variety of elements.
- (7) Elements include the collective semblance of a network of buildings, roads, open spaces, landscaping, cultural elements, landmarks and other tangible items.

- (8) Over time, the city has regulated certain tangible items to protect the public health, safety and welfare.
- (9) Standard regulations in the form of dimensional zoning or municipal codes, although providing basic protections, do not comprehensively reflect the diversity of unique established areas.
- (10) Standard regulations could unnecessarily influence development and redevelopment efforts creating monolithic single dimensional products that could negatively influence the previously established areas of the city.
- (11) There is a need for aesthetically oriented requirements that allow for flexibility, promote design creativity, and enhance the established goals of the community that ultimately affect the quality, flavor and essence of the community.
- (12) Within certain unique and established areas, development efforts have a potential to impact property values, city identity, and the quality of life of its residents.
- (13) An ordinance that provides guidelines, objectives, and standards for the development and redevelopment of certain unique established areas of the city is appropriate.

(Code 1985, § 161.01; Ord. No. 4469, 12-20-1999)

Sec. 105-2. - Statement of intent.

The intent of this chapter is to provide guidelines, objectives, and standards in a design review format to allow for flexibility and creativity in order to achieve high quality orderly development and redevelopment reflective of unique established areas of the city; specifically, the chapter looks to accomplish the following:

- (1) Provide sufficient direction to developers so as not to be arbitrary or capricious.
- (2) Promote design flexibility and creativity.
- (3) Enhance the quality, flavor and essence of the community.
- (4) Provide standards that reflect and/or complement notable quality existing developments, as well as appropriate regional or national design trends.
- (5) Require and seek the advice of design professionals in considering the review of proposed developments.
- (6) Provide the administrative authority the ability to waive standard dimensional zoning requirements as part of the design review process when it is determined that the proposed design is consistent with the intent of this chapter.
- (7) Require construction materials and elements that reflect and/or complement notable quality existing developments.
- (8) Require urban solutions to standard design elements such as parking, landscaping, signage, and utilities.
- (9) Promote the development of pedestrian friendly and visually inviting streetscapes.
- (10) Provide requirements that restrict the ability of a proposed development to adversely impact adjacent property values.
- (11) Limit the negative appearance of miscellaneous items such as mechanical equipment, vending machines, aboveground utilities, site lighting, and dumpster areas.
- (12) Provide guidelines which promotes the establishment of view corridors.
- (13) Require the consideration of historically relevant structures.

(Code 1985, § 161.02; Ord. No. 4469, 12-20-1999)

Sec. 105-3. - 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; any words not defined in this section shall be construed in generally accepted meanings as defined in a recent edition of a dictionary of the English language:

Appearance means the outward aspect visible to the public.

Applicable means indicative of a close logical relationship with a matter under consideration. Although one matter is being considered, one or more additional matters could require consideration due to their immediate and direct bearing on the first.

Appropriate means sympathetic, or fitting, to the context of the site and the whole community. Relative to the interpretation of this chapter, deemed by the administrative authority to meet or exceed requirements of the chapter following the review and input of a design professional.

Appurtenances means the visible, functional objects accessory to and part of buildings.

Architectural concept means the basic aesthetic idea of a building, or group of buildings or structures, including the site and landscape development, that produces the architectural character.

Architectural feature means a prominent or significant part or element of a building, structure, or site.

Architectural style means the characteristic form and detail, as of buildings of a particular historic period.

Attractive means having qualities that arouse interest and pleasure in the observer.

Berm means a raised form of earth to provide screening or to improve the aesthetic character.

Cohesiveness means unity of composition between design elements of a building or a group of buildings and the landscape.

Compatibility means harmony in the appearance of two or more external design features in the same vicinity.

Conservation means the protection and care that prevent destruction or deterioration of historical or otherwise significant structures, buildings, or natural resources.

Consistent means appropriate, in agreement or harmony with, compatible.

Design professional means an individual trained in artistic/aesthetic principals relative to the built environment who can professionally interpret the possible fine distinctions between the attributes of a given proposal and the requirements contained herein. Design professionals may include, but shall not be limited to, the city planner by nature of the position, a state licensed architect, a state licensed landscape architect, or urban planner certified by the American Institute of Certified Planners.

Discouraged means deemed not to meet the requirements of this chapter. Discouraged items or materials may only be utilized or incorporated into a project where determined as satisfactory by the plan commission as part of the waiver process.

Encouraged means deemed appropriate or meeting the requirements of this chapter. Item which promotes the intent of this chapter.

Exterior building component means an essential and visible part of the exterior of a building.

External design feature means the general arrangement of any portion of a building, sign, landscaping, or structure and including the kind, color, and texture of the materials of such a portion, and the types of roof, windows, doors, lights, attached or freestanding signs, or other fixtures appurtenant to such portions as will be open to public view from any street, place, or way.

Harmony means a quality that represents an appropriate and congruent arrangement of parts, as in an arrangement of varied architectural and landscape elements.

Historically relevant means a structure or other real property rated as notable or outstanding within the City of Mishawaka Summary Report, Indiana Historic Sites & Structures Inventory as may be amended.

Incidental means secondary or minor, occurring as a result of something of more importance.

Mechanical equipment means equipment, devices, and accessories, the use of which relates to water supply, drainage, heating, ventilating, air conditioning, and similar purposes.

Miscellaneous structures means structures, other than buildings, visible from public ways. Examples are memorials, antennas, water tanks and towers, sheds, shelters, fences, walls, kennels, transformers, drive-up facilities.

Monotone means the repetition of the same appearance, texture, form, or color.

Not applicable means a requirement that is deemed by the plan commission, or its designee, to not apply to a given project or proposal based on a lack of a relationship between the requirement and the given project or proposal.

Pedestrian means indicative of characteristics that relate to human scale including visual and physical interaction at ground level.

Proportion means a balanced relationship of parts of a building, landscape, structures, or buildings to each other and to the whole.

Satisfactory means recognition of an effort to fulfill requirements. Relative to the interpretation of this chapter, the term deemed by the administrative authority to meet intent of the requirements of the ordinance following the review and input of a design professional. Not meeting the literal requirements require a waiver by the administrative authority.

Scale means proportional relationship of the size of parts to one another and to the human figure.

Screening means the structure of plantings, walls, or decorative fencing that conceals from view from public ways the area behind the structure.

Sign means a letter, illustration, symbol, figure, insignia, or other device employed to express and illustrate a message or part thereof.

Significant means having a quality or essence important to and pertaining to the intent of this chapter. Relative to changes in appearance, a modification that is noticeably different in character when compared to the original by an untrained passerby. Relative to building or structure additions, an increase of more than 1,000 square feet of building coverage or 25 percent of the existing gross floor area.

Street hardware means manmade objects other than buildings that are part of the streetscape. Examples are: tree grates, directional signs, benches, litter containers, ash urns, planting containers, mailboxes, and street walls.

Street, collector/arterial, means a public street that serves as a connection or route of transportation through an area, to other parts of the city, or beyond as may be determined by the city department of engineering.

Street, local, means a public or private street that predominantly serves as a destination route for businesses or residences located in a specific area as may be determined by the city department of engineering.

Street wall means a wall that generally abuts the sidewalk, although there may be required setbacks and recesses for open space. The street wall helps define and enclose the street corridor, creating a sense of activity, intensity, and spatial containment.

Streetscape means the scene as may be observed along a public street which may be composed of natural and manmade components, including buildings, paving, planting, street hardware, and miscellaneous structures.

Structure means anything constructed or erected, the use of which requires permanent or temporary location on or in the ground.

Utility means any device, including wire, pipe, conduit, poles, assemblies, detention areas, electrical boxes, pits, manholes, transformers, or the like which carries, contains, or provides access to gas, water, sanitary sewer, stormwater, electricity, oil, and communications.

(Code 1985, § 161.10; Ord. No. 4469, 12-20-1999)

Sec. 105-4. - Applicability.

This chapter shall apply to all land within the corporate limits of the city that has been designated by chapter 13Z, zoning, as requiring design review as part of the height, area, and developmental regulations of a specific zoning district. Designated specific zoning districts shall list the applicable requirements of this chapter where only a portion is intended to apply. If applicable requirements are not listed individually, all requirements contained herein shall apply. This chapter, in whole or part, may also be incorporated by reference within overlay zoning districts or within individual planned unit development districts. Design review shall be required for the following:

- (1) The erection, exterior alteration, exterior reconstruction, change of use, addition, or other modification that changes the appearance of an existing structure, related appurtenance, and/or external design feature not otherwise identified as exempt by this chapter.
- (2) Demolition of existing structures identified as "outstanding" or "notable" within the City of Mishawaka Summary Report, Indiana Historic Sites and Structures Inventory.

(Code 1985, § 161.11; Ord. No. 4469, 12-20-1999)

Secs. 105-5—105-26. - Reserved.

ARTICLE II. - ADMINISTRATION

Sec. 105-27. - Exemptions.

This chapter shall not apply to the following uses, development, redevelopment, modifications, or maintenance:

- (1) The creation of new single-family residential structures.
- (2) Additions and modifications to existing single-family residential structures, including structures incidental or accessory to single-family residential uses.
- (3) Building repair or maintenance of non-single-family residential structures including painting, replacement of siding, roofing, replacement of windows, including similar incidental modifications, provided said modification is reasonably consistent with the external appearance of the existing structure. Significant color modifications, increase/decrease in window area, or changes in materials shall be subject to the requirements contained herein.
- (4) Interior modifications that do not change the use of the structure, increase usable areas, or otherwise increase the intensity of the use.
- (5) Demolition of existing structures not identified as "outstanding" or "notable" within the City of Mishawaka

- (6) Public improvements, projects, construction, and redevelopment efforts supported by tax dollars undertaken by the city located on city-owned property, public parks, rights-of-way, or easements. However, the city shall be required to consider the intent and requirements of this chapter for any improvement, or redevelopment effort located within a geographic area subject to the requirements contained herein.
- (7) All property and structures that are legally existing, or have received final site plan approval, before the effective date of the ordinance from which this chapter is derived shall be considered legally nonconforming. Subsequent modifications, additions, demolition, new construction, and changes in appearance need only meet the provisions of this chapter in accordance with section 105-40.

(Code 1985, § 161.12; Ord. No. 4469, 12-20-1999)

Sec. 105-28. - Overlay requirements.

In accordance with IC 36-7-4-1400 series (development plans), this chapter shall serve as an addition to chapter 137, zoning. As such, the requirements contained herein shall be considered as an addition to any requirements identified within chapter 129, on-premises sign standards, chapter 133, subdivision regulations, chapter 137, zoning, and/or any other applicable code, regulation, or requirement. Should requirements contained herein differ between separate ordinances or documents, the most stringent shall apply.

(Code 1985, § 161.13; Ord. No. 4469, 12-20-1999)

Sec. 105-29. - Authority.

The plan commission is established as the administrative agency for this chapter. This chapter is adopted pursuant to the authority granted to local government by IC 36-7-4-1400 series (development plans).

(Code 1985, § 161.14; Ord. No. 4469, 12-20-1999)

Sec. 105-30. - Plan commission review.

The plan commission shall review, approve or disapprove design/development plans for new construction, demolition, changes in use, additions, and or any other modifications to structures not otherwise identified as being exempt by this chapter. Review for a limited number of items may be performed for the plan commission by its designee as part of the administrative review process as set forth in section 105-31.

- (1) *Public hearing required.* A public hearing shall be required for design/development plans as follows:
 - a. Final site plans excluding those identified by section 137-35(b).
 - b. Final site plans including those identified by section 137-35(b) that require the demolition of a historically relevant structure.
 - c. Signage that does not meet the size, area, and location requirements of chapter 129, on-premises sign standards, and the requirements of this chapter.
 - d. Parking modifications where the parameters for administrative review are identified by section 105-31.
 - e. Any improvement or modification that requires a waiver in accordance with section 105-38.
 - f. Appeals of the designee of the plan commission in accordance with section 105-32.
- (2) *Hearing procedure.* Required public hearings shall be accomplished in a manner similar to the procedure required for subdivision plats as identified by section 133-74(e), (f) and (g) in accordance with IC 5-3-1 and the plan

commission's rules of procedure.

- (3) *Plan commission elected hearing.* In addition to those items identified by subsection (1) of this section, the plan commission may defer action on any application and require a public hearing in accordance with subsection (2) of this section where the plan commission deems the proposal could have an impact on adjacent properties or otherwise warrants the input of the greater community.

(Code 1985, § 161.15; Ord. No. 4469, 12-20-1999)

Sec. 105-31. - Administrative review—Application and process.

In order to decrease time delays for certain projects, applications for the following may be submitted to, reviewed, and approved/denied by the designee of the plan commission, on behalf of the plan commission in accordance with IC 36-7-4-1402(c). The designee of the plan commission shall be the city planner/executive director of the department of city planning as appointed in accordance with IC 36-7-4-311(a). In the absence or vacancy of this position, the plan commission may appoint an interim designee from the staff of the department of city planning. Conditions and/or modifications may be required by the designee in accordance with this chapter. Only the following items may be considered as part of the administrative review process:

- (1) Final site plans limited to those identified by section 137-35(b).
- (2) Signage that meets the size, area, and location requirements of chapter 129, on-premises sign standards, and the requirements of this chapter.
- (3) Parking modifications, provided the total number of spaces per lot does not exceed 50, or the total increase to an existing lot that exceeds 50 spaces does not exceed ten percent of the existing number.
- (4) Any improvement or modification, that has not been identified as being exempt from this chapter, which requires design review and is not otherwise identified within section 105-30(1)a.

(Code 1985, § 161.16; Ord. No. 4469, 12-20-1999)

Sec. 105-32. - Same—Appeal.

A decision of the designee of the plan commission may be appealed directly to the plan commission. To initiate an appeal, an interested party shall file said appeal in writing stating the reasons for the appeal. Appeals shall be filed at the city department of planning no longer than 30 calendar days from the date of the administrative review decision. The filing fee of the appeal shall equal the fee required for plan commission final site plan review. A public hearing shall be held for each appeal in accordance with section 105-30(1)a. The date of the public hearing shall be determined by the filing deadlines established every year by the rules of procedure of the plan commission.

(Code 1985, § 161.17; Ord. No. 4469, 12-20-1999)

Sec. 105-33. - Procedures for plan commission submission.

The procedures for submission for development plan/design review shall be consistent with the requirements for filing a final site plan in accordance with the section 137-35. Those improvements or modifications identified by this chapter as requiring development plan/design review, that do not require final site plan review, shall submit an application for an improvement location permit in accordance with the section 137-36. All applications submitted before the plan commission shall meet applicable filing deadlines and will be scheduled for review accordingly. Any improvement and/or modification may be

submitted for plan commission review. To expedite the approval process, certain improvements and/or modifications may be submitted for administrative review at the discretion of the applicant. Decisions made as part of administrative review process are final and may only be appealed to the plan commission in accordance with section 105-32.

(Code 1985, § 161.18; Ord. No. 4469, 12-20-1999)

Sec. 105-34. - Procedures for administrative review.

Administrative review applications may be filed at any time. The designee of the plan commission may take up to five business days to review an application. The designee of the plan commission shall approve, deny, or forward the application to the plan commission for review. The designee shall notify the applicant in writing and identify the reasons for denial or why an application has been forwarded to the plan commission. Applications may be forwarded to the plan commission by its designee if there is a perceived conflict of interest or the designee deems the proposal could have an impact that warrants the consideration of the entire plan commission. Applications forwarded to the plan commission by the designee of the plan commission shall be considered one submission. No additional fees or application shall be required. All administrative reviews shall be reported by memorandum to the plan commission at the next regularly scheduled meeting.

(Code 1985, § 161.19; Ord. No. 4469, 12-20-1999)

Sec. 105-35. - Design professional review.

Each application for development plan/design review shall be evaluated by a third party design professional. The plan commission, or its designee, may not consider an application for design/development plan review without the evaluation of a design professional. This evaluation, at a minimum, shall include a checklist that signifies the design professional has reviewed and evaluated the proposal relative to each requirement contained within this chapter. The design professional shall indicate whether the proposal is appropriate, satisfactory, inappropriate, or not applicable. Items identified as being satisfactory or inappropriate shall require the design professional to outline the reasons for this evaluation for plan commission consideration. The plan commission, or its designee, as part of the review of any application shall consider this evaluation. This evaluation, as may be modified by the plan commission, or its designee, may be adopted as the written findings required by IC 36-7-4-1406 and section 105-37. To expedite the administrative review process, the designee of the plan commission may perform both the required design professional review and administrative review for a given proposal.

(Code 1985, § 161.20; Ord. No. 4469, 12-20-1999)

Sec. 105-36. - Review fees.

Separate filing fees for design/development plan review are not required. Reviews shall occur simultaneously with required site plan and/or improvement location permit submissions. As such, all applicable site plan and/or improvement location permit fees shall apply.

(Code 1985, § 161.21; Ord. No. 4469, 12-20-1999)

Sec. 105-37. - Written findings and records.

The plan commission, or its designee, shall adopt written findings for each application reviewed in accordance with IC 36-7-4-1406. Plan documentation and supporting information required as identified within this chapter shall be recorded in a manner consistent with the final site plan improvement process. Site plan information not required to be recorded on the final site plan

shall be maintained by the department of city planning. Plan documentation and supporting information required in conjunction with improvements and/or modifications that require only an improvement location permit need not be recorded. Records regarding improvement location permits shall be maintained by the department of city planning.

(Code 1985, § 161.22; Ord. No. 4469, 12-20-1999)

Sec. 105-38. - Waiver of development requirements.

The plan commission may waive or reduce development requirements only following a public hearing held in accordance with section 105-30(1)a. The designee of the plan commission may not waive or reduce any requirements contained herein. As part of the findings required by section 105-37, the plan commission shall identify the reasons for approving/denying each waiver request. In addition, the plan commission may impose additional conditions, beyond those that may be imposed under section 105-39, where the commission determines that the additional conditions directly relate to the intent of this chapter and are deemed to holistically compensate for a specific aspect of a requested waiver. Waivers shall be limited to the following development requirements:

- (1) The height, area, and developmental regulations of the specific zoning district that requires design review, provided it is determined that said waiver advances the intent of this chapter. The plan commission may not waive height, area, and developmental regulations of a specific zoning district (excluding those identified by this chapter) based only on the apparent hardship imposed by the strict application of the terms of the ordinance.
- (2) The requirements identified by this chapter, provided the plan commission identifies said standards, pose an unnecessary physical or financial hardship relative to the proposed project.
- (3) The requirements identified by this chapter, provided it is determined that said waiver advances the intent of this chapter.

(Code 1985, § 161.23; Ord. No. 4469, 12-20-1999)

Sec. 105-39. - Conditions and commitments.

The plan commission, or its designee, may impose conditions as part of any design review application provided the conditions are consistent with the intent of this chapter and are reasonably necessary to satisfy any applicable development requirement. The plan commission, or its designee, may also require a performance bond or other written assurance that requires the timely completion of public improvements within or associated with a given project. To ensure projects are completed as presented, the plan commission, or its designee, may permit or require the owner of real property to make a written commitment in accordance with IC 36-7-4-613. The plan commission, or its designee, may accept commitments from the agent of the owner of real property only where the owner has provided the written consent for the agent to act as the legal representative of the owner.

(Code 1985, § 161.24; Ord. No. 4469, 12-20-1999)

Sec. 105-40. - Modification of legally existing nonconforming property and structures.

The plan commission, or its designee, may require proportional modifications to legally existing nonconforming property and structures as part of any improvement that requires design review. The proportional modifications requested need not relate to the proposed modifications. However, the cost and scope of requested modifications shall be relatively consistent with the value of proposed improvements. For example, a proposed sign improvement could warrant the required relocation/removal of a

vending machine or news rack. A proposed building addition could require the screening or enclosure of unassociated existing exterior mechanical equipment. A proposed sign modification would not warrant the replacement of an existing nonconforming roof material.

(Code 1985, § 161.25; Ord. No. 4469, 12-20-1999)

Sec. 105-41. - Plan documentation and supporting information.

The following documentation and supporting information shall be submitted for any development or proposal where design/development plan review is required. Items that are not applicable for a particular proposed improvement or modification need not be submitted if not relevant to the proposed project. For example, if a given proposal does not involve a sign or mechanical equipment, the required supporting information for these items would not be applicable unless otherwise required by the plan commission, or its designee, as a condition of approval. The plan commission, or its designee, as part of the review process may request additional documentation and supporting information as necessary to determine compliance with the requirements contained herein.

- (1) All information identified by section 137-35(c) for site plan approval.
- (2) Building/structure elevations and construction details illustrating exterior appearance of required design elements, identification of materials, exterior window treatments, and entrance features.
- (3) Proposed building/structure color schemes, renderings, and/or any other information necessary to indicate compliance with this chapter. Typical material and paint samples illustrating the exterior appearance of any building/structure may also be requested by the plan commission or its designee.
- (4) Context drawings. Where requested by the plan commission, or its designee, may require elevations of a proposed project in relation to surrounding streets and structures. The purpose of these elevations is to assist the plan commission, or its designee, in reviewing the appropriateness of building height, proportions, and pedestrian emphasis.
- (5) Location and description of exterior mechanical equipment, antennas, or similar structures.
- (6) Location of exterior vending machines, newsracks, telephones, teller machines, and similar structures.
- (7) For projects that are located adjacent to or within 50 feet of the St. Joseph River, shall identify the location of the river and any associated amenities.
- (8) Documentation identifying the type and location of proposed and existing exterior utilities. Construction details shall be provided for all proposed utilities.
- (9) An exterior lighting plan documenting the location and type of existing and proposed building mounted and freestanding site lighting. Construction details and or catalogue cuts shall be provided for each type of proposed fixture identifying the style, mounting height, wattage, and type (metal halide, high pressure sodium, mercury vapor, etc.). In addition, the plan commission, or its designee, may require an applied photometric drawing documenting the average sustained horizontal footcandle level for a given site.
- (10) Construction details for proposed fences and walls. Where wall heights vary, the minimum and maximum wall heights shall be identified.
- (11) The location and proposed screening of proposed dumpster and utility service areas. Existing dumpster and utility service areas intended to remain shall also be identified and labeled.
- (12) Documentation of the location and type of existing and proposed street hardware. Construction details and or catalogue cuts shall be provided for each type of hardware proposed.
- (13) A signage plan documenting the location, form, character, mounting height, and style of existing and proposed

signage.

- (14) Color rendered elevations of all proposed signage.
- (15) A landscaping plan indicating the common name, botanical name, location, and installed size of proposed plantings.
- (16) Irrigation plans that indicate the service connection, controller location, areas to be irrigated, and irrigation method.
- (17) A plan identifying the location of historically relevant structures identified as either "notable" or "outstanding" within the City of Mishawaka Summary Report, Indiana Historic Sites and Structures Inventory.
- (18) A plan identifying the use or integration of landmarks or cultural artifacts.
- (19) The location, associated amenities, and construction details relative to proposed urban plazas, outdoor seating, and water features.

(Code 1985, § 161.26; Ord. No. 4469, 12-20-1999)

Sec. 105-42. - Violations and enforcement.

Projects that are constructed not in compliance with this chapter or without required review shall be considered in violation of chapter 137, zoning. Enforcement of the provisions of this chapter shall be accomplished in accordance with sections 137-45 through 137-47.

(Code 1985, § 161.27; Ord. No. 4469, 12-20-1999)

Sec. 105-43. - Design requirements.

The requirements contained within this chapter shall apply to all projects and be considered as part of development plan/design review as applicable to a given proposal. Where possible, graphic representations, illustrations, and photographs have been included as appropriate and inappropriate examples for each requirement. The use of examples are intended to provide guidance only. As such, each requirement is meant to be reviewed holistically relative to the context of its location and the scope of the proposed improvement. These requirements are intended to allow for flexibility and creativity in order to achieve high quality orderly development and redevelopment. Design professionals are encouraged to apply for waivers where appropriate to further the intent of this chapter. As part of the design/development plan review process, the plan commission, or its designee (where permitted), will determine if a project is appropriate, satisfactory, inappropriate, or not applicable.

(Code 1985, § 161.28; Ord. No. 4469, 12-20-1999)

Secs. 105-44—105-74. - Reserved.

ARTICLE III. - ARCHITECTURAL REQUIREMENTS

Sec. 105-75. - Architectural character and style.

The basic aesthetic idea of a proposal shall be considered holistically relative to the context of its location and the scope of the proposed improvement. New buildings and substantial modifications of property shall be designed by a design professional in the relation to the specific characteristics of the site, the surrounding area, and the intent of this chapter. The applicable seal or other relevant proof of professional certification shall be considered appropriate documentation relative to design

professional status. The use of boilerplate buildings and architectural features shall be discouraged. This chapter shall not dictate the appropriateness of a specific architectural style, except inasmuch as said style otherwise complies with the intent of this chapter. The replication of existing historic styles of architecture within the city shall be encouraged only when the location or context of a proposal would warrant as deemed by the plan commission, or its designee.

(Code 1985, § 161.40; Ord. No. 4469, 12-20-1999)

Sec. 105-76. - Architectural materials.

The use of natural materials shall be encouraged. Natural materials shall include, but shall not be limited to, fired brick, limestone, river stone, slate, granite or other similar material. Use of imitation or synthetic materials shall be discouraged. Imitation or synthetic materials shall include but shall not be limited to aluminum or vinyl siding, wood siding, pressed concrete veneer brick, exposed pre-cast concrete, concrete block (smooth, split face, or otherwise), or replicate stone. Structures that primarily consist of glass and steel and/or stucco shall be discouraged. Glass block, stucco, metal, and wood may be utilized as an accent or decorative feature incidental to the principle natural materials. The use of reflective glass shall be discouraged. The use of metal, fiberglass, or hard plastic awnings shall be discouraged. Appropriate awning materials include cloth, canvas, or similar materials with a concealed frame.

(Code 1985, § 161.41; Ord. No. 4469, 12-20-1999)

Sec. 105-77. - Architectural color and textures.

The use of natural materials and colors shall be encouraged. Natural colors shall include but shall not be limited to brick red, maroon, limestone, beige, brown, and other earth tones. Bold contrasting vibrant colors shall be discouraged except where deemed appropriate for accents. Bold colors shall include but shall not be limited to yellow, red, purple, pink, orange, lime-green, sky blue, and any neon or fluorescent. Monotone colors shall be discouraged. Blending ranges of colors of bricks and other building materials shall be encouraged to provide rich textures.

(Code 1985, § 161.42; Ord. No. 4469, 12-20-1999)

Sec. 105-78. - Architectural features and details.

Balconies, decorative facades, bracketed eaves, columns, balustrades, towers, turrets, skylights, and arches shall be encouraged. Door and window location, size, and spacing shall be provided to promote visual interest, provide pedestrian emphasis, and to enhance the architectural concept. Architectural features and details shall be designed in proportion to the building. Details shall be provided to promote visual interest, provide pedestrian emphasis, and to enhance the designer's concept. Monotone or flat single dimensional walls shall be discouraged within view of the public right-of-way and the St. Joseph River. The use of historic details, or mimicking of existing details, may be utilized where appropriate to the design in accordance with the intent of this chapter.

(Code 1985, § 161.43; Ord. No. 4469, 12-20-1999)

Sec. 105-79. - Building height and proportions.

The height, width, and general proportions of a building shall be designed in consideration of surrounding structures. Buildings, including incidental accessory appurtenances, over 80 feet in height shall be discouraged. Facade modulation and articulated rooflines shall be encouraged to reduce the apparent mass of structures at street level. Physical features such as balconies, terraces, large windows, canopies, porches, and exterior seating shall be encouraged to develop street character,

pedestrian emphasis, and liveliness. Larger buildings, over three stories above grade, shall be encouraged to provide an architectural differentiation of ground level. Differentiation may be provided by the incorporation of architectural elements such as recesses, arcades, higher structural bays, and overhangs.

(Code 1985, § 161.44; Ord. No. 4469, 12-20-1999)

Sec. 105-80. - Roof materials.

Wood shingle, asphalt shingle, tile, slate, painted metal, and copper shall be considered appropriate roofing materials that are visible from public right-of-way. Roll roofing, built up tar and gravel, plastic, and fiberglass materials will generally be deemed inappropriate materials that are visible from the public right-of-way. The plan commission or its designee may require roofs to match or be constructed of materials of a similar appearance based on adjacent structures, in accordance with the intent of this chapter.

(Code 1985, § 161.45; Ord. No. 4469, 12-20-1999)

Sec. 105-81. - Roof form.

The design lines created by the shape of the roof shall constitute the roof form. Varied roof forms (multiple design lines) shall be encouraged where possible. Roof forms for new construction shall be encouraged to create pedestrian emphasis and incorporate multiple forms to provide visual interest. Large flat roofs shall be discouraged for buildings under 30 feet in height.

(Code 1985, § 161.46; Ord. No. 4469, 12-20-1999)

Sec. 105-82. - Foundation walls.

Exposed foundation walls shall be constructed of architectural materials that match the principle facing of the structure. The maximum exposure of foundation walls not constructed of materials that match the principle facing of the structure shall be limited to a maximum of 12 inches.

(Code 1985, § 161.47; Ord. No. 4469, 12-20-1999)

Secs. 105-83—105-107. - Reserved.

ARTICLE IV. - MISCELLANEOUS REQUIREMENTS

Sec. 105-108. - Mechanical equipment.

To minimize the impact of mechanical equipment on the appearance of the community, window air conditioning units or condenser elements shall be discouraged. Antennas shall be located where they are not visible from the public right-of-way and/or the St. Joseph River. Mechanical equipment on the ground shall be screened or housed in a structure that is in harmony with the surroundings. Mechanical equipment and/or related appurtenances attached to the side of a building shall be covered or designed in harmony with the building. Mechanical equipment attached to the roof of a building should be kept as low as possible and screened from view at ground level. The use of screening that utilizes appropriate architectural materials shall be encouraged.

(Code 1985, § 161.50; Ord. No. 4469, 12-20-1999)

Sec. 105-109. - Vending machines and newsracks.

Vending machines and newsracks shall not be located where visible from public right-of-way or the St. Joseph River. An appropriate location for these items is within enclosed structures such as a foyer or entranceway.

(Code 1985, § 161.51; Ord. No. 4469, 12-20-1999)

Sec. 105-110. - Pay telephones, teller machines, and similar accessory structures.

Pay telephones, teller machines, and similar accessory structures shall be incorporated integrally within main architectural structures. Items may be housed separately within individual accessory structures provided said structures meet the design review standards adopted herein. Drive-through facilities (facilities that may be operated without leaving a motor vehicle) shall be discouraged.

(Code 1985, § 161.52; Ord. No. 4469, 12-20-1999)

Sec. 105-111. - Integration and use of river property.

Property that contains frontage on the St. Joseph River, including associated water bodies such as the Mill Race, shall be developed in a manner to emphasize and incorporate this amenity. This shall be accomplished in a manner reflective of the intended use of the property. Integration shall include the creation of both active and passive public uses. This integration may include, but shall not be limited to, the dedication of easements for public use, the construction of public river-oriented improvements such as walks and overlooks, developing view corridors, and providing an architectural relationship between principle buildings and the river through the use of windows, entrances, details, and views.

(Code 1985, § 161.53; Ord. No. 4469, 12-20-1999)

Sec. 105-112. - Pedestrian emphasis.

Architectural projects shall be developed in a manner that contains amenities, design elements, and features that promote the emphasis of pedestrian uses and interaction. This requirement shall apply to all public right-of-way, frontage on the St. Joseph River, as well as, internal entrances designed for frequent use. Pedestrian emphasis shall be accomplished in a manner reflective of the intended use of the property. Integration may include, but shall not be limited to, providing significant amounts of window store frontage, providing an overhead plane such as canopies or awnings, physical amenities such as bollard lights, benches, as well as, providing wide walks with varying patterns or materials.

(Code 1985, § 161.54; Ord. No. 4469, 12-20-1999)

Sec. 105-113. - Exterior utilities.

All new or proposed site utilities shall be located underground. Aboveground utilities shall be discouraged. Entry fixtures and related appurtenances shall be located away from high use areas and main entrances. Stormwater detention shall not be accomplished by using open ponds or retention areas except where the incorporation of the element further contributes to the intent of this chapter. Non-appearance-related stormwater retention methods, such as utilizing shallow storage on parking areas, shall be encouraged. High voltage electric lines (nonservice lines) may be located above ground as may be deemed appropriate by the plan commission or its designee. Where possible, existing aboveground utilities and related appurtenances shall be placed underground or obscured from view of public rights-of-way and the St. Joseph River. This may be accomplished by locating utilities and appurtenances behind structures in nonvisible areas.

(Code 1985, § 161.55; Ord. No. 4469, 12-20-1999)

Sec. 105-114. - Exterior lighting.

All exterior lighting shall be appropriate to the building and its surroundings in terms of style, scale, and intensity of illumination. Standard city ornamental street lights shall be provided along all public road rights-of-way and the St. Joseph River spaced no greater than 80 feet apart. Standard city ornamental street lights shall also be provided at roadway and private vehicular drive intersections. The plan commission may require existing city poles and fixtures be upgraded to an ornamental standard as part of the conditions of approval. Low wattage (maximum of 250 watts per location) shall be encouraged. Maximum sustained light coverage over two horizontal footcandles shall be discouraged. Mounting heights of over 20 feet for exterior lighting fixtures shall be discouraged. Miscellaneous site lighting shall be shielded, 90-degree cut-off or otherwise designed to prevent glare on public right-of-way, walks, and adjacent buildings. Wood poles or similar amenities that appear temporary in nature shall be discouraged. Up-lighting of buildings, trees, and flag poles shall be encouraged where said lighting does not produce glare or other visual detractions.

(Code 1985, § 161.56; Ord. No. 4469, 12-20-1999)

Sec. 105-115. - Fences and walls.

Where fences or walls are utilized they shall be constructed of iron, steel picket, stone, or natural materials designed to match the principle building. Chain link, concrete block, fiberglass, vinyl and wood fences shall be prohibited. Solid screening more than four feet in height shall be discouraged except where appropriate in conjunction with screening dumpster and utility areas. Railroad ties and unfaced concrete shall be considered inappropriate for wall construction. Sheet piling that extends more than two feet above grade, or two feet below the 100-year flood elevation of the St. Joseph River, shall utilize stone, masonry, or other facing material as deemed appropriate by the plan commission, or its designee. Street walls, where proposed or required, shall be of a masonry construction, or concrete faced with natural materials, designed to be in harmony with the surroundings. Street walls shall predominantly be designed for seating purposes no higher than 24 inches above the surrounding grade.

(Code 1985, § 161.57; Ord. No. 4469, 12-20-1999)

Sec. 105-116. - Dumpster/utility service areas.

Dumpster and utility service areas (including transformers, truck docks, and loading areas) shall be located where they are not visible from the public right-of-way and/or the St. Joseph River. Equipment/dumpsters on the ground shall be screened or housed in a structure that is in harmony with the surroundings. The use of screening that utilizes appropriate architectural materials shall be encouraged.

(Code 1985, § 161.58; Ord. No. 4469, 12-20-1999)

Sec. 105-117. - Street hardware.

Street hardware shall be required where appropriate relative to a proposed use and/or the scope of a proposed project. As such, the plan commission may require the incorporation of directional signs, ash urns, benches, litter containers, tree grates, mailboxes, and other relevant appurtenances as part of the conditions of approval. Street hardware shall utilize high-quality materials such as painted steel, iron, and masonry. Street hardware consisting of wood and/or plastic materials shall be discouraged. Signs (excluding supports) may utilize materials such as wood, plastic, and fiberglass provided said sign meets the other requirements identified by this chapter.

(Code 1985, § 161.59; Ord. No. 4469, 12-20-1999)

Secs. 105-118—105-148. - Reserved.

ARTICLE V. - PARKING FACILITY REQUIREMENTS

Sec. 105-149. - Off-street parking areas.

- (a) *Fifty spaces or fewer.* Parking areas that contain 50 spaces or fewer shall be designed to limit the use of frontage on public rights-of-way. Parking shall be designed to be located behind or between buildings. The utilization of small residual areas between buildings within developed areas for parking shall be encouraged. Angled parking shall be discouraged within new developments except where parcel configuration would otherwise restrict the development of standard 90-degree spaces. It is also encouraged that within new development parking areas be developed in accordance with the standards identified for parking areas greater than 50 spaces in subsection (b) of this section.
- (b) *Greater than 50 spaces.* Contiguous parking areas that contain greater than 50 spaces shall be designed reflective of urban conditions to maximize the use of property. Parking shall be designed on multiple levels. The shared use, occupancy, and maintenance of structures shall be encouraged. Parking structures shall be designed as per the building design requirements identified by this chapter. Parking structures greater than two stories above ground shall incorporate retail space or a different ground level treatment along public rights-of-way.

(Code 1985, §§ 161.60, 161.61; Ord. No. 4469, 12-20-1999)

Sec. 105-150. - On-street parking areas.

On-street parking areas located within public right-of-way shall be encouraged on local and service-oriented streets. On-street parking areas located within public right-of-way shall be discouraged on collector and arterial streets. Where appropriate pavement widths are provided, parking shall be limited to angled and parallel spaces. Perpendicular spaces within road right-of-way shall be discouraged. On-street parking may be prohibited by the plan commission where it deems that there could be a negative impact on public safety. Approval of on street parking may only occur with the prior consent of the city board of public works and safety.

(Code 1985, § 161.62; Ord. No. 4469, 12-20-1999)

Secs. 105-151—105-168. - Reserved.

ARTICLE VI. - SIGNAGE REQUIREMENTS

Sec. 105-169. - Exterior signage materials.

Exterior signage materials such as wood, metal, and masonry shall be encouraged where possible. Use of exposed neon shall be discouraged. An appropriate application for exposed neon, if utilized, shall be located within exterior display windows. Support materials for freestanding signs shall consist of a masonry style consistent with the exterior appearance of the principle building. Metals, or other materials consistent with and complementary to the principle building may also be considered appropriate.

(Code 1985, § 161.70; Ord. No. 4469, 12-20-1999)

Sec. 105-170. - Exterior signage colors.

Bold contrasting vibrant colors shall be discouraged except where deemed appropriate for incidental portions, characters, or accents. Color restrictions shall not apply to established company symbols or corporate logos. This exemption shall be limited to the specific symbol or logo and shall not apply to background colors or construction materials. Bold colors shall include but shall not be limited to yellow, red, purple, pink, orange, lime-green, sky blue, and any neon or fluorescent. Limited applications of these colors may be considered satisfactory by the plan commission based on the specific context of a proposal, the architectural concept, and application relative to the intent of this article.

(Code 1985, § 161.71; Ord. No. 4469, 12-20-1999)

Sec. 105-171. - Signage form.

(a) The following types of signs shall be encouraged:

- (1) Projecting signs;
- (2) Suspended signs;
- (3) Wall signs;
- (4) Marquee signs;
- (5) Building identification signs;
- (6) Low profile freestanding identification signs;
- (7) Menu boards; and
- (8) Temporary wall mounted banners.

(b) The following types of signs shall be discouraged:

- (1) Off-premises signs;
- (2) Freestanding identification signs which exceed eight feet in height;
- (3) Automatic changing signs;
- (4) Changeable copy signs;
- (5) Exterior temporary signs, excepting menu boards and temporary wall mounted banners;
- (6) Roof signs; and
- (7) Portable signs.

(c) Signs shall be designed in a comprehensive singular manner.

(d) Multiple message type signs shall utilize similar colors, framing materials, and/or styles to compliment each other.

(e) Signs of different styles that are pieced together shall be discouraged.

(Code 1985, § 161.72; Ord. No. 4469, 12-20-1999; Ord. No. 5395, § 1, 7-15-2013)

Sec. 105-172. - Window signage.

Window signs shall not occupy more than 25 percent of the transparent window area of each individual windowpane where a sign is placed. Window signage shall be prohibited above the ground floor or street level.

(Code 1985, § 161.73; Ord. No. 4469, 12-20-1999)

Sec. 105-173. - Projecting signage clearance.

Projecting or suspended signs shall have a minimum clearance of eight feet from the lowest adjacent grade below the sign. Signs that project into public rights-of-way or easements shall require the prior consent of the city board of public works and safety.

(Code 1985, § 161.74; Ord. No. 4469, 12-20-1999)

Sec. 105-174. - Signage size limitations.

The maximum height of the first letter or logo of a sign shall not exceed 30 inches in height and 48 inches in length. The first letter or logo may not exceed 35 percent of the area of the overall sign area. Other individual letter characters or symbols on any proposed sign shall not exceed 18 inches in height. The vertical size of any sign which exceeds six feet in height shall be discouraged. The horizontal size of any sign which exceeds 20 linear feet shall be discouraged. Wall-mounted letters or messages that extend beyond 20 linear feet along the horizontal face shall be discouraged. No sign shall be any closer than 24 inches to the end of a storefront or the corner of a building.

(Code 1985, § 161.75; Ord. No. 4469, 12-20-1999; Ord. No. 5684, § 1, 2-17-2020)

Sec. 105-175. - Signage quantity.

A maximum of one freestanding sign shall be permitted per individual business or leased storefront for each street frontage, excluding directional signs. A maximum of one projecting or suspended sign shall be permitted per street frontage per individual business or leased storefront. A maximum of one wall sign, painted graphic, or building sign shall be permitted per building face, excluding window signs, projecting signs, and awnings.

(Code 1985, § 161.76; Ord. No. 4469, 12-20-1999; Ord. No. 5684, § 1, 2-17-2020)

Sec. 105-176. - Signage clutter.

To avoid clutter and confusion in viewing signage, a maximum of 40 characters per sign shall be encouraged, excluding window signs. Company symbols or logos need not be included as a character for determining the maximum number. The integration of company symbols or logos shall be encouraged; however, the logos shall be of a size and use materials/colors consistent with the requirements identified herein. Characters used as part of a directory to identify names of individuals or businesses who are practicing employed at an individual business, that are three inches in height or less shall not be counted as part of the maximum number of characters listed above.

(Code 1985, § 161.77; Ord. No. 4469, 12-20-1999; Ord. No. 5684, § 1, 2-17-2020)

Sec. 105-177. - Signage lighting.

The internal illumination or uplighting of identification signs shall be encouraged. Sign lighting that produces glare or other visual detracting shall be discouraged. Visual detracting shall include, but shall not be limited to, flashing or moving lights, lights that change in color or intensity, and lighting that is not reasonably uniform emphasizing a particular character or message.

(Code 1985, § 161.78; Ord. No. 4469, 12-20-1999)

Sec. 105-178. - Signage style considerations.

Special consideration waivers may be provided for signs that are designed to reflect a desirable style, character, or image. Consideration shall be given for signage reflective of a particular era, style of construction, special use of materials, etc. Examples of this type of sign could include the reconstruction of a historical marquee, a 1950's style of lettering and use of material, and the use of a specific product or the incorporation of a relative product within signage. Creativity and the creation of distinct and unique signs shall be encouraged. These types of signs may be deemed satisfactory by the plan commission as part of a holistic review of a specific design or architectural concept provided said signage is determined to be appropriate based on the specific context of a proposal and application relative to the intent of this article.

(Code 1985, § 161.79; Ord. No. 4469, 12-20-1999)

Sec. 105-179. - Menu boards.

Portable temporary sign displays in front of a business for the specific use of advertising that business, that are brought in/not displayed overnight. Signs may a freestanding sandwich board easel sign, or a flush mounted sign attached to the face of the building. The sign area of an individual face shall not exceed six square feet. Only one sign of this type shall be permitted per store frontage. The location of the sign shall not interfere with outward opening doors/windows, or negatively impact use of the public sidewalk or street in any way. Signs shall not be located within 15 feet of any handicapped ramp or at the corner of public streets. Any proposed sign located within the public right-of-way shall require a notice of public recognition and encroachment from the Mishawaka Board of Public Works and Safety prior to placement.

(Ord. No. 5395, § 1, 7-15-2013)

Sec. 105-180. - Temporary wall mounted banners.

One temporary banner not to exceed 12 square feet may be placed flush mounted to the face of existing buildings. Banners shall be firmly secured so as not to move in the wind and shall be maintained in good condition. Faded or torn signs shall be immediately removed. One banner shall be permitted per store frontage. Where a building fronts on a corner, one banner sign shall be permitted for each face of the building fronting public right-of-way. For the purpose of this section, temporary shall be defined as not to exceed 120 continuous calendar days.

(Ord. No. 5395, § 1, 7-15-2013)

Secs. 105-181—105-209. - Reserved.

ARTICLE VII. - LANDSCAPE REQUIREMENTS

Sec. 105-210. - Street trees.

Deciduous shade trees shall be planted within public street rights-of-way and along the banks of the St. Joseph River. Trees shall be planted a maximum of 30 linear feet on center, based on the total frontage and the location of high quality existing trees intended to be preserved. Trees shall be planted in an urban context. This shall include providing cast iron tree grates within sidewalk areas where appropriate. The use of male Ginkgo biloba (maidenhair tree) shall be encouraged along public road rights-of-way and along the banks of the St. Joseph River. Trees shall be nursery quality material installed at a 3½-inch to four-inch caliper size and shall be limbed to seven feet clear.

(Code 1985, § 161.80; Ord. No. 4469, 12-20-1999)

Sec. 105-211. - Parking area screening.

Evergreen shrubs whose height at maturity ranges between three and four feet shall be planted continuously as a hedge between parking areas and public road rights-of-way/St. Joseph River. Shrubs shall be nursery quality materials installed at a minimum of 24 inches in height. This screening shall be supplemented with vertical plantings such as ornamental or deciduous shade trees. Shade trees shall be located within parking areas no greater than 100 feet apart within curbed landscaped islands to dissipate light and break up large areas of asphalt. Curbed landscape islands shall be a minimum of nine feet in width with a minimum landscaped/nonimpervious area of 180 square feet. Given the difficulties of maintaining lawn, groundcover and/or shrubbery, plantings within curbed islands shall be encouraged. Shade trees shall be nursery quality material installed at a 3½-inch to four-inch caliper size and shall be limbed to seven feet clear.

(Code 1985, § 161.81; Ord. No. 4469, 12-20-1999)

Sec. 105-212. - Variety of landscape material.

Each project shall contain an aesthetic landscape element appropriate to the size, scale, and location of the property. New development and redevelopment sites shall incorporate a variety of materials that convey interest through multiple seasons. The combined use of evergreens, flowering shrubs, perennials, and bulbs shall be encouraged. On existing properties where potential landscape space is limited, this requirement may be met by window boxes, and/or container plantings as deemed appropriate by the plan commission, or its designee.

(Code 1985, § 161.82; Ord. No. 4469, 12-20-1999)

Sec. 105-213. - Maintenance of landscape; duty of property owner; irrigation systems.

Required landscaping materials shall be maintained in good condition based on standard horticultural practices. Where practical, particularly in conjunction with new development or redevelopment, the developer shall cause to be installed an irrigation system for required landscaping, including plantings that may be located within the public right-of-way. Property owners shall be responsible for the continual maintenance of required landscaping. Maintenance shall be considered the irrigation, trimming, cutting, and fertilization necessary to provide a healthy manicured appearance. Required landscaping that is dead, significantly diseased, or significantly distressed shall be removed and replaced at the owners' expense. Proposed tree installation, removal, and replacement located within the public rights-of-way requires the prior consent of the city board of public works and safety.

(Code 1985, § 161.83; Ord. No. 4469, 12-20-1999)

Secs. 105-214—105-234. - Reserved.

ARTICLE VIII. - CULTURAL CONSIDERATIONS AND REQUIREMENTS

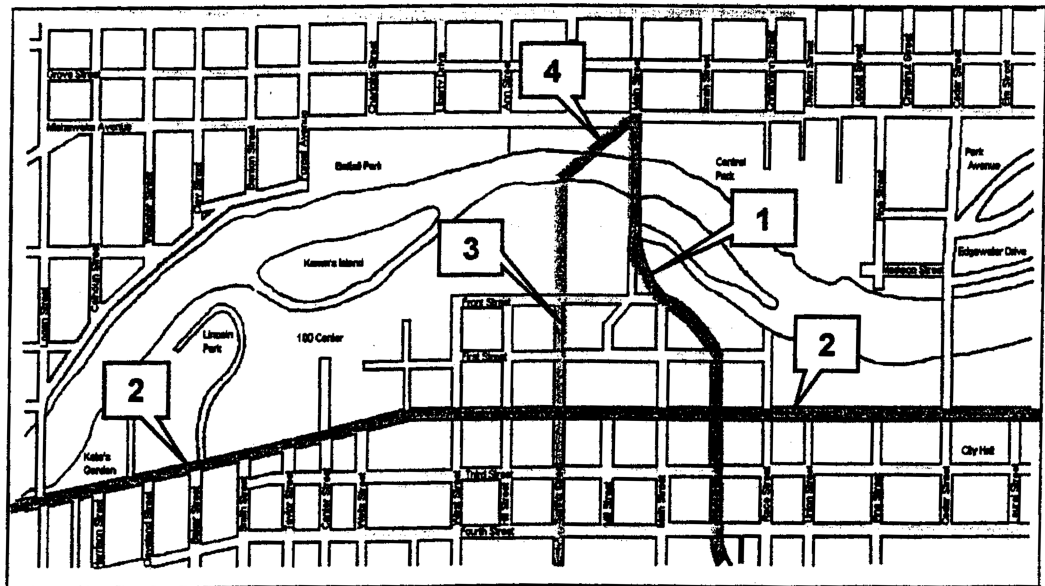
Sec. 105-235. - View corridors.

Only projects subject to design/development plan review which are located within the areas identified by the referenced map and this section shall be subject to this restriction. Projects shall be developed in a manner that promotes, frames, or otherwise does not restrict the view corridors identified on the map. View corridors have been identified to maintain a sense of place and to emphasize longstanding structures that have served as visual landmarks to the community. Views may be intermittently interrupted as may be approved by the plan commission provided the proposed development has been designed to minimize

the interruption and otherwise meets the intent of this chapter. As part of the review process, the plan commission, or its designee, may request additional documentation that may include, but shall not be limited to, sections, perspectives or computer imaging that shows the context of a project in relation to the established view corridor. Required documentation shall be dependent on the scope of the proposed project and its location. The corridors shall be defined as follows:

- (1) Main Street/Church Street. From the centerline intersection of Mishawaka Avenue and Main Street following the centerline of Main/Church Street to the intersection of the Grand Trunk Railroad underpass and Church Street. The corridor shall be 160 feet in width, 80 feet on either side of the centerline of the road.
- (2) Lincolnway. From the centerline intersection of Lincolnway East and Laurel Street following the centerline of Lincolnway to the intersection of Lincolnway West and Logan Street. The corridor shall be 140 feet in width, 70 feet on either side of the centerline of the road.
- (3) Spring Street. From the intersection of Spring Street and Fourth Street following the centerline of Spring Street to where, if projected due north, Spring Street would intersect with the southern bank of the St. Joseph River. The corridor shall be 120 feet in width, 60 feet on either side of the centerline of the road.
- (4) River Center. From the intersection of Mishawaka Avenue and Main Street following a straight line to the projected intersection of the south bank of the St. Joseph River and Spring Street. The corridor shall be 120 feet in width, 60 feet on either side of the line.

View Corridor Map



(Code 1985, § 161.90; Ord. No. 4469, 12-20-1999)

Sec. 105-236. - Consideration of historically relevant structures.

Before undertaking the development or redevelopment of a parcel of land or modification of an existing structure, the applicant shall research the historic status of the structure or parcel of land. This shall be accomplished by reviewing the City of Mishawaka Summary Report, Indiana Historic Sites and Structures Inventory. This report is available at the office of the department of city planning. Before the demolition or significant alteration of any structure rated as "outstanding" or "notable," the applicant shall investigate and research the adaptive reuse of the existing structure. If adaptive reuse is possible, the

applicant may pursue the project subject to all relevant codes and requirements. The plan commission may provide special consideration waivers based on an applicant's effort to adaptively reuse a historically relevant structure in accordance with the intent of this chapter. If the adaptive reuse is not feasible based on proposed development or project plans, the applicant shall submit a written summary of said investigations with a written request to demolish concurrently with final site plan submission. The demolition of a historically relevant structure shall require a public hearing in accordance with section 105-31. A demolition permit for the removal of a historically relevant structure shall not be issued or considered valid prior to final site plan approval by the plan commission. Demolition of a historically relevant structure, or portion thereof, prior to the demolition time constraints required by this article, shall result in a fine of \$2,500.00 per day, per violation. Final site plan approval that requires the demolition of a historically significant structure shall not occur until a minimum of 90 days following the initial public hearing on the proposal. The 90-day waiting period is required to allow for the potential identification of a viable interested party to relocate the structure. The applicant/property owner shall provide any viable interested party the ability to relocate historically relevant structures at the interested party's expense. To be identified as a viable interested party, an individual or entity shall identify its interest in writing to both the property owner/applicant and department of city planning. The interested party must also identify the specific verifiable financial resources and proposed location of the structure. If a viable interested party is not identified the plan commission may act on the final site plan at the next regularly scheduled meeting. If a viable interested party is identified, the final site plan may be acted upon; however, the plan commission may require up to an additional 120 days to allow for the relocation of said structure. The plan commission may require the applicant to contribute to the relocation costs associated with moving a historically relevant structure in an amount that does not exceed twice the estimated demolition, removal, and disposal costs of said structure based on multiple independent quotations provided by the applicant.

(Code 1985, § 161.91; Ord. No. 4469, 12-20-1999)

Sec. 105-237. - Incorporation of landmarks and cultural artifacts.

Landmarks and cultural artifacts, real or fabricated, contribute to the character and sense of place of a specific geographic region. The incorporation of landmarks and cultural artifacts within development proposals shall be encouraged. Examples include the re-creation of a theater marquee, the use of historical sign designs, or the incorporation of manufactured goods/machinery in the landscape or buildings.

(Code 1985, § 161.92; Ord. No. 4469, 12-20-1999)

Sec. 105-238. - Incorporation of urban plazas, outdoor seating, and water features.

Special consideration waivers may be provided for projects that incorporate desired quality elements such as urban plazas, outdoor restaurant seating, and the incorporation of water features. The intent is to encourage the incorporation of these elements where appropriate. These types of amenities may be deemed appropriate by the plan commission as part of a holistic review of a specific design or architectural concept relative to a given location and the intent of this chapter.

(Code 1985, § 161.93; Ord. No. 4469, 12-20-1999)

Sec. 105-239. - Sources and reference.

The following sources and reference materials were reviewed in establishing this article. These materials provided outline language, illustrations, photographs, and other pertinent information relative to the production of this chapter.

(1) Books.

- a. Newton, Norman T., *Design on the Land*. The Belknap Press of Harvard University Press, Cambridge Massachusetts, and London England. 1971.

- b. Jakubovich, Paul J., and Vollmert, Les., *Good for Business, A guide to rehabilitating the exteriors of Older Commercial Buildings*. Published by the City of Milwaukee, Department of City Development. June 1995.

(2) Planning advisory service reports.

- a. Glassford, Peggy, *Appearance Codes for Small Communities*. American Planning Association, 1313 E. 60th St., Chicago Illinois, 60637, 1983.
- b.. Duerksen, Christopher J., *Aesthetics and Land-Use Controls, Beyond Ecology and Economics*. American Planning Association, 1313 E. 60th St., Chicago Illinois, 60637, 1986.
- c. Hinshaw, Mark L., *Design Review*. American Planning Association, 1313 E. 60th St., Chicago Illinois, 60637. 1995.

(3) Public documents.

- a. City of Mishawaka, Indiana. *Summary Report, Indiana Historic Sites and Structures Inventory*. Published by the City of Mishawaka Historic Review Board and Beiger Heritage Corporation. November 1995.
- b. City of Mishawaka, Indiana. *Mishawaka Center City/Riverfront Revitalization Project, Mishawaka River Center*. Published by the City of Mishawaka, prepared by the Troyer Group. June 1999.

(Code 1985, § 161.98; Ord. No. 4469, 12-20-1999)

Chapter 109 - DOWNTOWN REVITALIZATION

ARTICLE I. - IN GENERAL

Sec. 109-1. - Establishment of downtown revitalization revolving fund.

- (a) There is authorized a special fund to be identified as the Downtown Revitalization Revolving Fund (hereinafter called the "fund"). The purpose of the fund is to provide for restricted loans to owners of nonresidential property located within the boundaries of the central business district and the Mishawaka Avenue Area of the city (see appendices A and B to this chapter for boundary descriptions). This area hereinafter shall be called "area".
- (b) The fund shall have an initial deposit of \$200,000.00, consisting of \$125,000.00 from the industrial development fund as administered by the state department of commerce pursuant to IC 5-28-9-1 et seq. and the sum of \$75,000.00 to be derived from community development block grant funds of the city. Additional funds derived from the collection of principal and interest payments or additional local funds may also be deposited from time to time. Disbursements from the fund shall be limited to the approved loan amount to eligible borrowers, the state department of commerce, and other costs directly related to the administration of the loan program.

(Code 1985, § 151.01; Ord. No. 2036, 3-21-1977; Ord. No. 2337, 12-17-1979)

Sec. 109-2. - Loan committee to administer.

- (a) For the purpose of administering the provisions of this chapter, there is hereby ordered created a loan committee to act upon the behalf of the city.
- (b) The loan committee will consist of the following:
 - (1) City engineer.
 - (2) City planner.
 - (3) City attorney.

(4) Director of community development.

(5) Council representative.

(Code 1985, § 151.02; Ord. No. 2036, 3-21-1977)

Secs. 109-3—109-22. - Reserved.

ARTICLE II. - LOANS FROM FUND

Sec. 109-23. - Regulations applicable to all borrowers.

The regulations and restrictions contained in this article shall apply in every case toward every eligible borrower from the fund.

(Code 1985, § 151.10; Ord. No. 2036, 3-21-1977)

Sec. 109-24. - Loan application procedure.

- (a) An eligible property owner will make application for a loan under the provisions of this article by submitting a written letter of application directly to the loan committee. While the form of this letter is left to the applicant, the content should include as a minimum the following:
 - (1) Identification of the borrower.
 - (2) Identification and location of the structure involved.
 - (3) General description of rehabilitation or restoration activities contemplated.
 - (4) Estimated amount of loan needed, if this is known.
- (b) Upon receipt of the application, the loan committee will make preliminary review and determination of the loan requested and the work activities contemplated. Preliminary approval will be given if the applicant, structure, and work activities meet the provisions and intent of this article. If approved, the applicant will be referred to one of the participating banks. The participating bank will process and review the loan application, using traditional procedures, to the loan committee within 30 days of referral of the application. The loan committee will make final determination of approval or disapproval of the loan within ten days of receipt of the bank's recommendation.
- (c) Upon approval of the loan, the city will initiate the following:
 - (1) Letter of commitment to the bank.
 - (2) Request a formal, detailed list of work items to be performed and paid for by the loan. This may include detailed drawings and specifications.
- (d) Upon approval of the loan, the borrower will perform the following:
 - (1) Provide the bank with all necessary documents, title reports, certificate of insurance, appraisals, and any other information requested.
 - (2) Agree to seek competitive bidding on all work to be performed by the loan.
 - (3) Agree to include in its contract documents the provisions of the Davis-Bacon Act and applicable equal employment opportunity provisions, and any other state or federal regulations applying to working conditions, rates of pay, and equality in employment. It is understood that the provisions of this subsection (3) apply only to the extent of the work activities covered by the loan.

- (4) Agree to allow the city to inspect all work performed under the loan, during construction and upon final completion.
- (5) Agree to allow the city to inspect all records and documents pertaining to any aspect of the loan or the use of funds obtained therefrom.
- (6) Agree to start construction of the approved work activities within three months of loan approval and complete them within 12 months.

(Code 1985, § 151.11; Ord. No. 2036, 3-21-1977)

Sec. 109-25. - Local banking institutions to review, approve, and finance loan applications.

In order to facilitate the review and servicing of loans under the provisions of this article, it is intended that the full involvement and assistance of local banking institutions be enlisted to perform certain required functions. The term "local banking institutions" means either the Valley Bank and Trust Company of Mishawaka, Indiana, or the First National Bank of Mishawaka, Mishawaka, Indiana (hereinafter referred to collectively as the bank). The functions contemplated shall include, but not be limited to the following:

- (1) Review of loan application, including requesting any additional documents or submissions, to enable a thorough review of the financial posture of the borrower, the business, or both. The additional documentation shall include the completion and submission of a formal loan application, the form and content normally required and used by the bank. The review shall include debt service considerations in regard to any existing indebtedness and the ability to assume the proposed additional obligations imposed by the proposed loan.
- (2) To make recommendations to the loan committee as to the granting of a loan under the provisions of this article. All applications shall be returned to the loan committee with recommendations for final determination and communication to the applicant.
- (3) Upon approval of the loan by the loan committee, the bank shall provide interim financing to the borrower during the ensuing construction or reconstruction period. The bank shall immediately receive a letter of commitment from the loan committee guaranteeing the permanent longterm financing at the completion of the rehabilitation activities. The bank shall levy a charge for the interim financing not to exceed ten percent of the interim loan amount. The city reserves the right to make inspection of work completed prior to any draws upon the interim loan.
- (4) Using funds received from the city, the bank will administratively set up the permanent loan and will perform all those functions in servicing the permanent loan as an agent of the city. These services will include, but not be limited to, the sending of monthly notices, collection and recording of payments, depositing all payments into the fund account, and the like. In this capacity as agent, the bank shall enact a service charge against the payments in an amount not to exceed 0.5 percent.
- (5) Should any monthly payment be deemed late, the bank will send the usual late notices and levy against the delinquent payment the normal late charges, which will be retained by the bank.
- (6) In the preparation of the final loan, the bank shall cause to be executed by the borrower a longterm mortgage note and warranty mortgage, the form and content of which is normally used by the bank, with the assignment of the note and mortgage to the city as the need may arise.
- (7) The relationship between the city and the bank is further defined by the execution of a buy-sell agreement.

(Code 1985, § 151.12; Ord. No. 2036, 3-21-1977)

Sec. 109-26. - Permissible types of loans.

Loans from the fund to eligible property owners shall be restricted to include only those costs involved in the repair, rehabilitation, restoration, or preservation of the facade of a nonresidential structure located within the area described in section 109-1(a). It is the intent and express purpose of this loan that it be used only for work activities relating to the creation of a harmonious and aesthetically pleasing presentation of individual structures within the area.

(Code 1985, § 151.13; Ord. No. 2036, 3-21-1977)

Sec. 109-27. - Eligible structures.

- (a) All nonresidential structures within the area shall be eligible for consideration. Structures of two or more stories, having residential dwelling units or a secondary use on upper floors, will also be eligible; provided, however, that the nonresidential use is the primary street level function of the structure.
- (b) No structure whose location is found to be in conflict with any comprehensive development plan, major thoroughfare plan, urban renewal plan, or any other such instrument of city planning and redevelopment will be eligible for participation in this loan program.

(Code 1985, § 151.14; Ord. No. 2036, 3-21-1977)

Sec. 109-28. - Eligible applicants.

- (a) 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:

Ownership means having possession of a fee-simple title to the property which is the subject of the loan.

- (b) To be eligible, an applicant for a loan from the fund must be an individual, partnership, or corporation that owns property within the area. If a corporation, the city will require a personal guarantee on behalf of the stockholders toward repayment of the loan. A loan cannot be considered if the applicant has a clear record of past disregard for former obligations or if there is a clear inability to make the payments that will be required.
- (c) Ownership through possession of a land sales contract shall be considered if such contract meets the following minimum requirements:
 - (1) The contract shall be a written, legally binding instrument involving the property.
 - (2) The seller of the property must hold fee simple title to the property, and while the contract is in good standing, must be unable to use the property for collateral or to convey the property to any other party unless that use for collateral or conveyance of fee is subject to the land sales contract. Legally acceptable limitations on the effect of conveyance or use of the property for collateral must be found to exist under local law, the provisions of the contract, or some other written agreement in recordable form. The city shall record this agreement or the contract promptly after loan settlement, if necessary to give either document the legal effect described.
 - (3) Under the contract, the seller and any subsequent holder of the fee to the property must be obligated, without qualification, to deliver to the purchaser fee-simple title and a deed to the property upon full payment of the contract price, or some lesser amount.
 - (4) Under the terms of the contract, the purchaser shall have:
 - a. Full use, possession, and quiet enjoyment of the property;
 - b. Equitable title to the property; and
 - c. Full rights of redemption for a period of not less than 90 days, unless redemption rights not less than 90 days are afforded by local law to a purchaser under a land sales contract.

- (d) Before an application for a rehabilitation loan to a purchaser under a land sales contract can be approved, the city must a copy of the land sales contract and a written legal opinion from its counsel that each of the foregoing conditions is satisfied and setting forth the basis for the opinion.

(Code 1985, § 151.15; Ord. No. 2036, 3-21-1977)

Sec. 109-29. - Eligible activities.

Loans shall be made only for the following activities as they relate to the structure involved:

- (1) Preparation of plans, specifications, and related architectural services.
- (2) Removal of exterior portions of the structure.
- (3) Construction or reconstruction of the exterior facade, either to front or rear of the structure, or to either or both exterior side walls depending upon whether the structure is in a corner location or is freestanding with all exterior walls exposed.
- (4) Removal of any outdoor advertising displays.
- (5) Expenses incurred in interim financing, including interest charges.
- (6) Landscaping.
- (7) Painting.
- (8) Removal and replacement of on-premises signage.
- (9) Removal and replacement of sidewalks.
- (10) The cost of securing approval of the loan, these costs to include recording fee, title services, and appraisals. These costs are to be initially borne by the borrower with reimbursement at the time of final loan approval and payout. Reimbursement will not be made should the loan be disapproved.

(Code 1985, § 151.16; Ord. No. 2036, 3-21-1977)

Sec. 109-30. - Ineligible activities.

The following activities shall be ineligible for the loans provided in this article:

- (1) Any and all activities associated with the interior of the structure.
- (2) Any and all activities relating to the roof of the structure.
- (3) Foundation and related activities.
- (4) New outdoor advertising displays.
- (5) Heating, air conditioning, plumbing, and interior electrical work or fixtures/equipment.
- (6) Acquisition of any real or personal property.
- (7) Any amount used for payment of any existing, outstanding indebtedness of the property.
- (8) Expansion of the structure.

(Code 1985, § 151.17; Ord. No. 2036, 3-21-1977)

Sec. 109-31. - Amount, term of loan.

- (a) Any loan made under the provisions of this article shall not exceed the sum of \$30,000.00 for any single structure, or \$60,000.00 for any single borrower.

(b) Any loan made pursuant to this article shall not exceed a term of seven years.

(Code 1985, § 151.18; Ord. No. 2036, 3-21-1977; Ord. No. 2337, 12-17-1979)

Sec. 109-32. - Interest rate.

Any loan made pursuant to this article shall be made at an annual interest rate of 5½ percent.

(Code 1985, § 151.19; Ord. No. 2036, 3-21-1977)

Sec. 109-33. - Repayment.

Repayment of a loan shall be made in equal monthly installments in an amortized amount that will retire the indebtedness at the time of the final monthly payment at end of term. No penalty will be assessed for prepayment at any time of any additional sums on the unpaid principal.

(Code 1985, § 151.20; Ord. No. 2036, 3-21-1977)

Sec. 109-34. - Loan security.

Each loan shall be secured by either a recorded first or second mortgage on the subject structure. All costs incurred in the event of foreclosure shall be borne by the borrower. In the event of a delinquency on any one installment, the city shall consider the entire unpaid balance to be delinquent and due. Foreclosure action shall immediately be instituted.

(Code 1985, § 151.21; Ord. No. 2036, 3-21-1977)

Sec. 109-35. - Loan applicant to agree to fulfill certain provisions.

Any applicant receiving funds under this loan program understands or agrees to the following special provisions:

- (1) *Liability for damages.* The applicant will agree to defend the city, indemnify, and save harmless the city from any and all claims that may arise from activities undertaken with the proceeds of the loan. Nothing contained herein shall be construed as rendering the applicant liable for acts of the city, its officers, agents, or employees.
- (2) *Close-out report.* The applicant shall submit to the city at the conclusion of the construction period a final report which summarizes the activities undertaken with the funds provided; including, but not limited to, names of contractors, work description, costs incurred and paid.
- (3) *Records.*
 - a. *Establishment and maintenance.* Records shall be maintained in accordance with requirements prescribed by the city with respect to all matters covered by the loan. Except as otherwise authorized by the city these records shall be maintained for a period of three years after receipt of final payment under this article.
 - b. *Documentation of costs.* All costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents shall be clearly identified and readily accessible.
- (4) *Inspections.* At any time during normal business hours and as often as the city may deem necessary, there shall be made available to the city for examination all records with respect to all matters covered by the loan during the construction period. Further, the applicant will permit the city or its representatives to audit, examine, and

make excerpts or transcripts from those records; and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to activities undertaken with funds provided by the loan.

(5) *Conflict of interest.*

- a. Interest of members, officers or employees of the city, members of the common council, or other public officials. No member, officer or employee of the city or its designee or agent, no member of the common council, and no other public official of the city who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with this loan.
- b. The applicant agrees that it will incorporate into every contract required to be in writing the following provision:

"Interest of Contractor and Employees. The contractor covenants that no person who presently exercises any functions or responsibilities in connection with the activities undertaken with the proceeds of this loan, has any personal financial interest, direct or indirect, in this contract."

(6) *Bidding procedures.* The applicant agrees that all contracts undertaken with funds provided herein with private contractors will be let in accordance with established bidding procedures as prescribed by the state board of accounts.

(7) *Labor standards.* There shall be included in all construction contracts, made possible by or resulting from this loan, with private entities, the applicable labor standard provisions of federal law imposing labor standards on federally assisted construction. The city will obtain the necessary labor standards.

(8) *Equal opportunity and nondiscrimination.* The applicant agrees to comply with equal opportunity requirements applicable to community development block grant activities. Specifically, the applicant agrees to comply with:

- a. Title VI, Civil Rights Act of 1964, which provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
- b. Section 109, Housing and Community Development Act of 1974, which provides that no person in the United States shall, on the ground of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this article.
- c. Executive order 11246, which prohibits discrimination on the grounds of race, creed, color, sex, or national origin in employment under federally assisted construction contracts.
- d. Section 3, Housing and Urban Development Act of 1968, which provides that to the greatest extent feasible, opportunities for training and employment shall be given to low-income residents of HUD-assisted project areas, and that contracts for work in connection with those projects be awarded to business concerns which are located in, or are owned in substantial part, by project area residents. In connection with its compliances with Section 3 and the Section 3 clause set forth below, the applicant shall insert in full in all contracts and subcontracts for work financed in whole or part with assistance provided under this article, the Section 3 clause which follows:
 1. "The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the department of housing and urban development, and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given low

income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in or owned in substantial part by persons residing in the area of the project.

2. "The parties to this contract will comply with the provisions of Section 3 and the regulations issued pursuant thereto by the secretary of the department of housing and urban development, and all applicable rules and orders of the department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
3. "The contractor will include this Section 3 clause in every subcontract for work in connection with the project; and will, at the direction of the applicant for or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under Section 3, and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations."

- (9) *Certified letter.* The applicant, upon approval of the loan, shall certify by letter addressed to the city that he understands, agrees to, and will comply with the foregoing provisions.

(Code 1985, § 151.22; Ord. No. 2036, 3-21-1977)

APPENDIX A. - CENTRAL BUSINESS DISTRICT

Sec. 1. - Central business district urban renewal area.

Beginning at a point formed by the intersection of the south right-of-way line of Lincolnway West and the west right-of-way line of West Street; thence south along the west right-of-way line of West Street to the north right-of-way line of Penn Central Railroad; thence easterly along that right-of-way line to the centerline of Spring Street; thence north along that centerline to the centerline of Fourth Street; thence east along that centerline for a distance of 570 feet more or less to a point; thence south along a line parallel to Main Street for a distance of 210 feet more or less to a point; thence east along a line, parallel to Fourth Street, to the centerline of Main Street; thence south along that centerline to the north right-of-way of the Penn Central Railroad; thence east along that right-of-way line to the east right-of-way of Pine Street; thence north along that right-of-way to the north right-of-way line of Third Street; thence east along that right-of-way line for a distance of 200 feet more or less to a point; thence north along a line parallel to Pine Street to the north right-of-way line of Lincolnway East; thence west along that right-of-way line for a distance of 75 feet more or less to a point; thence north along a line parallel to Cedar Street to the southern bank of the St. Joseph River; thence westerly along the river bank to the west right-of-way line of Main Street; thence south along that right-of-way line to the north right-of-way of vacated Water Street; thence west along that right-of-way line to the west right-of-way line of Mill Street, if extended; thence south along that right-of-way line to the north right-of-way line of Front Street; thence west along that right-of-way to the west right-of-way line of West Street; thence south along that right-of-way line to the main track of the Elkhart and Western Railroad; thence westerly along said railroad track to the west right-of-way line of Towle Avenue; thence south along said right-of-way to the south right-of-way line of Lincolnway West; thence east along that right-of-way line to the west right-of-way line of West Street, which is the point of beginning.

(Code 1985, ch. 151, app. A, § 1; Ord. No. 2337, 12-17-1979)

Sec. 1. - Mishawaka Avenue urban renewal area.

Beginning at a point which is the intersection of the extension of the north right-of-way line of the first alley north of Grove Street and the east right-of-way line of Division Street and proceeding south along the east right-of-way line of Division Street to the south right-of-way line of East Mishawaka Avenue; thence east along that right-of-way line a distance of 34.6 feet more or less; thence south a distance of 89.0 feet more or less; thence east a distance of 43.0 feet more or less; thence south to the north bank of the St. Joseph River; thence northwesterly along that river bank to the east right-of-way line of North Main Street; thence west to the west right-of-way line of North Main Street; thence westerly along the north bank of the St. Joseph River to its intersection with the east right-of-way of Ann Street extended; thence north to the south right-of-way line of Mishawaka Avenue; thence west along south right-of-way line of Mishawaka Avenue to the west right-of-way line of Ann Street; thence north to the north right-of-way line of the first alley north of Grove Street; thence east to the east right-of-way line of Division Street, which is the point of beginning.

(Code 1985, ch. 151, app. B, § 1; Ord. No. 2337, 12-17-1979)

Chapter 113 - ECONOMIC DEVELOPMENT AREAS

Footnotes:

--- (1) ---

State Law reference— *Economic development and pollution control, IC 36-7-12-1 et seq.*

ARTICLE I. - IN GENERAL

Secs. 113-1—113-18. - Reserved.

ARTICLE II. - TARGET AREAS

Sec. 113-19. - Certain areas declared to be economic development target areas.

The following specific geographic territories of the city are hereby declared to be economic development target areas:

- (1) The area commonly known as the central business district urban renewal area which was declared and confirmed as a redevelopment area before March 31, 1983, by reason of Resolution Number 73-9 and confirming Resolution Number 73-15 by the city redevelopment commission, which declaratory resolution was recorded in the office of the county recorder on March 20, 1973, at Book 276, pages 152-154, which specific geographic area is more particularly described in section 1 of appendix A to chapter 109.
- (2) The area commonly known as the "Mishawaka Avenue Urban Renewal Area" which was declared and confirmed as a redevelopment area before March 31, 1983, by reason of Resolution Number 73-19 and confirming Resolution Number 73-28, adopted by the city redevelopment commission, which declaratory resolution was recorded in the office of the county recorder on April 25, 1973, at Book 277, pages 96-116, which specific geographic area is more particularly described in section 1 of appendix B to chapter 109.

Chapter 117 - EROSION CONTROL

Footnotes:

--- (1) ---

Editor's note— Ord. No. 5902, § 1, adopted Dec. 4, 2024, amended chapter 117 in its entirety to read as herein set out. Former chapter 117, §§ 117-1—117-105, pertained to similar subject matter, and derived from Ord. No. 5085, adopted Dec. 4, 2006.

ARTICLE I. - IN GENERAL

Sec. 117-1. - Purpose.

To provide for the health, safety, and general welfare of the public, the city finds it necessary to adopt standards concerning erosion control, post-construction stormwater pollution prevention, and other provisions related to the regulation of earthmoving, excavation, and stormwater discharge. This chapter provides methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with the requirements of the National Pollutant Discharge Elimination System (NPDES) permit process and the Indiana Department of Environmental Management's (IDEM) Construction Stormwater General Permit (CSGP). Specifically, the city has found that soil erosion resulting from nonagricultural land disturbing activities may cause a significant amount of sediment and other pollutants to be transported off-site to locations including adjacent properties, public streets, storm sewer structures, ditches, streams, wetlands, lakes and rivers. Furthermore, the proper installation and operation of stormwater management measures is necessary to ensure that soil erosion and stormwater quality issues do not arise after the completion of a land disturbing activity. The regulation of land disturbing activities will minimize the amount of sediment and other pollutants, resulting from soil erosion due to land disturbing activities, from being transported off site to adjacent public or private lands. It will also minimize erosion and stormwater quality issues that arise due to the long-term operation of the site after construction. This chapter applies to nonagricultural land disturbing activities, including industrial, commercial, institutional, residential, utility, and roadway development. The objectives of this chapter are:

- (1) To regulate the contribution of pollutants to the municipal drainageways, ponds, lakes, and other stormwater receivers.
- (2) To regulate the contribution of pollutants to municipal separate storm sewer system (MS4) by stormwater discharges by any user.
- (3) To reduce the potential negative impact of land disturbing activities on adjacent properties and the public at large.
- (4) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this chapter.
- (5) To minimize or reduce flooding, siltation, increases in stream temperature, and stream bank erosion and maintain the integrity of stream channels and to continue to enforce no net increase of stormwater runoff from newly developed sites.
- (6) To minimize increases in nonpoint source pollution caused by stormwater runoff from development, which could otherwise degrade local water quality.
- (7) To reduce soil erosion, and nonpoint source pollution, wherever possible, through stormwater management controls and to ensure that these management controls are properly maintained.

Sec. 117-2. - 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:

Administering authority means the department of city planning, as it relates to the issuance of improvement location permits. The department of city planning, the department of engineering, or any duly authorized representative of the city utilities, as it relates to identifying violations and placing stop work orders.

Agricultural land use means use of land for the production of animal or plant life, including forestry, pasturing or yarding livestock, and planting, growing, cultivating, and harvesting crops for human or livestock consumption for profit. The term "agricultural land" further clarified as uses that require specific verifiable tax filings relative to the agricultural nature of the operation.

Best management practices (BMPs) means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants, directly or indirectly, into stormwaters, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials.

City planner means the city planner or their designated representative.

Construction stormwater pollution prevention plan (SWPPP) means a plan developed to minimize the impact of stormwater pollutants resulting from construction activities.

Department of engineering means the city department of engineering as the designated unit of government given the authority to review the performance specifications of this chapter.

Director of engineering means the director of engineering or their designated representative.

Erosion means the detachment and movement of soil, sediment, or rock fragments by any means including water, wind, ice, or gravity.

Erosion control measure means a practice or a combination of practices to control erosion and resulting sedimentation.

Erosion control plan means a written and/or graphic description of pertinent information concerning erosion control measures designed to meet the requirements of this chapter as submitted by the applicant for review and approval by the department of city planning.

Exposed land uses means those activities that result in continuous or habitual nonagricultural disturbance of land not associated with construction. Exposed land uses shall include, but shall not be limited to, nonsurfaced public or private race tracks and recreational yards, driveways and parking areas, mining and extraction sites, manufacturing storage yards, site clearing and tree harvesting, and other manmade activities that cause land to be subject to erosion due to the lack of pavement, vegetative cover, or other stable surfacing. For the purposes of this chapter, gravel shall not be considered a stable surface when used for vehicular traffic and parking.

Land disturbing activity means any manmade change of the land surface, including removing vegetative cover, excavating, filling, transporting, and grading. In the context of this chapter, it includes only nonagricultural land disturbing activities.

Land users means those entities, individually and collectively who are performing land disturbing activities or have caused these activities to occur. These include but are not limited to owners, lot operators, builders, contract agents, lessees, renters, and occupiers. For enforcement purposes, the owner is the entity continually responsible for meeting the performance requirements of this chapter.

Long-term operation and maintenance agreement means a written description of the pertinent information concerning the long-term maintenance schedule and expectations to ensure that stormwater management BMPs are kept functional. The maintenance agreement will specify minimum operation and maintenance requirements and intervals to be performed by the property owner.

Lot operator means a builder, contractor or subcontractor working on an individual lot.

Lot owner means a person who has a financial interest in the construction activities for an individual lot.

Nonagricultural land use means use of land for industrial, commercial, manufacturing, wholesale or retail sale of goods or services, residential, institutional, and recreational uses of land. These uses shall also include utility and public works projects including lanes, sewers, conduits, alleys, and streets, and other land uses not included under agricultural land use.

Post-construction stormwater pollution prevention plan means a written and/or graphic description of pertinent information concerning permanent stormwater pollution prevention measures designed to meet the requirements of this chapter and submitted for review prior to the issuance of an improvement location permit and approved by the department of engineering.

Runoff means the portion of precipitation from such sources as rainfall, snowmelt, or irrigation water that flows over the ground surface.

Site means the entire area included in the legal description of the land on which land disturbing activity has been proposed in the permit application or is currently occurring.

Stormwater management system means the structural or nonstructural practices that are designed and constructed to reduce stormwater runoff pollutant loads, discharge volumes, and/or establish storage rates on-site.

Trained individual means an individual who is trained and experienced in the principles of stormwater management, including erosion and sediment control as is demonstrated by completion of coursework, state registration, professional certification, or annual training that enable the individual to make judgments regarding stormwater management, treatment, and monitoring.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-3. - Authority.

This chapter is adopted under the authority granted by IC 36-1-4-11. This authority provides for the administration, enforcement, and amendment of this chapter for controlling soil erosion and other provisions related to the regulation of stormwater in the city. No statement contained herein shall be construed to interfere or conflict with any additional ordinance, code, or law of the city. In addition, no statement contained herein shall be construed to interfere, conflict, or be deemed to fulfill the requirements of any other applicable authority or agency.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-4. - Applicability of chapter provisions.

This chapter applies to all nonagricultural land disturbing activities within the incorporated boundaries of the city. Projects approved by the city board of public works and safety funded in part by city tax dollars where performance and maintenance bonds are required are exempt from the permit and bonding requirements of this chapter, but shall be required to comply with all performance requirements of section 117-10.

Additionally, new retail gasoline outlets and new MS4-owned fueling areas or those that replace their existing tank systems, regardless of size are required to install appropriate measures to reduce lead, copper, zinc, and polyaromatic hydrocarbons in stormwater run-off.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-5. - Calculation of areas and volumes.

Due to the quantitative nature of calculating areas and volumes, fractional numbers may arise. For the purposes of this chapter, areas shall be calculated to the nearest square foot. Volumes shall be calculated to the nearest cubic yard.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-6. - Classification of land disturbing activities.

This chapter recognizes that different types of construction and the relative size of land disturbing activities inherently have differing degrees of potential impact relative to erosion and sediment runoff. As such, separate classifications have been established to vary the regulation of land disturbing activities proportionally to the potential impact of the activity. Any individual land disturbing less than the thresholds described must still adhere to the requirements of this section if it is part of a larger development falling within the thresholds described below.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-7. - Light land disturbing activities.

Nonagricultural land disturbing activities including residential, industrial, commercial, institutional, utility, and highway construction falling within the following parameters:

- (1) Activities involving the excavation, filling, or combination thereof of no more than 40 cubic yards of soil, sand, gravel, stone, or similar material.
- (2) Activities which disturb no more than 2,000 square feet of land.
- (3) Emergency repair or replacement of existing utility lines located within easements or rights-of-way as required to restore interrupted service or imminent hazards.
- (4) Public utility improvements or other public projects that require a performance bond to the city relative to the satisfactory completion of land disturbing activities.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-8. - Moderate land disturbing activities.

Nonagricultural land disturbing activities including residential, industrial, commercial, institutional, utility, and highway construction falling within the following parameters:

- (1) Activities involving the excavation, filling, or combination thereof of more than 40 cubic yards but less than or equal

to 2,000 cubic yards of soil, sand, gravel, stone, or similar material.

(2) Activities which disturb more than 2,000 square feet of land but less than one acre of land.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-9. - Significant land disturbing activities.

Nonagricultural land disturbing activities including residential, industrial, commercial, institutional, utility, and highway construction falling within the following parameters:

(1) Activities involving the excavation, filling, or combination thereof of more than 2,000 cubic yards of soil, sand, gravel, stone, or similar material.

(2) Activities that disturb one acre of land or more.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-10. - Nonagricultural land disturbing activity performance requirements.

Unless otherwise specified herein, the following requirements apply to all nonagricultural land disturbing activities, including the light, moderate, and significant levels as identified herein, within the incorporated boundaries of the city. Each item listed below may not be applicable to all land disturbing activities. As such, performance requirements may vary based on the specific land disturbing activities and soil characteristics. Best management practices shall be utilized to address the prevention, control, and reduction of stormwater pollutants on a site-specific basis.

- (1) *Site dewatering/discharge.* Sediment-laden water flowing from the site shall be detained to allow sediment to settle and accumulate prior to discharge. Water shall not be discharged in a manner that causes erosion, including the scouring of a receiving channel. Discharge into the existing storm sewer shall not be performed unless previously approved by the city department of engineering, or applicable jurisdictional agency.
- (2) *Waste and material disposal.* Wastes or unused building materials, including, but not limited to, garbage, debris, cleaning wastes, wastewater, toxic materials, and hazardous substances shall not be carried by runoff from a site. Proper disposal of all wastes and unused building materials, in line with the nature of the waste or material is required.
- (3) *Roadway protection.* Public or private roadways shall be kept cleared of accumulated sediment. If appreciable sedimentation occurs after a storm event, the sediment will be removed and deposited on the parcels of land from where it likely originated. Sediment being tracked from a site onto public or private roadways shall be minimized.
- (4) *Property protection.* Adjacent properties shall be kept cleared of accumulated sediment. If appreciable sedimentation occurs after a storm event, the sediment shall be removed and deposited on the parcels of land from where it likely originated, where legally permitted. Permission, means, and methods of clean up shall be secured from impacted property owners prior to removal.
- (5) *Drain inlet protection.* All storm drain inlets within land disturbing activity areas shall be protected against sedimentation with barriers meeting accepted design criteria, standards, and specifications. In addition, storm drain inlets located outside of land disturbing activity areas, which accept stormwater runoff from a land disturbing activity area, shall also be protected in an identical manner.
- (6) *Exposed land uses.* Exposed land uses shall be prohibited, except where specifically identified as a permitted or conditional use within chapter 137, zoning. Any exposed land use, either permitted by right or conditional, shall require prior site plan approval pursuant to the requirements identified within section 137-35.

- (7) *On-site erosion control.* The following items apply to significant land disturbing activities and shall be required throughout the period of the time when land disturbing activities are taking place:
- a. Stormwater runoff passing through a site from adjacent areas shall be controlled by diverting it around disturbed areas whenever possible. Alternatively, the existing channel may be improved to prevent erosion or sedimentation from occurring.
 - b. Barring unforeseeable weather conditions, all disturbed ground left inactive for seven or more days shall be stabilized, by seeding, sodding, mulching, covering, sediment fences, or with other barriers meeting accepted design criteria, standards, and specifications.
 - c. With disturbed areas of more than ten acres, where drainage is in the same direction or where runoff will result in loss of soil, an abatement or recovery program is required. When the disturbed area is stabilized, the sediment basin can be removed. If erosion is likely to continue, the sediment basin shall be maintained by the existing or subsequent landowners. The discharge rate from a sediment basin shall not cause scouring in the receiving channel.
 - d. With disturbed areas of less than or equal to ten acres, filter fences, straw bales, or equivalent erosion control measures, placed along all side-slope and down-slope sides of the site, shall be required. Also, if concentrated runoff passes through the site, filter fences shall be placed along the edges of the concentrated flow area to reduce the amount of sediment removed from the site. If these measures are not sufficient to control off-site sedimentation, a sediment basin may still be required to manage severe slopes.
 - e. Erosion from all soil storage piles containing more than ten cubic yards of material shall be controlled by placing straw bales, filter fence, or other best management practices. Moreover, any soil storage pile containing more than ten cubic yards of materials shall be located at least 25 feet upslope from a roadway, drainage channel, or adjacent property. Furthermore, if remaining in existence for more than seven days, the storage pile shall be stabilized by mulching, vegetative cover, tarps, or other approved best management practice.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-11. - Significant land disturbing activity post-construction performance requirements.

Unless otherwise specified herein, the following requirements apply to all nonagricultural land disturbing activities classified as significant as identified herein, within the incorporated boundaries of the city. Performance requirements may vary based on the specific land disturbing activities and soil characteristics. Best management practices shall be utilized to address the prevention, control, and reduction of stormwater pollutants on a site-specific basis. Project completion and release of the performance bond shall not exempt the site owner from the performance activities listed below. The maintenance and inspection measures contained in this section are permanent measures that apply throughout the life of the site.

- (1) Install and maintain each post construction stormwater management system approved as part of the post-construction stormwater pollution prevention plan. Each measure shall be installed in accordance with the approved plan. As-builts of applicable stormwater management systems will be required and may be field verified prior to the release of the performance bond.
- (2) Maintain all drainage systems and stormwater management facilities in good working order.
- (3) Maintain natural drainage for any portion of the real estate not served by a constructed drainage system.
- (4) Maintain all erosion sediment control systems installed on the real estate or identified as part of the construction plan unless such systems were temporary measures only intended to be in place during construction.

- (5) Maintain all drainage channels, swales and basins installed or identified as part of the construction plan so that they cause erosion in the receiving channel, the outlet, or basin side-slope reducing the performance of the system. Keep features such as wetlands and bodies of water protected from stormwater run-off pollutants.
- (6) Inspect all stormwater management facilities on a schedule sufficient to ensure compliance with this chapter. These inspections shall occur on at least an annual basis.
- (7) Provide for the removal of silt, litter, grass cuttings, vegetation and other debris from all catchbasins, inlets and stormwater retention/detention areas.
- (8) Maintain records of all maintenance and inspection activities related to the stormwater management measures. Records shall be retained for at least three years and must be made available to city personnel upon request.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-12. - Design criteria, standards, and specifications for erosion control measures and post construction stormwater measures.

All erosion control and post-construction stormwater management measures including, but not limited to, those required to comply with this chapter shall meet the design criteria, standards, and specifications for erosion control and stormwater management measures similar to or the same as those outlined in the Indiana Department of Environmental Management's Indiana Stormwater Quality Manual, or engineering standards as adopted by the city board of public works and safety, as may be amended.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-13. - Permit requirements.

Where required, no land user shall begin a land disturbing activity subject to this chapter without receiving prior approval of an improvement location permit. Improvement location permits shall be issued in accordance with the requirements of chapter 137, zoning. Permits may be issued specifically for land disturbing activities or in conjunction with planned improvements that require land disturbing activity. An improvement location permit shall be required as follows:

- (1) Light land disturbing activity: No permit required.
- (2) Moderate land disturbing activity: Permit required.
- (3) Significant land disturbing activity: Permit required.

Any land disturbing activity greater than or equal to one acre must submit a notice of intent (NOI) to obtain permit coverage from IDEM and meet all applicable requirements of IDEM's CSGP.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-14. - As-built requirements.

- (a) Prior to final release of the bond provided for in section 117-47, the as-built condition of critical stormwater management features must be identified and approved.
- (b) The volume, slopes, configuration, condition and topographic information of all detention, retention and water quality practices shall be certified by a professional engineer licensed in the state. This information shall be provided to the city in the form of a scaled as-built drawing or other electronic form accepted by the city. The as-built certification shall indicate if final conditions are consistent with, or exceed, the provisions of the post-construction stormwater pollution prevention plan (SWPPP).
- (c) If it is determined that information provided in the as-built drawing, certification, inspection or survey of the site does

not meet or exceed the post-construction SWPPP provisions, the city reserves the right to withhold the final bond until such time as site conditions meet or exceed the plan provisions. Furthermore, other enforcement mechanisms may be applied to the permittee or persons making certifying statements.

(Ord. No. 5902, § 1, 8-19-2024)

Secs. 117-15—117-31. - Reserved.

ARTICLE II. - ADMINISTRATION AND ENFORCEMENT

Sec. 117-32. - Responsibility.

Control of erosion and sediment relative to land disturbing activities shall be the responsibility of the land users.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-33. - Penalty for proceeding without permit.

No land user shall begin a land disturbing activity subject to the provisions of this chapter without receiving prior approval of an improvement location permit where required. The fee for improvement location permits issued following proceeding land disturbing activity shall increase by a factor of ten (ten times the normal associated fee). Land users notified of a lack of permit shall have three business days from the date of notification to obtain a permit. Failure to obtain a permit following notification shall be subject to penalty provisions identified by chapter 137, zoning.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-34. - Bonding requirements.

No land user shall begin a land disturbing activity subject to this chapter without receiving prior submission of a surety bond where required. Administration of surety bonds shall rest with the department of engineering. The amount of the surety shall be as identified by this chapter and shall be submitted prior to or concurrently with an improvement location permit to the department of engineering. Surety shall remain in full force and effect during and after land disturbing activities until notice of termination (NOT) requirements have been met, city has inspected and accepted project site for compliance, and NOT has been submitted to IDEM. Surety bonds shall be required as follows:

- (1) Light land disturbing activity: No surety required.
- (2) Moderate land disturbing activity: No surety required.
- (3) Significant land disturbing activity: Surety required.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-35. - Determination of required surety.

The required dollar amount of the surety bond where required shall be determined as identified below. The largest dollar amount shall apply:

- (1) *Area calculation.*
 - a. Up to five acres of disturbed land area: \$5,000.00 per acre.

b. For each additional acre of disturbed land area: \$2,500.00 per acre.

(2) *Volume calculation.* One dollar per cubic yard of disturbed material including both cut and fill.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-36. - Erosion control plan or construction stormwater pollution prevention plan (SWPPP) required.

An erosion control plan as identified herein shall be required for all moderate land disturbing activities. A construction SWPPP as identified herein shall be required for all significant land disturbing activities. No land user shall begin a moderate or significant land disturbing activity without submitting and obtaining approval for an erosion control plan or construction SWPPP, respectively. Two copies of the erosion control plan or construction SWPPP shall be submitted prior to or concurrently with the improvement location permit. Erosion control plans submitted and approved as part of the review of final development plans need not be resubmitted and can merely be referenced on the improvement location permit application. Although subject to the performance requirements of section 117-10, projects approved by the city under the IDEM CSGP prior to the establishment of this chapter shall not be required to submit an erosion control plan as required herein.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-37. - Content of erosion control plan—moderate land disturbing activity.

All applications for an improvement location permit for moderate land disturbing activity shall include the following information:

- (1) Site boundaries and adjacent lands which accurately identify the site location;
- (2) Site construction/grading plan. Erosion control plans submitted concurrently with final site plans need not duplicate information except as necessary for plan clarity. Site construction/grading plans shall include at a minimum:
 - a. Locations and approximate dimensions of all proposed land disturbing activities;
 - b. Locations and approximate dimensions of all temporary soil stockpiles;
 - c. Locations and approximate dimensions of all erosion control measures necessary to meet the performance requirements of this chapter;
 - d. Schedule of the anticipated starting and completion dates of each land disturbing activity, including the installation of erosion control measures needed to meet the requirements of this chapter; and
- (3) Any additional information deemed necessary by the department of engineering where specific or unique site conditions warrant clarification identifying that the performance requirements of section 117-10, pertaining to nonagricultural land disturbing activity performance requirements, are met.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-38. - Content of construction stormwater pollution prevention plan (SWPPP)—Significant land disturbing activity.

All applications for an improvement location permit for significant land disturbing activity shall include, but not be limited to, the following content and construction SWPPP in accordance with IDEM's CSGP:

- (1) An index indicating the location, in the construction plan, of all information required by this section.
- (2) A vicinity map depicting the project site location in relationship to recognizable local landmarks, towns, and major roads.

- (3) A project narrative and supporting plan documents (documentation may be included on the plan sheets or in a separate document), which must include:
- a. A description of the nature and purpose of the project.
 - b. A legal description of the project site. The description must include the legal section(s), or alternative land division(s), township and range.
 - c. The latitude and longitude in decimal representation at:
 - i. The approximate entrance to the project site that is obtaining permit coverage if the project is not linear.
 - ii. The beginning of the project site for linear projects.
 - d. The size of the project area expressed in acres.
 - e. The total expected land disturbance expressed in acres.
 - f. Construction support activities that are expected to be part of the project.
 - g. The soil properties, characteristics, limitations, and hazards associated with the project site and the measures that will be integrated into the project to overcome or minimize adverse soil conditions.
 - h. The general construction sequence related to phasing of the project.
 - i. A reduced plat or project site map that is submitted on a sheet or sheets no larger than 11 inches by 17 inches for all phases or sections of the project site (multiple sheets may be submitted to meet this requirement) and includes:
 - i. The boundaries of the project site as represented in the full construction plans and for which the notice of intent (NOI) will be submitted.
 - ii. The boundaries of each phase, section, or other divisions of the project site associated with the construction activity.
 - iii. When applicable, the lot numbers, lot boundaries, road layout, and road names.
 - iv. A legend.
 - j. The identification and location of all wetlands, lakes and water courses on or adjacent to the project site.
 - k. The location of any in-stream activities that are planned for the project including, but not limited to stream crossings and pump arounds.
 - l. The identification and status of any other state or federal water quality permits or authorizations that are required for construction activities associated with the project site. If the permit or authorization has not been obtained, provide the expected timeline for obtaining the permit or authorization.
 - m. The identification of a U.S. EPA approved or established TMDL, including the name of the TMDL and the pollutant(s) for which there is a TMDL.
 - n. The identification of discharges to a water on the current 303(d) list of impaired waters and the pollutant(s) for which it is impaired.
- (4) An existing project site layout which must include:
- a. The identification of all wetlands, lakes, and water courses on, or adjacent to, the project site.
 - b. The location of all existing structures on the project site.
 - c. The boundaries of the 100-year flood plains, floodway fringes, and floodways.
 - d. A soil map of the predominant soil types, as determined by the United States Department of Agriculture, Natural Resources Conservation Service (USDA, NRCS) Soil Survey, an equivalent publication, or as determined by a soil scientist. A soil legend must be included with the soil map.

- e. The identification and delineation of natural buffers and existing vegetative cover, such as crop or crop residue, brush, and trees.
 - f. The land use of all adjacent properties.
 - g. The existing topography at a contour interval appropriate to indicate drainage patterns.
 - h. The location(s) of where run-off enters the project site.
 - i. The location(s) of where run-off discharges from the project site.
- (5) The final project site layout which must include:
- a. The location of all proposed site improvements, including roads, utilities, lot delineation and identification, proposed structures, and common areas.
 - b. The boundaries of 100-year floodplains, floodway fringes, and floodways.
 - c. The proposed final topography at a contour interval appropriate to indicate drainage patterns.
 - d. The boundaries of natural features or unique resource areas that will be left undisturbed or preserved including, but not limited to, wetlands, steep slopes, riparian corridors, and natural buffers
- (6) A grading plan which must include:
- a. A delineation of all proposed land-disturbing activities, including known off-site activities that will provide services to the project site.
 - b. The location of all on-site soil stockpiles and borrow areas and, when known at the time of submittal, the location of all off-site borrow, soil stockpiles, and disposal areas.
 - c. The existing and proposed topography.
- (7) A drainage plan which must include:
- a. The location, size, and dimensions of all stormwater drainage systems, such as culverts, storm sewers, and conveyance channels.
 - b. The locations of specific points where concentrated stormwater and non-stormwater discharges will leave the project site.
 - c. The locations where stormwater may be directly discharged into ground water, such as abandoned wells, sinkholes, or karst features.
 - d. The name(s) of the receiving water(s) and, when the discharge is to a system (storm sewer, stormwater management measure, etc.) owned/or operated by a municipality, city, town, or county, the name of the system operator and the ultimate receiving water.
 - e. The location, size, and dimensions of features, such as existing permanent retention or detention facilities, including manmade wetlands, designed for the purpose of stormwater management.
- (8) A SWPPP associated with construction activities. The plan must be designed and implemented to achieve the minimum performance requirements of Section 3.0 of the IDEM CSGP and must include:
- a. A description of the potential pollutant generating sources and pollutants, including all potential non-stormwater discharges that are associated with the construction activities, which may reasonably be expected to contribute pollutants to stormwater discharges.
 - b. The location, dimensions, detailed specifications, and construction details of all temporary and permanent stormwater quality measures, including, but not limited to:
 - i. Erosion control measures;
 - ii. Sediment control measures;

- iii. Perimeter control measures;
 - iv. Run-off control measures;
 - v. Dewatering applications and management methods;
 - vi. Measures utilized to cross water resources for the accessibility needed to perform construction;
 - vii. Measures utilized to isolate or separate construction activities from work within waterbodies; and
 - viii. Concrete and cementitious washout areas and management measures.
- c. Temporary stabilization and permanent stabilization plans, including the sequence of implementation planned to minimize the footprint of disturbed, unstable soil and the following information:
 - i. Specifications and application rates for soil amendments and seed mixtures.
 - ii. The type and application rate for anchored mulch, erosion control blanket, and other appropriate stabilization options.
 - d. For each temporary stormwater measure, a maintenance standard, including a threshold of when each requires corrective action and/or replacement with alternative measures.
 - e. The planned construction sequence describing the relationship between implementation of stormwater quality measures, including temporary and permanent stabilization and stages of construction activities. The sequence must include the measures that will be implemented prior to land disturbance in a specific drainage area and those that will be implemented as construction progresses throughout the life of the project.
 - f. The provisions for erosion and sediment control on individual building lots regulated under the permit.
 - g. A material handling and spill prevention and spill response plan meeting the requirements in 327 IAC 2-6. 1, including contact information for local emergency personnel and the IDEM Emergency Spill Line (888)233-7745 or (317)233-7745
 - h. The material handling and storage procedures associated with construction activity describing the management and disposal of construction products and waste.
- (9) *Additional information as deemed necessary.* Any additional information deemed necessary by the department of engineering where specific or unique site conditions warrant clarification identifying that the performance requirements of section 117-10, pertaining to nonagricultural land disturbing activity performance requirements, are met.
- (10) *Signature of a "trained individual".* The construction SWPPP must be signed by a trained individual as defined in section 117-2.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-39. - Post-construction stormwater pollution prevention plan required.

A post-construction stormwater pollution prevention plan (SWPPP) as identified herein shall be required for all significant land disturbing activities. No land user shall begin a significant land disturbing activity without submitting and obtaining approval for a post-construction SWPPP. Two copies of the post-construction SWPPP shall be submitted prior to or concurrently with the improvement location permit application and erosion control plan. Post-construction SWPPPs submitted and approved as part of the review of final development plans need not be resubmitted and can merely be referenced on the improvement location permit application. Although subject to the performance requirements of section 117-10, projects approved by the city IDEM's CSGP prior to the establishment of this chapter shall not be required to submit a post-construction SWPPP as required herein.

Sec. 117-40. - Content of post-construction stormwater pollution prevention plan.

The post-construction stormwater pollution prevention plan (SWPPP) must include, but not be limited to the following information, in accordance with IDEM's CSGP:

- (1) A description of potential pollutant generating sources and a list of pollutants from the proposed land use that may reasonably be expected to contribute pollutants to stormwater discharges.
- (2) A description of stormwater quality and stormwater management measures that will be installed to address post-construction sources that are expected to generate pollutants in stormwater discharges after construction activities have been completed. The measures selected should achieve, at a minimum, the following objectives:
 - a. Stormwater quality measures that target pollutants of concern and are designed to remove or minimize pollutants from stormwater run-off that is associated with the final land use.
 - b. Stormwater quality measures that will be implemented to prevent or minimize adverse impacts to aquatic resources including, but not limited to, wetlands, streams, karst features, and riparian habitats.
 - c. Stormwater management measures that will address the potential impacts of increased run-off from the project. Measures must be designed and approved according to the CSGP and this chapter. A trained individual must approve that the design meets the applicable requirement(s).
 - d. Measures, including structural and those based on low impact development principles, selected to address the pollutant(s) of concern, reduction of peak flows, and ability to infiltrate.
 - e. Protective measures that will be implemented during active construction when the type of post-construction measure(s) planned are susceptible to pollutants, specifically sediment that may be generated during land-disturbing activities.
- (3) The location, dimensions, detailed specifications, and construction details of all post-construction stormwater quality and stormwater management measures.
- (4) A sequence describing when each post-construction stormwater measure will be installed in relation to project construction.
- (5) An operation and maintenance manual that includes a description of the maintenance guidelines for all post-construction stormwater measures to facilitate their proper long-term function. This operation and maintenance manual must be provided to city and any additional future parties who will assume responsibility for the operation and long-term maintenance of the post-construction stormwater measures.
- (6) When known at the time of plan submittal, the entity that will be responsible for operation and maintenance of the post-construction system.

Additionally, the post construction stormwater pollution prevention plan must also include a long-term operation and maintenance agreement containing maintenance guidelines for all post-construction stormwater quality measures to facilitate their proper long-term function.

Sec. 117-41. - Long-term operation and maintenance agreement.

- (a) Long-term operation and maintenance agreements shall include a maintenance plan for all stormwater quality best management practices (BMPs) for all projects covered under this chapter that require more than general

maintenance (e.g., periodic mowing). The long-term operation and maintenance agreements shall be recorded.

- (b) The plan will be developed to ensure that the stormwater management BMPs are kept functional. The maintenance agreement will specify minimum operation and maintenance requirements and intervals to be performed by the property owner. The operation and maintenance requirements shall be in accordance with the operation and maintenance procedures and schedules listed in the state stormwater quality manual.
- (c) The plan shall address schedules for inspections and techniques for operation and maintenance including vegetation clearing or mowing and removing accumulated trash, debris, sediment pollutants and other forms of pollution.
- (d) It is the obligation of the project owners and their successors in interest to provide this agreement to future parties, including property owners, who will assume responsibility for the operation and maintenance of the post-construction stormwater quality measures.
- (e) When a stormwater quality BMP serves more than one parcel, an owners' association or binding contract for the purpose of operation and maintenance is required. The owners association shall be responsible for operation and maintenance as directed by this article.
- (f) Where stormwater detention and/or retention systems are used, care must be taken to ensure that the systems do not become nuisances or health hazards. Detention and retention facilities should be designed to require minimal maintenance, and maintenance expectations must be clearly stated in the long-term operation and maintenance agreement.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-42. - Easement requirements.

All permanent stormwater management systems identified in the post-construction stormwater pollution prevention plan (SWPPP), including detention or retention basins, filter strips, infiltration systems, conveyance systems, and structures located outside of the right-of-way shall be designated as common areas or incorporated into permanent easements if the permanent systems serve the city, county drainage board regulated drains, or other lot owners (i.e. subdivisions). For the purposes of access, monitoring, inspection, and general maintenance activities, an adequate easement width beyond the actual footprint of the stormwater quality management facility as well as a 20-foot-wide access easement from a public right-of-way to each BMP shall be provided. If the permanent stormwater management systems are required solely for the benefit of the individual lot owner, then a permanent easement will not be required. The easement requirements noted may be changed by the city as deemed necessary for specific cases.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-43. - Review of erosion control plan, construction stormwater pollution prevention plan (SWPPP), post-construction stormwater pollution prevention plan (SWPPP), and long-term operation and maintenance agreement.

- (a) Upon submission, the city planner shall review the submission requirements of the erosion control plan, construction stormwater pollution prevention plan (SWPPP), post-construction stormwater pollution prevention plan (SWPPP), and long-term operation and maintenance agreement. These documents shall not be evaluated by the city planner in regards to the performance requirements of this chapter. The city planner shall promptly forward complete submissions to the department of engineering for review of the performance requirements of this chapter.
- (b) For moderate land disturbing activities, the city planner may issue an improvement location permit prior to the review of the department of engineering. For significant land disturbing activities, the city planner may not issue an improvement location permit prior to the review of the department of engineering. When questions arise or specific

unique site circumstances dictate it, the city planner may also withhold the issuance of any improvement location permit pending the review of the department of engineering.

- (c) The department of engineering shall promptly review erosion control plans, construction- and post-construction SWPPPs, and long-term operation and maintenance agreements. If the submission is deficient or held for the review of the department of engineering, the city planner shall inform the applicant in writing and require additional information where applicable. When additional information is submitted, the city planner shall again determine whether the plan meets the submission requirements of this chapter. If the plan is disapproved or requires modification based on the review of the department of engineering, the city planner shall inform the applicant in writing giving reasons for disapproval or the need for modifications.
- (d) In the case where the city planner has issued an improvement location permit prior to the review of the department of engineering, comments of the department of engineering received following the issuance of an improvement location permit shall be forwarded in writing to the land user. If the plan is disapproved or requires modification based on the review of the department of engineering, the city planner shall inform the applicant in writing giving reasons for disapproval or the need for modifications. The review and approval of an erosion control plan by the city planner and/or the department of engineering shall not be construed as more than meeting the submission requirements of this chapter. The review and approval of an erosion control plan by the city planner and/or the department of engineering shall not exempt, remove, or otherwise modify the obligations of the land user relative to the performance requirements of this chapter. Thus, if the proposed erosion control measures are approved but yet fail to meet the performance requirements identified in section 117-10, the land user shall be responsible for installing additional measures, performing maintenance, and taking any measure necessary to ensure compliance with performance requirements on a continual basis.
- (e) Approval of the provisions of the erosion control plan and post-construction stormwater pollution prevention plan as allowed by this chapter shall not be construed as compliance with any other applicable state, federal, or local ordinances.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-44. - Inspection.

- (a) To ensure compliance with the erosion control plan, the city shall inspect sites having ongoing land disturbing activities as deemed appropriate. Inspections may be undertaken by the department of planning, the department of engineering, or any other representative employed by or contracted with the city for said purpose.
- (1) Inspection programs may be established on any reasonable basis, including, but not limited to:
 - a. Routine inspections;
 - b. Random inspections;
 - c. Inspections based upon complaints or other notice of possible violations;
 - d. Inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants;
 - e. Inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the NPDES stormwater permit; and
 - f. Joint inspections with other departments or agencies inspecting under environmental or safety laws.
 - (2) Inspections may include, but are not limited to:

- a. Reviewing maintenance and repair records;
 - b. Sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and
 - c. Evaluating the condition of drainage control facilities and other stormwater treatment practices.
- (b) When any new drainage or erosion control facility is installed on private property, or when any new connection is made between private property and a public storm sewer system, the property owner shall grant to the city the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when it has a reasonable basis to believe that a violation of this chapter has occurred.
- (c) The site owner is responsible for implementing a self-monitoring program, as required by CSGP Section 3.6. The self-monitoring program shall include the following:
 - (1) A trained individual shall perform a written evaluation of the project site:
 - a. Twenty-four hours prior to a qualifying precipitation event or by the end of the next business day following each measurable storm event; which is defined as a precipitation accumulation equal to, or greater than, one-half inch of rainfall within a 24-hour period; and
 - b. If no rain event occurs within the work week a minimum of one inspection must occur per week.
 - c. In the event of multiple qualifying events during the work week, no more than three inspections would be required to meet the self-monitoring commitment.
 - (2) The evaluation must:
 - a. Address the maintenance of existing stormwater quality measures to ensure they are functioning properly; and
 - b. Identify additional measures necessary to remain in compliance with all applicable statutes and rules.
 - (3) Written evaluation reports must include:
 - a. The name of the individual performing the evaluation;
 - b. The date of the evaluation;
 - c. Problems identified at the project site; and
 - d. Details of corrective actions recommended and completed.
- (d) All evaluation reports for the project site must be made available to the city within 48 hours of a request.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-45. - Responsibility of the department of engineering.

The administration of this chapter, as identified, is the responsibility of the city planner. However, based on the technical requirements of this chapter, the department of engineering shall be responsible for the review and evaluation of all land disturbing activities compliance with the performance requirements of this chapter. The city planner may only pursue the administration of this chapter relative to performance requirements when the lack of compliance has been documented in writing by the department of engineering.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-46. - Enforcement.

The following practices shall be utilized regarding the enforcement of this chapter:

- (1) Land users shall be notified in writing of noncompliance following the inspection and verification of the

department of planning and/or department of engineering.

- (2) If, within five days after notification, a permit holder does not correct said noncompliance, the city planner may pursue issuing a stop work order in accordance with the requirements identified herein.
- (3) The city planner may also immediately post a stop-work order if:
 - a. Any land disturbing activity requiring an improvement location permit and/or bond under this chapter is being undertaken without a permit and/or bond;
 - b. If the approved erosion control plan has not been implemented in good faith concurrent with construction; or
 - c. The land disturbing activity does not comply with the performance requirements of this chapter and poses an imminent negative impact to the public health, safety, and welfare as determined by the department of engineering following an on-site inspection.
- (4) Upon correction of the violation, land users may appeal to the city to retract a stop-work order.
- (5) Ten days after posting a stop-work order, the city may issue a notice of intent to the violator stating the intent of the city to use or draw upon the surety bond, where required, to perform work necessary to provide compliance with this chapter. All expenses for work, administration, and legal fees associated with providing compliance with this chapter which exceeds the amount of the surety bond may be billed to the land user. For all other land disturbing activities where surety was not required, the city may perform the work necessary to provide compliance with this chapter. All expenses for work, administration, and legal fees associated with providing compliance with this chapter may be billed to the land user.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-47. - Project completion.

- (a) Land users shall complete land disturbing activities in a timely and orderly manner. Land disturbing activities shall be considered complete when the disturbed area has been stabilized with improvements, vegetative cover, or other department of engineering approved means and when discharges of stormwater associated with construction activity have ceased. When a project has been completed for a significant land disturbing activity, the person holding the permit shall petition, in writing, indicating project completion and submittal of notice of termination for approval by the city and filed with IDEM.
- (b) For significant land disturbing activities, as-builts of permanent stormwater management systems must be submitted prior to or concurrently with the project completion notice and request for bond release. The city shall have 28 calendar days to perform an inspection and respond to the request for release.
- (c) Upon inspection and verification of satisfactory land disturbing completion, any surety bonds shall be released by the department of engineering forthrightly. Maintenance responsibilities of completed land disturbing activities shall remain with the person owning the land.
- (d) If the stormwater management systems on site are deemed to be insufficient, not appropriate and/or inconsistent with the post-construction stormwater pollution prevention plan (SWPPP) or objectives stated in this chapter, then approval will not be granted.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-48. - Appeals.

Any order, requirement, decision, or determination made by an administrative official or staff member may be appealed in the same manner that any provision of chapter 137, zoning. This process is identified in chapter 137.

(Ord. No. 5902, § 1, 8-19-2024)

Secs. 117-49—117-69. - Reserved.

ARTICLE III. - NONCONFORMING USES

Sec. 117-70. - Correction of nonconforming situations—General compliance standard.

Land users who are currently in violation or are out of compliance with the performance standards identified within section 117-10 pertaining to nonagricultural land disturbing activity performance requirements shall have 30 calendar days from the receipt of notice of violation identified under section 117-46, enforcement, to apply for the applicable permits or bring the property into compliance with this chapter.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-71. - Same—Compliance standard for existing gravel drive, parking area or alley.

Land users who are currently in violation or are out of compliance with the performance standards identified within section 117-10 pertaining to nonagricultural land disturbing activity performance requirements due to an existing gravel drive, parking area, or alley may add gravel as a surfacing material to meet the performance requirements of this chapter provided the area of the existing gravel surface is not expanded. Land users shall have 30 calendar days from the receipt of notice of violation identified under section 117-46, enforcement, to apply for the applicable permits or bring the property into compliance with this chapter.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-72. - New or expanded gravel drives, parking areas, and alleys prohibited.

New or expanded permanent non-construction-related drives, parking areas, alleys shall be hard-surfaced. Gravel or stone surfaces shall not be considered an acceptable stable surface when used for vehicular traffic and parking.

(Ord. No. 5902, § 1, 8-19-2024)

Secs. 117-73—117-102. - Reserved.

ARTICLE IV. - MAINTENANCE MEASURES

Sec. 117-103. - Maintenance of erosion control measures.

During the period of land disturbance at a site, all sediment basins and other erosion control measures necessary to meet the performance requirements of this chapter shall be applied by the land user. If sedimentation is likely to be a problem after land disturbing activities have ceased, some or all of the sediment basins, as well as other erosion control measures shall be maintained by the land user or subsequent landowner for as long as the problem exists.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-104. - Maintenance of permanent measures.

All stormwater/erosion control management facilities must be maintained by the property owner to ensure compliance with the requirements of this chapter and accomplishment of its purposes. Maintenance needs may include the removal of silt, litter and other debris from all catch basins, inlets and drainage pipes, grass cutting and vegetation removal, and necessary replacement of landscape vegetation. Any maintenance needs found must be addressed in a timely manner, as determined by the city.

(Ord. No. 5902, § 1, 8-19-2024)

Sec. 117-105. - Failure to maintain permanent measures.

The responsible party must ensure that all permanent stormwater management measures are maintained so that they operate according to the approved design. If a responsible party fails or refuses to perform the required maintenance, the city, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the facility in proper working condition. If the erosion control/stormwater management facility becomes a danger to public safety or public health, the city shall notify the party responsible for maintenance of the facility, in writing. Upon receipt of that notice, the responsible person shall immediately effect maintenance and repair of the facility in an approved manner. After proper notice, the city may assess the owner of the facility for the cost of repair work and any penalties.

(Ord. No. 5902, § 1, 8-19-2024)

Chapter 121 - THE FLOOD DAMAGE PREVENTION ORDINANCE

Footnotes:

--- (1) ---

Editor's note— Ord. No. 5921, § 1, adopted Jan. 13, 2025, amended Ch. 121 in its entirety to read as herein set out. Former Ch. 121 pertained to flood control. See the Code Comparative Table—Ordinances for full derivation.

ARTICLE I. - STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE, AND METHODS

Sec. 121-1. - Statutory authorization.

The Indiana Legislature has in IC 36-1-4-11 granted the power to local government units to control land use within their jurisdictions. Therefore, the Common Council of the City of Mishawaka does hereby adopt the following floodplain management regulations.

(Ord. No. 5921, § 1, 1-13-2025)

Sec. 121-2. - Findings of fact.

The flood hazard areas of the City of Mishawaka are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare. Additionally, structures that are inadequately elevated, floodproofed, or otherwise protected from flood damage also contribute to the flood loss. In order to minimize the threat of such damages and to achieve the purposes hereinafter set forth, these regulations are adopted.

Sec. 121-3. - Statement of purpose.

It is the purpose of this chapter to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health.
- (2) Minimize expenditure of public money for costly flood control projects.
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- (4) Minimize prolonged business interruptions.
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in floodplains.
- (6) Help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight area.
- (7) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.
- (8) Minimize the impact of development on adjacent properties within and near flood prone areas.
- (9) Ensure that the flood storage and conveyance functions of the floodplain are maintained.
- (10) Minimize the impact of development on the natural, beneficial values of the floodplain.
- (11) Prevent floodplain uses that are either hazardous or environmentally incompatible.
- (12) Meet community participation requirements of the National Flood Insurance Program.

Sec. 121-4. - Methods of reducing flood loss.

In order to accomplish its purposes, these regulations include methods and provisions for:

- (1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water hazards, or which result in damaging increases in flood heights or velocities.
- (2) Requiring that uses vulnerable to floods, including facilities, which serve such uses, be protected against flood damage at the time of initial construction.
- (3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters.
- (4) Controlling filling, grading, dredging, excavating, and other development which may increase flood damage.
- (5) Preventing or regulating the construction of flood barriers, which will unnaturally divert floodwaters, or which may increase flood hazards in other areas.

Secs. 121-5—121-9. - Reserved.

ARTICLE II. - DEFINITIONS

Sec. 121-10. - Definitions.

Unless specifically defined below, words or phrases used in these regulations shall be interpreted so as to give them meaning they have in common usage and to give these regulations the most reasonable application.

Accessory structure means a structure with a floor area of 400 square feet or less that is on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure; an accessory structure specifically excludes structures used for human habitation.

- (1) Accessory structures are considered walled and roofed where the structure includes at least two outside rigid walls and a fully secured roof.
- (2) Examples of accessory structures include but are not necessarily limited to two-car detached garages (or smaller), carports, storage and tool sheds, and small boathouses.
- (3) The following may have uses that are incidental or accessory to the principal structure on a parcel but are generally not considered to be accessory structures by the NFIP:
 - a. Structures in which any portion is used for human habitation, whether as a permanent residence or as temporary or seasonal living quarters, such as a detached garage or carriage house that includes an apartment or guest quarters, or a detached guest house on the same parcel as a principal residence.
 - b. Structures used by the public, such as a place of employment or entertainment.
 - c. Development that does not meet the NFIP definition of a structure for floodplain management purposes. Examples include, but are not necessarily limited to, a gazebo, pavilion, picnic shelter, or carport that is open on all sides (roofed but not walled).

Addition (to an existing structure) means any walled and roofed expansion to the perimeter of a structure in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.

Alteration of a watercourse means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other modification which may alter, impede, retard, or change the direction and/or velocity of the flow of water during conditions of the base flood.

Appeal means a request for a review of the floodplain administrator's interpretation of any provision of this chapter, a request for a variance, or a challenge of a board decision.

Area of special flood hazard is the land within a community subject to a one percent or greater chance of being flooded in any given year.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year. The base flood may also be referred to as the one percent annual chance flood or 100-year flood.

Base flood elevation (BFE) means the water surface elevation of the base flood in relation to a specified datum, usually the North American Vertical Datum of 1988.

Basement means that portion of a structure having its floor sub-grade (below ground level) on all sides.

Best available flood layer (BAFL) means floodplain studies and any corresponding floodplain maps prepared and/or approved by the Indiana Department of Natural Resources which provide base flood elevation information, floodplain limits, and/or floodway delineations for flood hazards identified by approximate studies on the currently effective FIRM (Zone A) and/or for waterways where the flood hazard is not identified on available floodplain mapping.

Building. See "Structure."

Community means a political entity that has the authority to adopt and enforce floodplain ordinances for the areas within its jurisdiction.

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

Development means, for floodplain management purposes, any man-made change to improved or unimproved real estate including but not limited to:

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

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

Elevation certificate means a FEMA form that is routinely reviewed and approved by the White House Office of Management and Budget under the Paperwork Reduction Act, that is encouraged to be used to collect certified elevation information.

Enclosed area (enclosure) is an area of a structure enclosed by walls on all sides.

Enclosure below the lowest floor. See "Lowest floor" and "Enclosed area."

Existing manufactured home park or subdivision 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 community's first floodplain ordinance.

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).

Fema means the Federal Emergency Management Agency.

Fill for floodplain management purposes, means any material deposited or placed which has the effect of raising the level of the ground surface above the natural grade elevation. Fill material includes but is not limited to consolidated material such as concrete and brick and unconsolidated material such as soil, sand, gravel, and stone.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.
- (3) Mudslides (i.e., mudflows) which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

Flood or flooding also includes the collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or current of water exceeding anticipated cyclical levels that result in a flood as defined above.

Flood hazard area means areas subject to the one percent. Annual chance flood. See "Special flood hazard area."

Flood insurance rate map (FIRM) means an official map of a community, on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a digital flood insurance rate map (DFIRM).

Flood insurance study (FIS) means the official hydraulic and hydrologic report provided by FEMA. The report contains flood profiles, as well as the FIRM and the water surface elevation of the base flood.

Flood prone area means any land area acknowledged by a community as being susceptible to inundation by water from any source. (See "Floodplain")

Flood protection grade (FPG) is the BFE plus two feet at any given location in the SFHA. See "Freeboard."

Floodplain or flood prone area means any land area susceptible to being inundated by water from any source. See "Flood."

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

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance), and other applications of police power which control development in flood-prone areas. The term describes such state or local regulations in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

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

Floodproofing certificate is a form used to certify compliance for non-residential structures as an alternative to elevating structures to or above the FPG.

Floodway is the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulative increasing the water surface elevation more than a designated height.

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

Fringe or flood fringe is the portion of the floodplain lying outside the floodway.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Hardship (as related to variances of this chapter) means the exceptional hardship that would result from a failure to grant the requested variance. The Board of Zoning Appeals of the City of Mishawaka requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

Historic structure means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the department of the interior) or preliminarily determined by the secretary of the interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the secretary of the interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the secretary of the interior; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by: (a) an approved state program as determined by the secretary of interior, or (b) directly by the secretary of interior in states without approved programs.

Hydrologic and hydraulic engineering analysis means analyses performed by a professional engineer licensed by the State of Indiana, in accordance with standard engineering practices that are accepted by the Indiana Department of Natural Resources and FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

International code council-evaluation service (ICC-ES) report means a document that presents the findings, conclusions, and recommendations from a particular evaluation. ICC-ES reports provide information about what code requirements or acceptance criteria were used to evaluate a product, and how the product should be identified, installed.

Letter of final determination (LFD) means a letter issued by FEMA during the mapping update process which establishes final elevations and provides the new flood map and flood study to the community. The LFD initiates the six-month adoption period. The community must adopt or amend its floodplain management regulations during this six-month period unless the community has previously incorporated an automatic adoption clause.

Letter of map change (LOMC) is a general term used to refer to the several types of revisions and amendments to FEMA maps that can be accomplished by letter. They are broken down into the following categories:

- (1) *Conditional letter of map revision (CLOMR)* means FEMA's comment on a proposed project that would, upon construction, result in modification of the SFHA through the placement of fill outside the existing regulatory

floodway.

- (2) *Conditional letter of map revision based on fill (CLOMR-F)* means a letter from FEMA stating that a proposed structure that will be elevated by fill would not be inundated by the base flood.
- (3) *Letter of map amendment (LOMA)* means an amendment by letter to the currently effective FEMA map that establishes that a building or area of land is not located in a SFHA through the submittal of property specific elevation data. A LOMA is only issued by FEMA.
- (4) *Letter of map amendment out as shown (LOMA-OAS)* means an official determination by FEMA that states the property or building is correctly shown outside the SFHA as shown on an effective NFIP map. Therefore, the mandatory flood insurance requirement does not apply. An out-as-shown determination does not require elevations.
- (5) *Letter of map revision (LOMR)* means an official revision to the currently effective FEMA map. It is issued by FEMA and changes flood zones, delineations, and elevations.
- (6) *Letter of map revision based on fill (LOMR-F)* means FEMA's modification of the SFHA shown on the FIRM based on the placement of fill outside the existing regulatory floodway.

Lowest adjacent grade means the lowest elevation, after completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

Lowest floor means, for floodplain management purposes, the lowest elevation described among the following:

- (1) The lowest floor of a building.
- (2) The basement floor.
- (3) The garage floor if the garage is connected to the building.
- (4) The first floor of a structure elevated on pilings or pillars.
- (5) The floor level of any enclosure, other than a basement, below an elevated structure where the walls of the enclosure provide any resistance to the flow of floodwaters. Designs for meeting the flood opening requirement must either be certified by a registered professional engineer or architect or meet or exceed the following criteria:
 - a. The walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of floodwaters.
 - b. At least two openings are designed and maintained for the entry and exit of floodwater; and these openings provide a total net area of at least one square inch for every one square foot of enclosed area. The bottom of all such openings shall be no higher than one foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher. Doorways and windows do not qualify as openings.
- (6) The first floor of a building elevated on pilings or columns in a coastal high hazard area (as that term is defined in 44 CFR 59.1), as long as it meets the requirements of 44 CFR 60.3.

Manufactured home 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."

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

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

Natural grade for floodplain management purposes means the elevation of the undisturbed natural surface of the ground. Fill placed prior to the date of the initial identification of the flood hazard on a FEMA map is also considered natural grade.

New construction for floodplain management purposes means any structure for which the "start of construction" commenced on or after the effective date of a floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

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 community's first floodplain ordinance.

North American Vertical Datum of 1988 (NAVD 88) as adopted in 1993 is a vertical control datum used as a reference for establishing varying elevations within the floodplain.

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

One-percent annual chance flood is the flood that has a one percent chance of being equaled or exceeded in any given year. See "Regulatory flood".

Physical map revision (PMR) is an official republication of a community's FEMA map to effect changes to base (one-percent annual chance) flood elevations, floodplain boundary delineations, regulatory floodways, and planimetric features. These changes typically occur as a result of structural works or improvements, annexations resulting in additional flood hazard areas, or correction to base flood elevations or SFHAs.

Prefabricated building is a building that is manufactured and constructed using prefabrication. It consists of factory-made components or units that are transported and assembled on-site to form the complete building.

Principally above ground means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

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 chance of being equaled or exceeded in any given year, as calculated by a method and procedure that is acceptable to and approved by the Indiana Department of Natural Resources and the Federal Emergency Management Agency. The regulatory flood elevation at any location is as defined in article III, § 121-22 of this chapter. The "regulatory flood" is also known by the term "base flood", "one-percent annual chance flood", and "100-year flood".

Repetitive loss means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equaled or exceeded 25 percent of the market value of the structure before the damage occurred.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Solid waste disposal facility means any facility involved in the storage or disposal of non-liquid, non-soluble materials ranging from municipal garbage to industrial wastes that contain complex and sometimes hazardous substances. Solid waste also includes sewage sludge, agricultural refuse, demolition wastes, mining wastes, and liquids and gases stored in containers.

Special Flood Hazard Area (SFHA), synonymous with "areas of special flood hazard" and "floodplain," means those lands within the jurisdiction of the City of Mishawaka subject to a one percent or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency on flood insurance rate maps, flood insurance studies, flood boundary and floodway maps and flood hazard boundary maps as Zones A, AE, AH, AO, A1-30, A99, or VE. The SFHA includes areas that are flood prone and designated from other federal, state or local sources of data including but not limited to best available flood layer maps provided by or approved by the Indiana Department of Natural Resources, historical flood information reflecting high water marks, previous flood inundation areas, and flood prone soils associated with a watercourse.

Start of construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building, including a gas or liquid storage tank, which is principally above ground. The term includes a manufactured home, as well as a prefabricated building. It also includes recreational vehicles installed on a site for more than 180 consecutive days.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

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 that have incurred "repetitive loss" or "substantial damage" regardless of the actual repair work performed. The term does not include improvements of structures to correct existing violations of state or local health, sanitary, or safety code requirements which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.

Variance is a grant of relief from the requirements of this chapter consistent with the variance conditions herein.

Violation means the failure of a structure or other development to be fully compliant with this chapter.

Walled and roofed means a building that has two or more exterior rigid walls and a fully secured roof and is affixed to a permanent site.

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

(Ord. No. 5921, § 1, 1-13-2025)

Secs. 121-11—121-19. - Reserved.

ARTICLE III. - GENERAL PROVISIONS

Sec. 121-20. - Lands to which this chapter applies.

This chapter shall apply to all areas of special flood hazard (SFHAs) within the jurisdiction of the City of Mishawaka, Indiana as identified in article III, § 121-22, including any additional areas of special flood hazard annexed by the City of Mishawaka, Indiana.

(Ord. No. 5921, § 1, 1-13-2025)

Sec. 121-21. - Basis for establishing the areas of special flood hazard.

- (a) The regulatory flood elevation, floodway, and fringe limits for the studied SFHAs within the jurisdiction of the City of Mishawaka, delineated as an "AE Zone" on the St. Joseph County, Indiana and Incorporated Areas Flood Insurance Rate Map dated January 6, 2011 shall be determined from the one-percent annual chance flood profiles in the Flood Insurance Study of St. Joseph County, Indiana and Incorporated Areas and the corresponding flood insurance rate maps (FIRM) dated January 6, 2011 as well as any subsequent updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date. Should the floodway limits not be delineated on the flood insurance rate map for a studied SFHA designated as an "AE Zone", the limits of the floodway will be according to the best available flood layer as provided by the Indiana Department of Natural Resources.
- (b) The regulatory flood elevation, floodway, and fringe limits for each of the SFHAs within the jurisdiction of the City of Mishawaka, delineated as an "A Zone" on the St. Joseph County, Indiana and Incorporated Areas Flood Insurance Rate Map, dated January 6, 2011, as well as any subsequent updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date, shall be according to the best available flood layer provided by the Indiana Department of Natural Resources, provided the upstream drainage area from the subject site is greater than one square mile. Whenever a party disagrees with the best available flood layer data, the party needs to replace existing data with better data that meets current engineering standards. To be considered, this data must be submitted to the Indiana Department of Natural Resources for review and subsequently approved.
- (c) In the absence of a published FEMA map, or absence of identification on a FEMA map, the regulatory flood elevation, floodway, and fringe limits of any watercourse in the community's known flood prone areas shall be according to the best available flood layer as provided by the Indiana Department of Natural Resources, provided the upstream drainage area from the subject site is greater than one square mile.
- (d) Upon issuance of a letter of final determination (LFD), any more restrictive data in the new (not yet effective) mapping/study shall be utilized for permitting and construction (development) purposes, replacing all previously effective less restrictive flood hazard data provided by FEMA.

(Ord. No. 5921, § 1, 1-13-2025)

Sec. 121-22. - Establishment of floodplain development permit.

A floodplain development permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities in areas of special flood hazard.

(Ord. No. 5921, § 1, 1-13-2025)

Sec. 121-23. - Compliance.

- (a) No structure shall hereafter be located, extended, converted, or structurally altered within the SFHA without full compliance with the terms of this chapter and other applicable regulations.
- (b) Where an existing or proposed structure or other development is affected by multiple flood zones, by multiple base flood elevations, or both, the development activity must comply with the provisions of this chapter applicable to the most restrictive flood zone and the most conservative (highest) base flood elevation affecting any part of the existing or proposed structure; or for other developments, affecting any part of the area of the development.
- (c) No land or stream within the SFHA shall hereafter be altered without full compliance with the terms of this chapter and other applicable regulations.

(Ord. No. 5921, § 1, 1-13-2025)

Sec. 121-24. - Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. No. 5921, § 1, 1-13-2025)

Sec. 121-25. - Discrepancy between mapped floodplain and actual ground elevations.

- (a) In cases where there is a discrepancy between the mapped floodplain (SFHA) with base flood elevations provided (riverine or lacustrine Zone AE) on the FIRM and the actual ground elevations, the elevation provided on the profiles or table of still water elevations shall govern.
- (b) If the elevation of the site in question is below the base flood elevation, that site shall be included in the SFHA and regulated accordingly.
- (c) If the natural grade elevation of the site in question is at or above the base flood elevation and a LOMA or LOMR-FW is obtained, the floodplain regulations will not be applied provided the LOMA or LOMR-FW is not subsequently superseded or invalidated.

(Ord. No. 5921, § 1, 1-13-2025)

Sec. 121-26. - Interpretation.

In the interpretation and application of this chapter all provisions shall be:

- (1) Considered as minimum requirements.
- (2) Liberally construed in favor of the governing body.
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. No. 5921, § 1, 1-13-2025)

Sec. 121-27. - Warning and disclaimer of liability.

The degree of flood protection required by this chapter 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 chapter does not create any liability on the part of the City of Mishawaka, the Indiana Department of Natural Resources, or the State of Indiana, for any flood damage that results from reliance on this chapter, or any administrative decision made lawfully thereunder.

(Ord. No. 5921, § 1, 1-13-2025)

Sec. 121-28. - Penalties for violation.

Failure to obtain a floodplain development permit in the SFHA or failure to comply with the requirements of a floodplain development permit or conditions of a variance shall be deemed to be a violation of this chapter. All violations shall be considered a common nuisance and be treated as such in accordance with the provisions of the Zoning Code for the City of Mishawaka. All violations shall be punishable by a fine as prescribed by section 137-47 of the Zoning Code for the City of Mishawaka and IC 36-1-3-8 and may be amended from time to time.

- (1) A separate offense shall be deemed to occur for each day the violation continues to exist.
- (2) The Common Council of the City of Mishawaka 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 of Mishawaka from taking such other lawful action to prevent or remedy any violations. All costs connected therewith shall accrue to the person or persons responsible.

(Ord. No. 5921, § 1, 1-13-2025)

Secs. 121-29—121-39. - Reserved.

ARTICLE IV. - ADMINISTRATION

Sec. 121-40. - Designation of administrator.

The Common Council of the City of Mishawaka hereby appoints the city planner or designated representative to administer and implement the provisions of this chapter and is herein referred to as the floodplain administrator.

(Ord. No. 5921, § 1, 1-13-2025)

Sec. 121-41. - Floodplain development permit and certification requirements.

An application for a floodplain development permit shall be made to the floodplain administrator for all development activities located wholly within, partially within, or in contact with an identified special flood hazard area. Such application shall be made by the owner of the property or his/her authorized agent, herein referred to as the applicant, prior to the actual commencement of such construction on a form furnished for that purpose. Such applications shall include, but not be limited to plans drawn to scale showing the nature, location, dimensions, and elevations of the area in question, existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- (1) *Application stage.*

- a. A description of the proposed development.
- b. Location of the proposed development sufficient to accurately locate property and structure(s) in relation to existing roads and streams.
- c. A legal description of the property site.
- d. For the reconstruction, rehabilitation, or improvement of an existing structure, or an addition to an existing building, a detailed quote and description of the total work to be completed including but not limited to interior work, exterior work, and labor as well as a certified valuation of the existing (pre-improved or pre-damaged) structure.
- e. A site development plan showing existing and proposed development locations and existing and proposed land grades.
- f. A letter from a licensed professional surveyor or engineer noting that an elevation reference benchmark has been established or confirmed for those projects requiring elevations to be met.
- g. Verification that connection to either a public sewer system or to an approved on-site septic system is available and approved by the respective regulatory agency for proposed structures to be equipped with a restroom, kitchen or other facilities requiring disposal of wastewater.
- h. Plans showing elevation of the top of the planned lowest floor (including basement) of all proposed structures in Zones A, AH, and AE. Elevation should be in NAVD 88.
- i. Plans showing elevation (in NAVD 88) to which any non-residential structure will be floodproofed.
- j. Plans showing location and specifications for flood openings for any proposed structure with enclosed areas below the flood protection grade.
- k. Plans showing materials to be used below the flood protection grade for any proposed structure are flood resistant.
- l. Plans showing how any proposed structure will be anchored to resist flotation or collapse.
- m. Plans showing how any electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities are designed and/or located. Elevation should be in NAVD 88.
- n. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. A hydrologic and hydraulic engineering analysis is required, and any watercourse changes submitted to DNR for approval. Once DNR approval is obtained, a FEMA conditional letter of map revision must be obtained prior to construction. (See article IV, § 121-42(8) and article IV, § 121-44 for additional information.)
- o. Any additional information, as requested by the floodplain administrator, which may be necessary to determine the disposition of a proposed development or structure with respect to the requirements of this chapter.

(2) *Finished construction.*

- a. Upon completion of construction of any structure requiring certification of elevation, an elevation certificate which depicts the "as-built" lowest floor elevation and other applicable elevation data is required to be submitted by the applicant to the floodplain administrator. The elevation certificate shall be prepared by or under the direct supervision of a registered land surveyor and certified by the same.
- b. Upon completion of construction of an elevated structure constructed on fill, a fill report is required to be submitted to the floodplain administrator to verify the required standards were met, including compaction.
- c. Upon completion of construction of a floodproofing measure, a floodproofing certificate is required to be

submitted by the applicant to the floodplain administrator. The floodproofing certificate shall be prepared by or under the direct supervision of a registered professional engineer or architect and certified by same.

(Ord. No. 5921, § 1, 1-13-2025)

Sec. 121-42. - Duties and responsibilities of the floodplain administrator.

The floodplain administrator and/or designated staff is hereby authorized and directed to enforce the provisions of this chapter. The administrator is further authorized to render interpretations of this chapter, which are consistent with its spirit and purpose.

Duties and responsibilities of the floodplain administrator shall include, but are not limited to:

- (1) Enforce the provisions of this chapter.
- (2) Evaluate application for permits to develop in special flood hazard areas to assure that the permit requirements of this chapter have been satisfied.
- (3) Interpret floodplain boundaries and provide flood hazard and flood protection elevation information.
- (4) Issue permits to develop in special flood hazard areas when the provisions of these regulations have been met or refuse to issue the same in the event of noncompliance.
- (5) Advise permittee that additional federal, state and/or local permits may be required. If specific federal, state and/or local permits are known, require that copies of such permits be provided and maintained on file with the floodplain development permit.
- (6) Conduct substantial damage determinations to determine whether existing structures, damaged from any source and in special flood hazard areas, must meet the development standards of these regulations.
- (7) For applications to improve structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the floodplain administrator shall:
 - a. Verify and document the market value of the pre-damaged or pre-improved structure.
 - b. Compare the cost to perform the improvement; or the cost to repair a damaged building to its pre-damaged condition; or, the combined costs of improvements and repair, if applicable, to the market value of the pre-damaged or pre-improved structure. The cost of all work must be included in the project costs, including work that might otherwise be considered routine maintenance. Items/activities that must be included in the cost shall be in keeping with guidance published by FEMA to ensure compliance with the NFIP and to avoid any conflict with future flood insurance claims of policyholders within the community.
 - c. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; the determination requires evaluation of previous permits issued for improvements and repairs as specified in the definition of "substantial improvement" for proposed work to repair damage caused by flood, the determination requires evaluation of previous permits issued to repair flood-related damage as specified in the definition of substantial damage.
 - d. Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the applicable general and specific standards in article V of this chapter are required.
- (8) Notify adjacent communities and the State Floodplain Coordinator prior to any alteration or relocation of a watercourse and submit copies of such notifications to FEMA.

- (9) Ensure that construction authorization has been granted by the Indiana Department of Natural Resources for all dev projects subject to article V, § 121-50(a), § 121-50(c)(1) and § 121-50(d) of this chapter. Maintain a record of such auth (either copy of actual permit/authorization or floodplain analysis/regulatory assessment).
- (10) Verify the upstream drainage area of any proposed development site near any watercourse not identified on a FEMA map to determine if article IV, § 121-42(9) is applicable.
- (11) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (12) Verify and record the actual elevation of the lowest floor (including basement) of all new or substantially improved structures, in accordance with article IV, § 121-41.
- (13) Verify and record the actual elevation to which any new or substantially improved structures have been floodproofed in accordance with article IV, § 121-41.
- (14) Make on-site inspections of projects in accordance with article IV, § 121-43.
- (15) Coordinate with insurance adjusters prior to permitting any proposed work to bring any flood-damaged structure covered by a standard flood insurance policy into compliance (either a substantially damaged structure or a repetitive loss structure) to ensure eligibility for ICC funds.
- (16) Ensure that an approved connection to a public sewer system or an approved on-site septic system is planned for any structures (residential or non-residential) to be equipped with a restroom, kitchen or other facilities requiring disposal of wastewater.
- (17) Provide information, testimony, or other evidence as needed during variance hearings.
- (18) Serve notices of violations, issue stop-work orders, revoke permits and take corrective actions in accordance with article IV, § 121-43.
- (19) Maintain for public inspection and furnish upon request local permit documents, damaged structure inventories, substantial damage determinations, regulatory flood data, SFHA maps, letters of map change (LOMC), copies of DNR permits, letters of authorization, and floodplain analysis and regulatory assessments (letters of recommendation), federal permit documents, and "as-built" elevation and floodproofing data for all buildings constructed subject to this chapter in accordance with article IV, § 121-44.
- (20) Coordinate map maintenance activities and associated FEMA follow-up in accordance with article IV, § 121-44.
- (21) Utilize and enforce all letters of map change (LOMC) or physical map revisions (PMR) issued by FEMA for the currently effective SFHA maps of the community.
- (22) Request any additional information which may be necessary to determine the disposition of a proposed development or structure with respect to the requirements of this chapter.

(Ord. No. 5921, § 1, 1-13-2025)

Sec. 121-43. - Administrative procedures.

- (a) *Inspections of work in progress.* As the work pursuant to a permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and terms of the permit. In exercising this power, the administrator has a right, upon presentation of proper credential, to enter on any premises within the territorial jurisdiction at any reasonable hour for the purposes of inspection or other enforcement action.
- (b) *Stop work orders.*
 - (1) Upon notice from the floodplain administrator, work on any building, structure or premises that is being done

contrary to the provisions of this chapter shall immediately cease.

- (2) Such notice shall be in writing and shall be given to the owner of the property, or to his agent, or to the person doing the work, and shall state the conditions under which work may be resumed.

(c) *Revocation of permits.*

- (1) The floodplain administrator may revoke a permit or approval, issued under the provisions of the ordinance, in cases where there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.
- (2) The floodplain administrator may revoke a permit upon determination by the floodplain administrator that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this chapter.

(d) *Floodplain management records.*

- (1) Regardless of any limitation on the period required for retention of public records, records of actions associated with the administration of this chapter shall be kept on file and maintained under the direction of the floodplain administrator in perpetuity. These records include permit applications, plans, certifications, flood insurance rate maps; letter of map change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and documentation of elevations required by this chapter; notifications to adjacent communities, FEMA, and the state related to alterations of watercourses; assurances that the flood carrying capacity of altered watercourses will be maintained; documentation related to appeals and variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to this chapter.
- (2) These records shall be available for public inspection at Department of Planning and Community Development, City Hall, 100 Lincolnway West, Mishawaka, IN 46544.

- (e) *Periodic inspection.* Once a project is completed, periodic inspections may be conducted by the floodplain administrator to ensure compliance. The floodplain administrator shall have a right, upon presentation of proper credential, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

(Ord. No. 5921, § 1, 1-13-2025)

Sec. 121-44. - Map maintenance activities.

To meet NFIP minimum requirements to have flood data reviewed and approved by FEMA, and to ensure that the City of Mishawaka flood maps, studies and other data identified in article III, § 121-22 accurately represent flooding conditions so appropriate floodplain management criteria are based on current data, the following map maintenance activities are identified:

(1) *Requirement to submit new technical data.*

- a. For all development proposals that impact floodway delineations or base flood elevations, the community shall ensure that technical data reflecting such changes be submitted to FEMA within six months of the date such information becomes available. These development proposals include:
 - i. Floodway encroachments that increase or decrease base flood elevations or alter floodway boundaries.
 - ii. Fill sites to be used for the placement of proposed structures where the applicant desires to remove the site from the special flood hazard area.
 - iii. Alteration of watercourses that result in a relocation or elimination of the special flood hazard area, including the placement of culverts; and subdivision or large-scale development proposals requiring the

establishment of base flood elevations.

- b. It is the responsibility of the applicant to have required technical data for a conditional letter of map revision or letter of map revision and submitted to FEMA. The Indiana Department of Natural Resources will review the submittals as part of a partnership with FEMA. The submittal should be mailed to the Indiana Department of Natural Resources at the address provided on the FEMA form (MT-2) or submitted through the online letter of map change website. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.
 - c. The floodplain administrator shall require a conditional letter of map revision prior to the issuance of a floodplain development permit for proposed floodway encroachments that increase the base flood elevation.
 - d. Floodplain development permits issued by the floodplain administrator shall be conditioned upon the applicant obtaining a letter of map revision from FEMA for any development proposal subject to this section.
- (2) *Right to submit new technical data.* The floodplain administrator may request changes to any of the information shown on an effective map that does not impact floodplain or floodway delineations or base flood elevations, such as labeling or planimetric details. Such a submission shall include appropriate supporting documentation made in writing by the Mayor of the City of Mishawaka and may be submitted to FEMA at any time.
- (3) *Annexation/detachment.* Upon occurrence, the floodplain administrator shall notify FEMA in writing whenever the boundaries of the City of Mishawaka have been modified by annexation or the community has assumed authority over an area, or no longer has authority to adopt and enforce floodplain management regulations for a particular area. In order that the St. Joseph County, Indiana and Incorporated Areas Flood Insurance Rate Map accurately represent the City of Mishawaka boundaries, include within such notification a copy of a map of the city suitable for reproduction, clearly showing the new corporate limits or the new area for which the city has assumed or relinquished floodplain management regulatory authority.

(Ord. No. 5921, § 1, 1-13-2025)

Sec. 121-45. - Variance procedures.

- (a) The board of zoning appeals, as established by the common council of the City of Mishawaka, shall hear and decide appeals and requests for variances from requirements of this chapter.
- (b) The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the floodplain administrator in the enforcement or administration of this chapter. Any person aggrieved by the decision of the board may appeal such decision to the St. Joseph County Circuit or Superior Court.
- (c) In considering such applications, the board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and:
 - (1) The danger to life and property due to flooding or erosion damage.
 - (2) The danger that materials may be swept onto other lands to the injury of others.
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - (4) The importance of the services provided by the proposed facility to the community.
 - (5) The necessity to the facility of a waterfront location, where applicable.
 - (6) The compatibility of the proposed use with existing and anticipated development.
 - (7) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.
 - (8) The safety of access to the property in times of flood for ordinary and emergency vehicles.

- (9) The expected height, velocity, duration, rate of rise, and sediment transport of the floodwaters at the site.
- (10) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (d) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (e) Variances from the provisions of this chapter shall only be granted when the board can make positive findings of fact based on evidence submitted at the hearing for the following:
 - (1) A showing of good and sufficient cause.
 - (2) A determination that failure to grant the variance would result in exceptional hardship as defined in article II.
 - (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.
- (f) No variance for a residential use within a floodway subject to article V, § 121-50(A), § 121-50(c)(1) or § 121-50(d) of this chapter may be granted.
- (g) Any variance granted in a floodway subject to article V, section § 121-50(a), § 121-50(c)(1) or § 121-50(d) will require a permit from the Indiana Department of Natural Resources. Variances shall not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- (h) Variances to the provisions for flood hazard reduction of article V may be granted only when a new structure is to be located on a lot of ½ acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade.
- (i) Variances may be issued for the repair or rehabilitation of "historic structures" upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a "historic structure" and the variance is the minimum to preserve the historic character and design of the structure.
- (j) Variances may be issued for new construction, substantial improvements, and other development necessary for the conduct of a functionally dependent use.
- (k) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (l) Upon consideration of the factors listed above and the purposes of this chapter, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
- (m) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the flood protection grade and the elevation to which the lowest floor is to be built and stating that the cost of the flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (n) The floodplain administrator shall maintain the records of appeal actions and report any variances to the Federal Emergency Management Agency or the Indiana Department of Natural Resources upon request.

(Ord. No. 5921, § 1, 1-13-2025)

Secs. 121-46—121-49. - Reserved.

ARTICLE V. - PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. 121-50. - Floodplain status standards.

(a) *Floodways (riverine)*. Located within SFHAs, established in article III, § 121-21, are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and has erosion potential. Under the provisions of the Flood Control Act (IC 14-28-1) a permit for construction in a floodway from the Indiana Department of Natural Resources is required prior to the issuance of a local building permit for any excavation, deposit, construction, or obstruction activity located in the floodway. This includes land preparation activities such as filling, grading, clearing, and paving undertaken before the actual start of construction of the structure. General licenses and exemption requirements of the Flood Control Act (IC 14-28-1 and 312 IAC 10) may apply to qualified additions/improvements to existing lawful residential structures, rural bridges, logjam removals, wetland restoration, utility line crossings, outfall projects, channel rock removal, and prospecting.

- (1) If the site is in a regulatory floodway as established in article III, § 121-21, the floodplain administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources and apply for approval for construction in a floodway, provided the activity does not qualify for a general license or exemption (IC 14-28-1 or 312 IAC 10).
- (2) No action shall be taken by the floodplain administrator until approval has been granted by the Indiana Department of Natural Resources for construction in the floodway, or evidence provided by an applicant that the development meets specified criteria to qualify for a general license or exemption to the requirement of the Flood Control Act. The floodplain development permit shall meet the provisions contained in this chapter.
- (3) The floodplain development permit cannot be less restrictive than an approval issued for construction in a floodway issued by the Indiana Department of Natural Resources, or the specified criteria used to qualify for a general license or exemption to the Flood Control Act for a specific site/project. However, a community's more restrictive regulations (if any) shall take precedence.
- (4) In floodway areas identified on the FIRM, development shall cause no increase in flood levels during the occurrence of the base flood discharge without first obtaining a conditional letter of map revision and meeting requirements of article IV, § 121-44(1). A conditional letter of map revision cannot be issued for development that would cause an increase in flood levels affecting a structure and such development should not be permitted.
- (5) In floodway areas identified by the Indiana Department of Natural Resources through detailed or approximate studies but not yet identified on the effective FIRM as floodway areas, the total cumulative effect of the proposed development, when combined with all other existing and anticipated development, shall not adversely affect the efficiency of, or unduly restrict the capacity of the floodway. This adverse effect is defined as an increase in the elevation of the regulatory flood of at least fifteen-hundredths (0.15) of a foot as determined by comparing the regulatory flood elevation under the project condition to that under the natural or pre-floodway condition as proven with hydraulic analyses.
- (6) For all projects involving channel modifications or fill (including levees) the City of Mishawaka shall submit the data and request that the Federal Emergency Management Agency revise the regulatory flood data per mapping standard regulations found at 44 CFR § 65.12.

(b) *Fringe (riverine)*. If the site is in the fringe (either identified on the FIRM or identified by the Indiana Department of Natural Resources through detailed or approximate studies and not identified on a FIRM), the floodplain administrator may issue the local floodplain development permit provided the provisions contained in this chapter have been met.

(c) *SFHAs without established base flood elevation and/or floodways/fringes (riverine)*.

- (1) Drainage area upstream of the site is greater than one square mile:

If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined, and the drainage area upstream of the site is greater than one square mile, the floodplain administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources for review and comment.

No action shall be taken by the floodplain administrator until written approval from the Indiana Department of Natural Resources (approval for construction in a floodway, letter of authorization, or evidence of general license qualification) or a floodplain analysis/regulatory assessment citing the one-percent annual chance flood elevation and the recommended flood protection grade has been received from the Indiana Department of Natural Resources.

Once the floodplain administrator has received the proper written approval, evidence of general license qualification, or floodplain analysis/regulatory assessment approving the proposed development from the Indiana Department of Natural Resources, a floodplain development permit may be issued, provided the conditions of the floodplain development permit are not less restrictive than the conditions received from the Indiana Department of Natural Resources and the provisions contained in this section have been met.

(2) Drainage area upstream of the site is less than one square mile:

If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined and the drainage area upstream of the site is less than one square mile, the floodplain administrator shall require the applicant to provide an engineering analysis showing the limits of the floodplain and one-percent annual chance flood elevation for the site.

Upon receipt, the floodplain administrator may issue the local floodplain development permit, provided the provisions contained in this chapter have been met.

(d) *SFHAs not identified on a map.*

- (1) If a proposed development site is near a waterway with no SFHA identified on a map, the floodplain administrator shall verify the drainage area upstream of the site. If the drainage area upstream of the site is verified as being greater than one square mile, the floodplain administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources for review and comment.
- (2) No action shall be taken by the floodplain administrator until written approval from the Indiana Department of Natural Resources (approval for construction in a floodway, letter of authorization, or evidence of general license qualification) or a floodplain analysis/regulatory assessment citing the one-percent annual chance flood elevation and the recommended flood protection grade has been received from the Indiana Department of Natural Resources.
- (3) Once the floodplain administrator has received the proper written approval, evidence of general license qualification, or floodplain analysis/regulatory assessment approving the proposed development from the Indiana Department of Natural Resources, a floodplain development permit may be issued, provided the conditions of the floodplain development permit are not less restrictive than the conditions received from the Indiana Department of Natural Resources and the provisions contained in this chapter have been met.

(Ord. No. 5921, § 1, 1-13-2025)

In all areas of special flood hazard, the following provisions are required:

- (1) All new construction, reconstruction or repairs made to a repetitive loss structure, and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (2) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage below the FPG.
- (3) New construction and substantial improvements must incorporate methods and practices that minimize flood damage.
- (4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be located at/above the FPG for residential structures. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be located at/above the FPG or designed so as to prevent water from entering or accumulating within the components below the FPG for non-residential structures. Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the FPG.
- (5) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (8) Any alteration, repair, reconstruction, or improvements to a structure that is in compliance with the provisions of this chapter shall meet the requirements of "new construction" as contained in this chapter.
- (9) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions), which is greater than 50 lots or five acres, whichever is less.
- (10) Where an existing or proposed structure or other development is affected by multiple flood zones, by multiple base flood elevations, or both, the development activity must comply with the provisions of this chapter applicable to the most restrictive flood zone and the highest base flood elevation affecting any part of the existing or proposed structure; or for other developments, affecting any part of the area of the development.
- (11) Fill projects that do not involve a structure must be protected against erosion and scour during flooding by vegetative cover, riprap, or bulk heading. If vegetative cover is used, the slopes shall be no steeper than three feet horizontal to one foot vertical.

(Ord. No. 5921, § 1, 1-13-2025)

Sec. 121-52. - Specific standards.

In all areas of special flood hazard where base flood elevation data or flood depths have been provided, as set forth in article III, § 121-21, the following provisions are required:

- (1) *Building protection requirement.* In addition to the general standards described in article V, § 121-51, structures to be located in the SFHA shall be protected from flood damage below the FPG. This building protection requirement applies to the following situations:
 - a. Construction or placement of a residential structure.
 - b. Construction or placement of a non-residential structure.

- c. Addition or improvement made to an existing structure where the cost of the addition or improvement equals or percent of the value of the existing structure (excluding the value of the land). An addition and/or improvement continuous in scope or time is considered as one project for permitting purposes.
- d. Reconstruction or repairs made to a damaged structure where the costs of restoring the structure to its before damaged condition equals or exceeds 50 percent of the market value of the structure (excluding the value of the land) before damage occurred (the costs of any proposed additions or improvements beyond restoring the damaged structure to its before damaged condition must be included in the cost).
- e. Installing a manufactured home on a new site or a new manufactured home on an existing site.
- f. Installing a travel trailer or recreational vehicle on a site for more than 180 days.
- g. Reconstruction or repairs made to a repetitive loss structure.
- h. Addition or improvement made to any existing structure with a previous repair, addition or improvement constructed since the community's first floodplain ordinance.

(2) *Residential construction.*

- a. New construction or substantial improvement of any residential structures shall meet provisions described in article V, § 121-50 and applicable general standards described in article V, § 121-51.
- b. In Zone A and Zone AE, new construction or substantial improvement of any residential structure shall have the lowest floor; including basement, at or above the FPG. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of article V, § 121-52(2)C. Should fill be used to elevate a structure, the standards of article V, § 121-52(2)D. must be met.
- c. Fully enclosed areas formed by foundation and other exterior walls below the flood protection grade shall meet the following requirement:
 - 1. Designed to preclude finished living space and designed to allow for the automatic entry and exit of floodwaters to equalize hydrostatic flood forces on exterior walls. Flood openings must be designed and installed in compliance with criteria set out in FEMA Technical Bulletin 1. Engineered flood openings must be designed and certified by a registered design professional (requires supporting engineering certification or make/model specific ICC-ES report), or meet the following criteria for non-engineered flood openings:
 - (i) Provide a minimum of two openings on different sides of an enclosure. If there are multiple enclosed areas, each is required to meet the requirements for enclosures, including the requirement for flood openings in exterior walls (having a total net area of not less than one square inch for every one square foot of enclosed area).
 - (ii) The bottom of all openings shall be no more than one foot above the higher of the final interior grade (or floor) and the finished exterior grade immediately under each opening.
 - (iii) If the floor of the enclosure is below the BFE, the openings must be located wholly below the BFE.
 - (iv) If the floor of the enclosure is at or above the BFE, but below the FPG, the openings must be located wholly below the FPG.
 - (v) Doors and windows do not qualify as openings.
 - (vi) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
 - 2. The floor of such enclosed area must be at or above grade on at least one side.

- d. A residential structure may be constructed on a fill in accordance with the following:
 - 1. Fill shall be placed in layers no greater than one foot deep before compacting to 95 percent of the maximum density obtainable with either the standard or modified proctor test method. The results of the test showing compliance shall be retained in the permit file.
 - 2. Fill shall extend ten feet beyond the foundation of the structure before sloping below the BFE.
 - 3. Fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulk heading. If vegetative cover is used, the slopes shall be no steeper than three feet horizontal to one foot vertical.
 - 4. Fill shall not adversely affect the flow of surface drainage from or onto neighboring properties.
- e. A residential structure may be constructed using a stem wall foundation (also called chain wall, raised-slab-on-grade, and slab-on-stem-wall-with-fill). Any backfilled stem wall foundation (also called chain wall, raised-slab-on-grade, and slab-on-stem-wall-with-fill) must be backfilled with compacted structural fill, concrete, or gravel that supports the floor slab. No flood openings are required for this type of construction.

(3) *Non-residential construction.*

- a. New construction or substantial improvement of any non-residential structures (excludes accessory structures) shall meet provisions described in article V, § 121-50 and applicable general standards described in article V, § 121-51.
- b. In Zone A and Zone AE, new construction, or substantial improvement of any commercial, industrial, or non-residential structure (excludes accessory structures) shall either have the lowest floor, including basement, elevated to or above the FPG or be floodproofed to or above the FPG. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of article V, § 121-52(3)c. Should fill be used to elevate a structure, the standards of article V, § 121-52(3)D. must be met.
- c. Fully enclosed areas formed by foundation and other exterior walls below the flood protection grade shall meet the following requirement:
 - 1. Designed to preclude finished living space and designed to allow for the automatic entry and exit of floodwaters to equalize hydrostatic flood forces on exterior walls. Flood openings must be designed and installed in compliance with criteria set out in FEMA Technical Bulletin 1. Engineered flood openings must be designed and certified by a registered design professional (requires supporting engineering certification or make/model specific ICC-ES report), or meet the following criteria for non-engineered flood openings:
 - (i) Provide a minimum of two openings on different sides of an enclosure. If more than one enclosed area is present, each must have openings on exterior walls (having a total net area of not less than one square inch for every one square foot of enclosed area).
 - (ii) The bottom of all openings shall be no more than one foot above the higher of the final interior grade (or floor) and the finished exterior grade immediately under each opening.
 - (iii) If the floor of the enclosure is below the BFE, the openings must be located wholly below the BFE.
 - (iv) If the floor of the enclosure is at or above the BFE, but below the FPG, the openings must be located wholly below the FPG.
 - (v) Doors and windows do not qualify as openings.
 - (vi) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they

permit the automatic flow of floodwaters in both directions.

2. The floor of such enclosed area must be at or above grade on at least one side.
- d. A nonresidential structure may be constructed on fill in accordance with the following:
 1. Shall be placed in layers no greater than one foot deep before compacting to 95 percent of the maximum density obtainable with either the standard or modified proctor test method. The results of the test showing compliance shall be retained in the permit file.
 2. Shall extend ten feet beyond the foundation of the structure before sloping below the BFE.
 3. Shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulk heading. If vegetative cover is used, the slopes shall be no steeper than three feet horizontal to one foot vertical.
 4. Shall not adversely affect the flow of surface drainage from or onto neighboring properties.
- e. A nonresidential structure may be floodproofed in accordance with the following:
 1. A registered professional engineer or architect shall certify that the structure has been designed so that below the FPG, the structure and attendant utility facilities are watertight and capable of resisting the effects of the regulatory flood. The structure design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice. Such certification shall be provided to the floodplain administrator.
 2. Floodproofing measures shall be operable without human intervention and without an outside source of electricity.
- f. A nonresidential structure may be constructed using a stem wall foundation (also called chain wall, raised-slab-on-grade, and slab-on-stem-wall-with-fill). Any backfilled stem wall foundation must be backfilled with compacted structural fill, concrete, or gravel that supports the floor slab. No flood openings are required for this type of construction.

(4) *Manufactured homes and recreational vehicles.*

- a. These requirements apply to all manufactured homes to be placed on a site in the SFHA:
 1. The manufactured home shall be elevated on a permanent foundation such that the lowest floor shall be at or above the FPG and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
 2. Fully enclosed areas formed by foundation and other exterior walls below the FPG shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in article V, § 121-52(3)c.
- b. Recreational vehicles placed on a site in the SFHA shall either:
 1. Be on site for less than 180 days and be fully licensed and ready for use on a public highway (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions), or
 2. Meet the requirements for "manufactured homes" as stated earlier in this section.

(5) *Accessory structures.* Within SFHAs, new construction or placement of an accessory structure must meet the following standards:

- a. Shall have a floor area of 400 square feet or less.
- b. Use shall be limited to parking of vehicles and limited storage.
- c. Shall not be used for human habitation.

- d. Shall be constructed of flood resistant materials.
 - e. Shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters.
 - f. Shall be firmly anchored to prevent flotation.
 - g. Service facilities such as electrical and heating equipment shall be elevated or floodproofed to or above the FPG.
 - h. Shall be designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in article V, § 121-52(3)c.
 - i. Shall not have subsequent additions or improvements that would preclude the structure from its continued designation as an accessory structure.
- (6) *Free-standing pavilions, gazebos, decks, carports, and similar development.* Within SFHAs, new construction or placement of free-standing pavilions, gazebos, decks, carports, and similar development must meet the following standards:
- a. Shall have open sides (having not more than one rigid wall).
 - b. Shall be anchored to prevent flotation or lateral movement.
 - c. Shall be constructed of flood resistant materials below the FPG.
 - d. Any electrical, heating, plumbing and other service facilities shall be located at/above the FPG.
 - e. Shall not have subsequent additions or improvements that would preclude the development from its continued designation as a free-standing pavilion, gazebo, carport, or similar open-sided development.
- (7) *Above ground gas or liquid storage tanks.* Within SFHAs, all newly placed aboveground gas or liquid storage tanks shall meet the requirements for a non-residential structure as required in article V, § 121-52(3)c.

(Ord. No. 5921, § 1, 1-13-2025)

Sec. 121-53. - Standards for subdivision and other new developments.

- (a) All subdivision proposals and all other proposed new development shall be consistent with the need to minimize flood damage.
- (b) All subdivision proposals and all other proposed new development shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (c) All subdivision proposals and all other proposed new development shall have adequate drainage provided to reduce exposure to flood hazards.
- (d) In all areas of special flood hazard where base flood elevation data are not available, the applicant shall provide a hydrologic and hydraulic engineering analysis that generates base flood elevations for all subdivision proposals and all other proposed new development (including manufactured home parks and subdivisions), which is greater than 50 lots or five acres, whichever is less.

(Ord. No. 5921, § 1, 1-13-2025)

Sec. 121-54. - Standards for critical facilities.

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA. Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated to or above the FPG at the site. Floodproofing and sealing measures must

be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the FPG shall be provided to all critical facilities to the extent possible.

(Ord. No. 5921, § 1, 1-13-2025)

Secs. 121-55—121-59. - Reserved.

ARTICLE VI. - LEGAL STATUS PROVISIONS

Sec. 121-60. - Severability.

If any section, subsection, sentence, clause, or phrase of these regulations is, for any reason, declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof, other than the part so declared.

(Ord. No. 5921, § 1, 1-13-2025)

Sec. 121-61. - Effective date.

This chapter shall be in full force and effect upon adoption.

(Ord. No. 5921, § 1, 1-13-2025)

Chapter 125 - HISTORIC PRESERVATION

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

ARTICLE I. - IN GENERAL

Sec. 125-1. - Objective.

The preservation and conservation of the unique character of many of the city's residential and commercial areas recognizes that the preservation and protection of the elements that make these areas attractive is consistent with the goal of residential and business district vitality. The historic district objective is to protect a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development. The conservation district objective is to retain the overall physical dimension of areas through appropriately scaled and sited new construction as well as sensitive rehabilitation of those structures which continue to retain functional usefulness.

(Code 1985, § 160.01; Ord. No. 3793, 12-6-1993)

Sec. 125-2. - 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:

Alterations means any material change in the external architectural features of any historic structure within an historic district or within any conservation district.

Building, accessory, means a building which is subordinate to and serves a principal building and contributes to the comfort, convenience or necessity of occupants of the principal building.

Building, principal, means the main building on a lot.

Commission means the historic preservation commission.

Conservation district means a continuous and distinctive urban area where a majority of the buildings retain an adequate amount of historic character for interpretation, although some alterations may have occurred. A conservation district may be limited to the boundaries of a property containing a single building, structure, object or site and have been designated by ordinance by the common council, or for which application for such listing is pending within the commission, provided that the commission will determine within 90 days of receipt of application pursuant to section 125-3 whether to list such property, and any property not so listed will not be considered a conservation district within the terms of this chapter.

Demolition means the substantial deterioration and/or complete removal of an historic structure or any structure which is located within an historic district or conservation district.

Historic district means a concentration of buildings, structures, objects, spaces or sites which may be limited to the boundaries of a property containing a single building, structure, object or site and have been designated by ordinance by the common council, or for which application for such listing is pending with the commission, provided that the commission will determine within 90 days of receipt of an application pursuant to section 125-3 whether to list such property, and any property not so listed will not be considered an historic district within the terms of this chapter.

Public way means a strip of land for purposes of vehicular travel, including the entire area within the right-of-way and includes the terms highway, parkway, road, street, avenue, boulevard, lane, court, place, drive, trail, terrace, and other such terms.

Staff means the city planner and each member of the department of city planning.

Structure means an edifice or building of any kind, or any piece of work artificially built up or, composed of parts joined together in some definite manner. Anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground.

(Code 1985, § 160.02; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993; Ord. No. 4343, 11-16-1998)

Sec. 125-3. - Purpose.

- (a) The historic district regulations provided in this chapter are intended to preserve and protect historic or architecturally significant buildings, structures, sites, monuments, streetscapes, squares and neighborhoods of the historic districts.
- (b) The conservation district regulations provided in this chapter are intended to provide a means for accommodating new buildings and structures which are compatible with the overall physical dimension of a specific area through appropriately scaled and sited new construction, as well as sensitive rehabilitation of existing structures.
- (c) It is the intent of this chapter to promote and protect the health, safety, and general welfare of the public through:
 - (1) The enhancement of property values, the protection of property rights of all citizens, and the stabilization and revitalization of distinctive areas of the city through the establishment of historic districts and conservation districts;

- (2) The protection, enhancement, and use of structures, sites, and neighborhoods which have an urban character unique to the city; and
- (3) The recognition of the need to conserve certain unique city areas by focusing on how each structure and element of the area blends and fits with other features of the area.
- (d) Properties within the boundaries of an historic district or conservation district are subject to the regulations of both the zoning district and the historic district or conservation district. If there is a conflict between the requirements of the zoning district and the historic district or conservation district, the more restrictive shall apply.

(Code 1985, § 160.03; Ord. No. 3793, 12-6-1993)

Secs. 125-4—125-24. - Reserved.

ARTICLE II. - BOUNDARIES MAP

Sec. 125-25. - Approval by common council required.

The map setting forth the historic district and conservation district boundaries as well as building classifications must be submitted to, and approved in an ordinance by the common council before the historic district or conservation district is established and the building classifications take place.

(Code 1985, § 160.06; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993)

Sec. 125-26. - Further surveying and mapping.

- (a) The commission may conduct additional surveys, and draw and submit additional maps for approval by the common council as it considers appropriate.
- (b) When submitting a map to the legislative body under section 125-25 and subsection (a) of this section, 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.
- (c) If a building or structure is declared to be under interim protection pursuant to subsection (b) of this section, the commission shall, by personal delivery or first class mail, provide the owner or occupant of the building or structure with written notice of the declaration within two days after declaring a building or structure to be under interim protection. The written notice must:
 - (1) Cite the authority of the commission to put the building or structure under interim protection under this section;
 - (2) Explain the effect of putting the building or structure under interim protection; and
 - (3) Indicate that the interim protection is temporary.
- (d) A building or structure put under interim protection under subsection (b) of this section remains under interim protection until the map is submitted to and approved in an ordinance or rejected by the common council.
- (e) While a building or structure is under interim protection under this section:
 - (1) The building or structure may not be demolished or moved; and
 - (2) The exterior appearance of the building or structure may not be conspicuously changed by addition, reconstruction or alteration.

(Code 1985, § 160.07; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993; Ord. No. 4343, 11-16-1998)

ARTICLE III. - CERTIFICATE OF APPROPRIATENESS

Sec. 125-56. - Required.

Except as provided in sections 125-96 and 125-123, a certificate of appropriateness must be issued by the historic preservation commission before an improvement location permit, demolition permit, building permit or moving permit is issued for, or work is begun on, any of the following:

- (1) Within all areas of the historic district or conservation district.
 - a. The demolition of any building;
 - b. The moving of any building;
 - c. A conspicuous change in the exterior appearance of historic buildings by addition, construction, alteration, or maintenance involving exterior color changes; 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 the historic district or conservation district.
 - a. A change in walls and fences or construction of walls and fences, if along public ways; or
 - b. 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.

(Code 1985, § 160.08; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993; Ord. No. 4343, 11-16-1998)

Sec. 125-57. - Application.

An application for a certificate of appropriateness may be filed in the office of the department of city planning on forms provided and shall be subject to the following requirements:

- (1) The commission may adopt, as a part of its rules, filing requirements which it finds reasonable and necessary to expedite the business of the commission. These 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.
- (2) A fee of \$10.00 shall be charged for such application to cover the cost of processing the application.
- (3) Applications are to be filed at least two weeks prior to the regularly scheduled commission meeting.

(Code 1985, § 160.09; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993; Ord. No. 4343, 11-16-1998)

Sec. 125-58. - Action on certificate by commission.

- (a) The commission may advise and make recommendations to the applicant before acting on an application for a certificate of appropriateness.
- (b) 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 by the department of city planning. If the certificate is issued, the application shall be processed in the same manner as applications for improvement, location, building, demolition or moving permits required by the city.

(c) If the commission denies an application for a certificate of appropriateness within 30 days after it was filed, the certificate shall not be issued. The commission must state its reasons for the denial in writing, and must advise the applicant. An application that has been denied shall not be processed as an application for an improvement, location, building, demolition or move permit and shall not authorize any work by the applicant.

(d) The commission may grant an extension of the 30-day limit prescribed by subsections (b) and (c) of this section, if agreed to by the applicant.

(Code 1985, § 160.10; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993; Ord. No. 4343, 11-16-1998)

Secs. 125-59—125-89. - Reserved.

ARTICLE IV. - REGULATORY PROVISIONS

Sec. 125-90. - Development standards.

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

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

(Code 1985, § 160.11; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993)

Sec. 125-91. - Visual compatibility.

Visual compatibility standards preserve or protect the unique character of designed historic districts and conservation districts. These standards are appropriate additions to regulations for historic districts and conservation districts. Except as provided in section 125-123, the construction of a new building or structure, and the moving, reconstruction, alteration, major maintenance, or repair involving a color change conspicuously affecting the external appearance of any nonhistoric building, structure, or appurtenance within the historic district or conservation district 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 or conservation district, particularly with buildings designated as historic, and with squares and places to which it is visually related.

(Code 1985, § 160.12; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993)

Sec. 125-92. - Visual compatibility factors.

Except as provided in section 125-123, within the primary area of the historic district or conservation district, new buildings, structures and sites, as well as buildings, structures, sites and appurtenances that are moved, reconstructed, materially altered, repaired, or changed in color, must be visually compatible with buildings, squares, and places to which they are visually related. These factors and standards are appropriate additions to regulations for historic districts and conservation districts. Such controls shall include, but are not limited to:

(1) *Height*. The height of proposed buildings must be visually compatible with adjacent buildings.

(2) *Proportion of building's front facade*. The relationship of the width of a building to the height of the front elevation must be visually compatible to buildings, squares and places to which it is visually related.

- (3) *Proportion of openings within the facility.* The relationship of 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) *Rhythm 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 to the buildings, squares and places to which it is visually related.
- (6) *Rhythm of entrances and porch projections.* The relationship of entrances and porch projections to sidewalks of a building must be visually compatible to the buildings, squares and places to which it is visually related.
- (7) *Relationships of materials, texture and color.* The relationship of the materials, texture and color of the facade of a building must be visually compatible with the predominant materials used in the building to which it is visually related.
- (8) *Roof shapes.* The roof shape of a building must be visually compatible with the buildings to which it is visually related.
- (9) *Walls of continuity.* Appurtenances of a building, 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, squares and places to which it is visually related.
- (10) *Scale of a building.* The size of a building, and the building mass of a building in relation to open spaces, windows, door openings, porches, and balconies must be visually compatible with the buildings, squares and places to which it is visually related.
- (11) *Directional expression of front elevation.* A building must be visually compatible with the buildings, squares and places to which it is visually related in its directional character, including vertical character, horizontal character, or nondirectional character.
- (12) *Exterior paint colors.* In an ordinance establishing an historic district or conservation district, an individual district may exclude changes in paint colors from the activities requiring the issuance of a certificate of appropriateness.

(Code 1985, § 160.13; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993)

Sec. 125-93. - Appeal provisions.

- (a) The purpose of this section is to preserve historic districts or conservation districts that are important to the education, culture, traditions and economic values of the city and to afford historic organizations, and other interested persons the opportunity to acquire or to arrange for the preservation of these buildings, structures or sites.
- (b) If the commission denies the issuance of a certificate of appropriateness for the demolition of a building or structure, a demolition permit may be issued by other agencies and a building may be demolished, but only after establishing all of the following:
 - (1) The property owner must demonstrate to the commission that an historic building or structure is incapable of earning an economic return on its value, as appraised by a licensed real estate appraiser.
 - (2) The property owner shall file with the administrator documented evidence that a good faith effort is being made to sell or otherwise dispose of such property at fair market value to any public or private person or agency which gives a reasonable assurance of its willingness to preserve and restore such property. Such documented evidence shall be provided at the expense of the property owner and shall include:
 - a. Offering price;

- b. Date the offer of sale is to begin;
 - c. Name and address of listing real estate agency, if any;
 - d. A copy of an advertisement to run in the same manner as the notice in subsection (c) of this section which offers the property for sale; and
 - e. An appraisal of the property's fair market value 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 by the staff of the department of city planning on the premises of the building, structure or site 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 is approved, a demolition permit shall be issued without further delay, and demolition may proceed.

(Code 1985, § 160.14; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993; Ord. No. 4343, 11-16-1998)

Sec. 125-94. - Maintenance.

Historic buildings shall be maintained to meet the applicable requirements of state and local building codes so as to prevent the loss of historic material and the deterioration of important character defining details and features.

(Code 1985, § 160.15; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993; Ord. No. 4343, 11-16-1998)

Sec. 125-95. - Recording the fact of historic district designation or conservation district designation.

The boundaries of any historic district or conservation district shall be recorded in the office of the county recorder by the staff.

(Code 1985, § 160.16; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993)

Sec. 125-96. - Conservation districts.

- (a) In an ordinance approving the establishment of an historic district, the city may provide that the establishment occur in two phases. Under the first phase, which lasts three years from the date the ordinance is adopted, a certificate of appropriateness is required only for the activities described in section 125-56(1)a, (1)b, and (1)d. At the end of the first phase, the district becomes fully established, and, subject to subsection (b) of this section, a certificate of appropriateness must be issued by the commission before a permit may be issued for or work may begin on an activity described in section 125-56.
- (b) The first phase described in subsection (a) of this section 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 activities described in section 125-56(1)c, (2)a and b. The objections 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 from which this chapter is derived.

(Code 1985, § 160.17; Ord. No. 3793, 12-6-1993; Ord. No. 4343, 11-16-1998)

Sec. 125-97. - Annexed landmarks.

(a) Where the Historic Preservation Commission of South Bend and St. Joseph County has designated a historic landmark in St. Joseph County, and the real estate on which the landmark is situated or comprised is subsequently annexed to and brought within the boundaries of the city, such landmark shall upon annexation to the city, continue its local historic district status within the city subject to regulation under this article. Development standards and other restrictions as may be included within the previously adopted ordinance shall be continued unless otherwise amended by the provisions of this article.

(b) For the purpose of this article, the word "landmark" shall also signify the word "district."

(Ord. No. 4987, §§ 1, 2, 10-17-2005)

Secs. 125-98—125-122. - Reserved.

ARTICLE V. - ENFORCEMENT

Sec. 125-123. - Interested parties.

(a) An interested party means one of the following:

- (1) The mayor of the city.
- (2) The common council.
- (3) The historic preservation commission of the city.
- (4) A neighborhood association, whether incorporated or unincorporated, a majority of whose members are residents of a historic district under this chapter.
- (5) An owner or occupant owning or occupying property in an historic district or conservation 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, as may be amended from time to time.

(b) Every interested party has a private right of action to enforce and prevent violation of a provision of this chapter or an ordinance adopted by a unit under this chapter, and with respect to any building, structure or site within an historic district, has the right to restrain, enjoin, or enforce by restraining order of injunction, temporarily or permanently, any person from violating a provision of this chapter or an ordinance adopted by a unit under this chapter.

(c) 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.

(d) The interested party bringing an action under this section does not have to post bond unless the court, after a hearing, determines that a bond should be required in the interest of justice.

(e) 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 a unit under this chapter, had been, or was about to be violated or breached.

(f) An interested party who obtains a favorable judgment in an action under this section may recover reasonable attorneys' fees and court costs from the person against whom judgment was rendered.

(g) 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.

(h) The remedy provided in this section is in addition to other remedies that may be available at law or in equity.

(Code 1985, § 160.30; Ord. No. 3793, 12-6-1993; Ord. No. 4343, 11-16-1998)

Sec. 125-124. - City may institute suit for injunction for violation.

(a) The erection, construction, enlargement, alteration, repair, demolition, color change, moving or maintenance of a building, structure, site or appurtenance which is begun, continued or maintained contrary to any provisions of this chapter is hereby declared a nuisance and in violation of this chapter. The city may institute a suit for injunction in the circuit court or superior court of the county to restrain any person or governmental unit from violating any provisions of this chapter and to cause such violation to be prevented, abated or removed. Such action may also be instituted by any property owner who is adversely affected by the violation of any provision of this chapter.

(b) The remedies provided for in this subchapter shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

(Code 1985, § 160.31; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993)

Sec. 125-125. - Judicial review.

Any person or party aggrieved by a decision or action taken by the commission shall be entitled to a judicial review thereof in accordance with IC 4-21.5.

(Code 1985, § 160.32; Ord. No. 3444, 11-19-1990; Ord. No. 3793, 12-6-1993; Ord. No. 4343, 11-16-1998)

Sec. 125-126. - Removal of classifications.

Regardless of any other provision, in the case of a building or structure owned by the city that is classified by the city historic preservation commission as historic and for which the classification is approved by the common council, the commission may remove the historic classification of the building or structure without the adoption of an ordinance by the common council if the commission determines that removal of the classification is in the best interest of the city and any affected political subdivision.

Sec. 125-127. - Removal of historic district designation; petition; hearing; findings.

The Mishawaka Historic Preservation Commission will follow IC 36-7-11-23 Removal of historic district designation; petition; hearing; findings for any petition that comes before the commission to remove a historic district designation or de-designation, as may be amended.

(Ord. No. 5700, § 1, 7-6-2020)

Chapter 129 - ON-PREMISES SIGN STANDARDS

ARTICLE I. - IN GENERAL

Sec. 129-1. - Purpose.

It is recognized that certain land uses have a legal right to advertise through the use of on-premises signage, and it is recognized that the city has the legal authority to present a set of reasonable nonarbitrary, and noncapricious standards in order to regulate the location, size, type and placement of on-premises signs within the corporate boundaries of the city, in order to protect the public health, safety and general welfare; to ensure that on-premises signs are compatible with the particular zoning district in which they are located; and to ensure that on-premises signs do not interfere with the safe movement of traffic.

(Code 1985, § 157.01; Ord. No. 3350, 1-15-1990)

Sec. 129-2. - Interpretation.

- (a) In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements for the promotion of the health, safety, or general welfare of the citizens.
- (b) Where conditions imposed by any provisions of this chapter are either more restrictive or less restrictive than any other law or ordinance, the law or ordinance which is more restrictive or which imposes 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 most restrictive or impose higher standards, the higher standards shall govern.
- (d) The provisions in this chapter are cumulative and additional limitations upon all other laws and ordinances, heretofore passed or which may be passed hereafter, governing any subject matter in this chapter.

(Code 1985, § 157.03; Ord. No. 3350, 1-15-1990)

Sec. 129-3. - Definitions.

When used in this chapter, the words "used" or "occupied" include the words intended, arranged, or designed be used or occupied; 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:

Administrator. The sign code administrator shall be the city planner or his designated representative for sections 129-3, 129-6, 129-7, 129-33 through 129-36, and 129-72 through 129-76 and the building commissioner or his designated representative for sections 129-37—129-47 and 129-96 through 129-99.

Alteration means any act or process, normal maintenance and painting, which changes one or more of the exterior features of a sign.

Ascender means the tall stroke of lower case letters b, d, f, h, k, l, t, or an upper case letter when used with lower case letters.

Awning means a structure made of cloth, metal, or other light materials attached to a building and supported entirely from the exterior wall of the same building which may be so erected as to permit its being raised or retracted to a position against the building when not in use, and which may have electric backlights to illuminate.

Background area means the entire area of a sign on which copy could be placed.

Board of public works and safety means the board of public works and safety of the city.

Board of zoning appeals means the board of zoning appeals of the city.

Building means a structure for the shelter, support or enclosure of persons, animals or chattel.

Building code means the Uniform Building Code promulgated by the International Conference of Building Officials, as adopted by this jurisdiction.

Building commissioner means the director of the department of buildings.

Building facade means that portion of any exterior elevation of a building extending from grade to the top of the parapet wall or eaves and the entire width of the building elevation, and which may also be referred to as the "building face."

Canopy means a roof structure supported from an open structure and made of cloth, metal, or other light materials, and which may have electric backlights to illuminate.

City engineer means the director of the department of engineering.

City planner means the director of the department of city planning.

Commission means the city planning commission.

Copy area means the sum of the area of the words and numbers endorsed by forming imaginary straight lines, but excluding pictorials, trademarks, symbols, ascender letters and numbers, and descender letters and numbers.

Council means the common council.

Descender means the portion of the lower case letters that extends below the line, f, g, m, p, q, y, z or upper case letters J and Y when used with lower case letters.

Display area means the sum of the area of the sign on which copy may be placed, which is enclosed by four imaginary straight lines, but excluding structural members, nonstructural trim and sign support bases.

Erect means to build, construct, attach, hang, place, inscribe, suspend or affix, and shall include the painting of wall signs.

Frontage means the length of the property lines of any one lot along the shortest legally accessible public right-of-way it borders. In the case of an interior lot, a line separating the lot from the street; and in the case of a corner lot, the line separating the narrowest street frontage dimension from the street.

Good repair means a condition which meets the minimum standards of health and safety; and which guarantees continued attractiveness, usefulness and structural soundness.

Ground level means the average elevation of the premises, or the elevation of the centerline of the adjacent right-of-way at the point closest to the sign.

Height of a sign means the vertical distance from the uppermost point of the sign to the ground level immediately below such point or to the level of the upper surface of the nearest curb of a street, alley or highway, whichever measurement permits the greater elevation of the sign.

Illuminated sign means any sign illuminated in any manner by an artificial light source.

Lot means a parcel of land occupied or suitable for occupancy by one main building or use, together with its accessory buildings or uses, and including the open spaces required. A lot shall be held under common ownership and shall be so recorded in the office of the county recorder. A lot may include contiguous parts of lots or a combination of more than one lot, when contiguous to one another and used as one parcel.

Lot, corner, means a lot at the junction of two streets.

Lot depth means the mean horizontal difference between the front and rear lot line.

Lot, interior, means a lot with frontage on one street.

Lot line means the property boundary lines of a lot.

Lot line, exterior side, means a lot line which is perpendicular or approximately perpendicular to the front lot line which separates the longest street frontage dimension of a corner lot from the street.

Lot line, front, means in the case of an interior lot, a lot line separating the lot from the street; and in the case of a corner lot, the lot line separating the narrowest street frontage of a lot from the street.

Lot line, interior side, means a lot line which is perpendicular or approximately perpendicular to the front lot line which separates two lots.

Lot line, rear, means a lot line which is opposite and most distant from the front lot line, and in the case of an irregular- or triangular-shaped lot, a line ten feet in length, within the lot parallel to, and at the maximum distance from the front lot line.

Noncombustible as applied to building construction material, means material which, in the form in which it is used, is either one of the following:

- (1) Material of which no part will ignite and burn when subjected to fire. Any material conforming to Uniform Building Code (U.B.C.) Standard No. 4-1 shall be considered noncombustible within the meaning of this section.
- (2) Material having a structural base of noncombustible material, as defined in subsection (1) of this definition, with a surfacing not over one-eighth inch thick, which has a flame-spread rating of 50 or less.

Nonstructural trim means the molding, batten, cappings, nailing strips, latticing, and platforms, which are attached to the sign structure, and are nonstructural in nature, and do not contribute to the support of the sign.

Owner means a person recorded as such in the records of the county recorder, and includes a duly authorized agent or attorney, a purchaser, devisee, judiciary; or any person having a vested or contingent interest in the property in question.

Plastic materials, approved, means those having a self-ignition temperature of 650 degrees Fahrenheit or greater when tested in accordance with U.B.C. Standard No. 52-3 and smoke-density rating not greater than 450 when tested in accordance with U.B.C. Standard No. 42-1, in the way intended for use, or a smoke density rating no greater than 75, when tested in the thickness intended for use by U.B.C. Standard No. 52-2. Approved plastics shall be classified as either CC1 or CC2, in accordance with U.B.C. Standard No. 52-4.

Premises means an area of land, with its appurtenances and buildings, which because of its unity of use, may be regarded as the smallest conveyable unit; usually a lot with the principal building and accessory buildings.

Projection means the horizontal distance by which the furthestmost point used in measuring the area of a sign extends beyond a building wall. A sign placed flat against a wall of a building parallel to a street or alley shall not be deemed to project for purposes of this chapter. A sign on and parallel to an awning, canopy or marquee shall not be deemed to project to the extent that such sign extends beyond a street property line or a building setback line.

Public right-of-way width means the perpendicular distance across a public street, measured from property line to property line. When property lines on opposite sides of the public street are not parallel, the public right-of-way width shall be determined by the city engineer.

Roof means the uppermost part of the building or structure; that part of the building on which rain would normally fall.

Roof eave means the lowest part of a roof which has no parapet; that part of the roof from which the rain would drain.

Roofline means the upper edge of any building wall or parapet, exclusive of any tower, chimney, ventilation equipment or utility equipment.

Semipublic body means any organization operating a nonprofit activity and serving a public purpose or service and shall include such organizations as noncommercial clubs, lodges, theater groups, recreational associations, neighborhood associations, cultural associations and schools.

Shopping center means a group of three or more stores, offices or shops selling merchandise or services and served by a common off-street automobile parking area which is located on private property.

Sign means an announcement, identification, image, description display, illustration or device, illuminated or nonilluminated, which advertises products or services, on- or off-premises, which is located on private property and is visible from any public place or is located on private property and exposed to the public and which directs attention to a product, place, activity, person, institution, business or solicitation, whether permanently or temporarily installed.

Sign types.

Animated sign means any sign which includes action, motion, or color changes on all or any part of the sign facing, requiring electrical energy, or set in motion by movement of the atmosphere. An animated sign does not include revolving signs, any type of automatic changing signs, banners, moving signs, marquee signs or chaser signs.

Automatic changing sign means a sign, such as an electronically or electrically controlled message center or reader board, where different automatic changing messages of an information or communicative nature are shown. Automatic changing signs include only the following:

- (1) *Message center.* A sign, which contains a changing message within the copy area, which remains on for specified minimum period of time, and blacks out for a specified minimum period of time between messages. Messages contained on the copy area of the sign do not travel or appear to travel in any direction.
- (2) *Electrical reader board.* A sign, which contains a traveling message, or a message which appears to be traveling, and usually in a horizontal manner. The characters incorporated into any message remain constant, and do not change in hue or intensity or appear to change in hue or intensity as they travel or appear to travel across or through the automatic changing copy area of the sign.
- (3) *Multivision board.* A sign with a number of panels which rotate in sequence, so as to be capable of presenting a minimum of three different visual presentations. Copy contained on the individual visual presentations does not travel in any manner or direction or appear to travel in any manner or direction nor does it change in hue or intensity or appear to change in hue or intensity.

Banner sign means any nonilluminated sign intended to be hung either with or without frames, possessing characters, letters, illustrations, or ornamentations applied only to paper or fabric.

Beacon light means any light with one or more beams, capable of being directed in any direction or capable of being revolved automatically, and used for attracting attention.

Bench sign means an off-premises sign which is attached to or painted upon a bench or seat which is located outside a building or structure.

Billboard. See *Off-premises sign*.

Canopy or awning sign means a sign attached or applied to a canopy or awning.

Changeable copy sign means an on-premises, freestanding sign that is designed so that characters, letters, or illustrations can be changed or rearranged manually, electronically, or by painting without physically altering the surface of the sign.

Chaser sign means a sign that creates a running effect in a bank of lamps or tubes.

Construction sign means a sign of 32 square feet or less and ten feet high or less, giving the names of principal contractors, architects, and lending institutions responsible for construction on the site where the sign is placed, together with other information included thereon. Construction signs shall not be illuminated and shall be removed immediately after the certificate of occupancy has been issued by the building commissioner.

Directional sign means any sign of no more than eight square feet and/or 3½ feet high, which is designed and erected solely for the purpose of directing automobile traffic and placed on the property to which or on which traffic is directed; and no more than two signs per curb cut.

Directory sign means a sign of one square foot or less per occupant on which the names and locations of occupants or the use of a commercial building is given.

Double-face sign means a sign with two parallel faces normally mounted to a structure or building, to be read from opposite directions.

Fascia sign. See *Wall sign*.

Flashing sign means any sign which contains a continually intermittent light or sequential flashing light source. The term "flashing sign" does not include signs which give the illusion of intermittent light or flashing light nor does it include flashing or intermittent light or the outlining of a pictorial scene as in an animated sign. The term "flashing sign" also does not include signs that use intermittent lighting changes for the purpose of changing the graphics or copy within the copy area of a sign. Time and temperature signs and electronically controlled message devices are also excluded from this category.

Freestanding sign means any permanently installed sign which is supported wholly by a foundation, uprights, braces and/or poles in the ground.

Ground and/or pole sign. See *Freestanding sign*.

Inflatable display means any three-dimensional, ambient, air-filled object depicting a container, figure, product or product trade dress.

Institutional bulletin means a freestanding sign of any governmental agency, semipublic body, religious group, hospital, or school, located on the premises and bearing only the information related to the activities conducted on the premises, persons involved, or other such information.

Integral sign means memorial signs or tablets, names of buildings, and date of erection when cut into any masonry surface on the wall of a building, or when constructed of bronze or other incombustible materials mounted on the wall of a building.

Mansard roof sign. See *Wall sign*.

Marquee sign means a sign attached parallel to and made part of a marquee, but not a canopy sign.

Mobile sign means a temporary, freestanding sign, mobile sign, or trailer sign which is not set in a permanent base or foundation that will withstand wind pressure or wind forces.

Monument sign means an illuminated or unilluminated sign in which the area between the bottom horizontal edge of the display area and the ground level, and between the vertical edges of the display area if extended to the ground level, is filled with a wall constructed of brick, and/or natural stone, or decorative metal panels.

Moving sign means a sign which moves or gives the visual impression of rotation or movement or has any moving or animated parts, whether machine driven or wind-powered; including, but not limited to, rotating signs, revolving signs, and strings of flags or streamers, but excluding automatic changing signs.

Multiface freestanding sign means a freestanding sign with more than two faces.

Nameplate means a nonilluminated sign of one square foot per occupied unit which is flush-mounted to the wall of a building and identifies only the name and occupation or profession of the occupants of the premises on which the sign is located.

Nonconforming sign means any sign which was lawfully erected and maintained prior to such time as it came within the purview of this chapter and any amendments thereto, and which fails to conform to all the applicable regulations and restrictions of this chapter as may be amended from time to time.

Obsolete sign means any sign which no longer correctly directs or exhorts any person, advertises a bona fide business, lessor, owner, product or activity conducted, or product available on the premises where such sign is displayed, or a sign which is not in good repair.

Off-premises sign means a sign permanently attached to a building, the ground or to a permanent structure having a location upon the ground advertising a business, product, service or event not necessarily available on the premises where the sign is located.

On-premises sign means any sign identifying or advertising a business, person, activity, goods, products or services located on the premises where the sign is installed and maintained, also known as appurtenant or accessory signs.

Painted graphics means any mosaic, mural, painting or graphic art technique or combination, or grouping of mosaics, murals or painting or graphic art techniques, applied, implanted or placed directly onto a wall by a brushing or spraying process or by some similar process, and containing no copy, advertising, symbols, lettering, trademarks or other references to the premises or to any products and/or services offered for sale on the premises on which any such mosaic, mural or painting or graphic art technique is placed.

Portable sign. See *Temporary sign.*

Projecting sign means any multifaced sign other than a wall sign affixed to any exterior wall whose leading edge extends beyond such building or wall more than 12 inches. A projecting sign shall not project into the public right-of-way unless approved by the board of public works and safety.

Public interest sign includes signs containing any of the following messages:

- (1) *Official signs and notices.* Official signs and notices placed by public officials or public agencies pursuant to and in accordance with federal, state, or local law for the purposes of carrying out an official duty or responsibility. Historical markers and commemorative plaques authorized by federal, state, or local law shall be considered as official signs.
- (2) *Public utility signs.* Signs, markers and notices placed for warning, informational or other purposes which are customarily placed by public utilities as essential to their operations.
- (3) *Public directional signs.* Signs and notices containing directional information about public places owned and operated by federal, state, or local governments or their agencies, natural phenomena, historic, religious, cultural, scientific or educational sites owned and/or operated by public or nonprofit private agencies, and outdoor recreational areas owned and/or operated by public or nonprofit private agencies.
- (4) *Holiday decorations.* Religious, patriotic, or commemorative decorations, flags, signs, notices, symbols, or displays related to a holiday or other celebration.

Public service message sign means a nonflashing, freestanding electronically or electrically controlled public service message sign which conveys only information such as time, date, temperature, atmospheric conditions or general news information, where different alternating copy changes are shown on the same lamp bank matrix.

Real estate sign means an unilluminated on-premises sign announcing the name of the owner, manager, realtor, or other person directly involved in the sale, lease, or rental of the property or announcing the purpose or conditions for which it is being offered. A real estate sign in residential R-1, R-2 and R-4 districts shall be no greater than 4.5 square feet and in all other districts shall be no greater than 32 square feet.

Religious notices means one freestanding sign or a sign flush-mounted to the wall of a building containing identification of a religious organization and containing information relating to worship services, meetings, locations, fund raising or other religious activities.

Roof sign means any sign erected or painted, in whole or in part, upon, against, or directly above a roof, or roof eave, or on top or above the parapet, or on a nonfunctional architectural appendage above the roof or roof eave, excluding signs mounted on or above a canopy, providing there is a roofline or parapet which projects higher than the top of the sign. A roof sign does not include mansard signs.

Sign means a sign which moves or gives the visual impression of rotation.

Single-face sign means a sign with copy on one face only, normally mounted on a building, wall, or structure to be seen from one direction only.

Snipe sign means any sign, made of any material whatsoever, that is attached in any way to a utility pole, tree, or any object or situated on public property.

Street banner sign means any banner sign which is stretched across or hung over a public right-of-way, and shall be approved by the board of public works and safety.

Temporary sign means any sign, portable sign, pennant, valance, inflatable display or advertising display constructed of cloth, canvas, light fabric, cardboard, wallboard, plastic, metal or other light materials, with or without structural frames. Temporary signs may be displayed for no more than 15 days only as regulated by the provisions of this chapter. Decorative displays for the holidays are not temporary signs.

Trailer sign. See *Temporary sign*.

Wall sign means any sign painted on or attached to and erected parallel to the wall of or erected and confined within the limits of, the outside wall or highest vertical projection of a mansard roof of any building and supported by such wall or mansard roof.

Wind sign means any attention-arresting device, other than banners, with or without copy, or a series of devices such as streamers, and/or pennants, with or without copy, designed and fastened in such a manner as to move upon being subject to pressure by the atmosphere.

Window identification sign means a sign visible from the exterior of a building, which sign may be painted on a window for the purpose of directing the attention of persons outside the building to a sale of merchandise, a service or event.

Sign structure means any structure which supports, has supported, or is capable of supporting a sign, including the sign area.

Street means a public highway, road or thoroughfare, excluding alleys and serviceways, which affords the principal means of access to adjacent lots.

Structure means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts jointed in some definite manner.

Uniform Building Code Standards means the Uniform Building Code Standards, promulgated by the International Conference of Building Officials, as adopted by the city, as may be amended from time to time.

Use means the purpose for which a building, lot, sign or other structure is arranged, intended, designed, occupied or maintained as established by the common council.

(Code 1985, § 157.07; Ord. No. 3350, 1-15-1990; Ord. No. 3913, 1-3-1995)

Sec. 129-4. - Administration.

Administration of sections 129-3, 129-6, 129-7, 129-33 through 129-36, and 129-72 through 129-76 shall be vested with the city planner or his designated representative and sections 129-37—129-47 and 129-96 through 129-99 shall be vested with the building commissioner or his designated representative.

(Code 1985, § 157.05; Ord. No. 3350, 1-15-1990)

Sec. 129-5. - Amendment of chapter.

The city council may, from time to time, amend, supplement, change, modify or repeal this chapter. An amendment to this chapter may only be initiated by;

- (1) Common council for all sections;
- (2) City plan commission for sections 129-3, 129-6, 129-7, 129-33 through 129-36, and 129-72 through 129-76;
- (3) Department of city planning for sections 129-3, 129-6, 129-7, 129-33 through 129-36, and 129-72 through 129-76; and
- (4) Department of buildings for sections 129-37—129-47 and 129-96 through 129-99.

(Code 1985, § 157.06; Ord. No. 3350, 1-15-1990)

Sec. 129-6. - Reference of established zoning districts.

In order to carry out the purposes and provisions of this chapter, the following districts are hereby referenced from chapter 137, zoning.

- (1) *Residential districts.*
 - a. R-1 single-family residential district.
 - b. R-2 two-family residential district.
 - c. R-3 multiple-family residential district.
 - d. R-4 manufactured home residential district.
- (2) *Commercial districts.*
 - a. C-1 general commercial district.
 - b. C-2 shopping center commercial district.
 - c. C-3 city center commercial district.
 - d. C-4 automobile oriented commercial district.
 - e. C-5 neighborhood commercial district.

- f. C-6 linear office commercial district.
- g. C-7 automobile oriented restaurant commercial district.
- h. C-8 high-density suburban commercial district.
- i. C-9 automobile-oriented sales commercial district.
- j. C-10 filling stations commercial district.

(3) *Industrial districts.*

- a. I-1 light industrial district.
- b. I-2 heavy industrial district.

(4) *Special districts.*

- a. S-1 extensive open space and public use district.
- b. S-2 planned unit development district.

(Code 1985, § 157.08; Ord. No. 3350, 1-15-1990; Ord. No. 4020, 2-20-1996; Ord. No. 4354, 11-16-1998)

Sec. 129-7. - Scope of regulations.

- (a) All signs erected hereafter, all structural alterations, enlargement, or relocation of existing signs hereafter, shall be subject to all regulations of this chapter.
- (b) Where a building permit for a sign has been issued in accordance with law prior to the effective date of the ordinance from which this chapter is derived and provided that construction is begun within six months of the effective date of the ordinance from which this chapter is derived and diligently prosecuted to completion, said sign may be completed in accordance with the approved plans on the basis of which the building permit has been issued, subject thereafter, if applicable, to the provisions herein for nonconforming signs.

(Code 1985, § 157.09; Ord. No. 3350, 1-15-1990)

Secs. 129-8—129-32. - Reserved.

ARTICLE II. - ADMINISTRATION AND ENFORCEMENT

Sec. 129-33. - Legal nonconforming signs.

- (a) *Notification of nonconformity.* After the enactment of this chapter, the city planner shall, as soon as practicable, survey the city for signs which do not conform to the requirements of this chapter. Upon determination that a sign is nonconforming, the city planner shall use reasonable efforts to so notify either personally or in writing the user or owner of the property on which the sign is located of the following:

- (1) The sign's nonconformity; and
- (2) Whether the sign is eligible for characterization either as legal nonconforming or unlawful.

Failing determination of the sign owner, user or owner of the property on which the sign is located, the notice may be affixed in a conspicuous place to the sign or to the business premises with which the sign is associated.

- (b) *Signs eligible for characterization as legal nonconforming.* Any sign located within the city limits on the date of adoption of this chapter, or located in an area annexed to the city thereafter, which does not conform with the provisions of this chapter, is eligible for characterization as a legal nonconforming sign and is permitted, provided it

also meets the following requirements:

- (1) The sign was covered by a sign permit or variance on the date of adoption of the ordinance from which this chapter is derived, if one was required under applicable law; or
- (2) If no sign permit was required under applicable law for the sign in question, the sign was in all respects in compliance with the applicable law on the date of adoption of this chapter.

(c) *Loss of legal nonconforming status.*

- (1) A legal nonconforming sign shall immediately lose its legal nonconforming designation if:
 - a. The sign is not kept in good repair and in a safe condition.
 - b. The sign is demolished by any natural force to the extent of 50 percent of its use.
 - c. The structure of the sign is altered (except for normal maintenance).
 - d. The sign is relocated, unless the relocation moves the sign further from the public right-of-way.
 - e. The sign is replaced.
 - f. The permit, variance, or condition under which the sign was allowed expires.
- (2) On the happening of any one of the sign conditions in subsection (c)(1) of this section, the sign shall be immediately brought into conformance with this chapter with a new permit secured therefor, or shall be removed.
- (3) Nothing in this chapter shall relieve the owner or user of a legal nonconforming sign or owner of the property on which the legal nonconforming sign is located from the provisions of this chapter regarding safety, maintenance and repair of signs; provided, however, that any repainting, cleaning, and other normal maintenance or repair of the sign or sign structure shall not modify in any way the sign structure.

(Code 1985, § 157.10; Ord. No. 3350, 1-15-1990)

Sec. 129-34. - Improvement location permit required.

No sign permit shall be issued by the building commissioner or his designated representative for the erection, alteration, reconstruction, or improvement to a sign, unless an improvement location permit shall have been issued by the city planner or his designated representative.

- (1) An application for an improvement location permit shall be accompanied by a simple site plan showing the following:
 - a. The boundaries of the subject property, all existing easements, property lines, existing streets and buildings.
 - b. Location and dimension of the proposed sign, including total height, area, setbacks and type of sign illumination.
- (2) The city planner or his designated representative shall approve or deny an application for an improvement location permit and issue the permit or address the reasons for its denial in writing to the applicant.
- (3) An improvement location permit shall become null and void unless the building permit shall have been issued and work thereon is substantially underway within one year of the issuance of said improvement location permit.

(Code 1985, § 157.11; Ord. No. 3350, 1-15-1990)

Sec. 129-35. - Powers and duties of city plan commission.

The city plan commission shall have the following powers and duties:

- (1) Initiate proposals to amend, supplement, change or repeal sections 129-3, 129-6, 129-7, 129-33 through 129-36, and through 129-76.
- (2) Review an ordinance for amendment, supplement, change, modify or repeal of sections 129-3, 129-6, 129-7, 129-33 through 129-36, and 129-72 through 129-76 proposed by other than the plan commission.
- (3) Initiate, direct and review from time to time, studies of the provisions of sections 129-3, 129-6, 129-7, 129-33 through 129-36, and 129-72 through 129-76.
- (4) To hold public hearings in matters pertaining to amend, supplement, change, modify or repeal of sections 129-3, 129-6, 129-7, 129-33 through 129-36, and 129-72 through 129-76 and submit reports to the city council setting forth its findings and recommendations.

(Code 1985, § 157.12; Ord. No. 3350, 1-15-1990)

Sec. 129-36. - Board of zoning appeals.

- (a) The board of zoning appeals shall hear and determine appeals to sections 129-3, 129-6, 129-7, 129-33 through 129-36, and 129-72 through 129-76 as follows:
 - (1) Any order, requirement, decision, or determination made by an administrative official, hearing officer, or staff member under chapter 137, zoning.
 - (2) Any order, requirement, decision or determination made by an administrative board or other body, except the city plan commission, in relation to the enforcement of chapter 129, on-premises sign standards.
 - (3) Any order, requirement, decision, or determination made by an administrative board or other body, except the city plan commission, in relation to the enforcement of an ordinance requiring the procurement of an improvement location permit.
 - (4) The board shall approve or deny variances from the standards of chapter 129, on-premises sign standards. A variance may be approved under this section only upon a determination in writing that:
 - a. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
 - b. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
 - c. Strict application of the terms of chapter 129, on-premises sign standards will result in practical difficulties in the use of the property.
- (b) The board of zoning appeals is not permitted and shall not hear variances for sections 129-37—129-47 and 129-96 through 129-99.

(Code 1985, § 157.13; Ord. No. 3350, 1-15-1990)

Sec. 129-37. - Right of entry.

- (a) Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the building commissioner or his authorized representative has reasonable cause to believe that there exists in any building or upon any premises any condition or code violation which makes such building or premises unsafe, dangerous or hazardous, the building commissioner, or his authorized representative may enter such building or premises at all reasonable times to inspect same. If such building or premises is occupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If such entry is refused, the building commissioner or his authorized representative shall have recourse to every remedy provided by law to secure entry.

- (b) It shall be unlawful for any person to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish equip, use or maintain any sign or sign structure in this jurisdiction, or cause or permit the same to be done, contrary to violation of any of the provisions of this chapter.

(Code 1985, § 157.18; Ord. No. 3350, 1-15-1990)

Sec. 129-38. - Permits; application.

- (a) *Permits required.* A sign shall not be erected, reerected, constructed, altered or maintained, except as provided by this chapter and after a sign permit for the same has been issued by the building commissioner. A separate sign permit shall be required for a sign for each business entity, and a separate permit shall be required for each group of signs on a single supporting structure. In addition, electrical permits shall be obtained for electric signs.
- (b) *Application for permit.* Application for a sign permit shall be made in writing upon forms furnished by the building commissioner. Such application shall contain the location by street and number of the proposed sign structure, as well as the name and address of the owner and the sign contractor or erector. Plans may be filed with the building commissioner.

(Code 1985, § 157.19; Ord. No. 3350, 1-15-1990)

Sec. 129-39. - Exemption from permitting requirement.

The following signs shall not require a sign permit. These exemptions shall not be construed as relieving the owner of the sign from the responsibility of its erection and maintenance, and its compliance with the provisions of other sections of this chapter or any other ordinance.

- (1) The changing of the advertising copy or message on a painted or printed sign only. Except for theater marquees and similar signs, specifically designed for the use of replaceable copy, electric signs shall not be included in this exception.
- (2) Painting, repainting or cleaning of an advertising structure or the changing of the advertising copy or message thereon shall not be considered an erection or alteration which requires a sign permit unless a structural change is made.

(Code 1985, § 157.20; Ord. No. 3350, 1-15-1990)

Sec. 129-40. - Fees.

- (a) A sign permit fee and a plan-checking fee shall be paid in accordance with the schedule established by the council.
- (b) A construction permit fee shall be paid in accordance with the schedule established by the council.

(Code 1985, § 157.21; Ord. No. 3350, 1-15-1990)

Sec. 129-41. - Maintenance.

All signs and sign support structures, together with all of their support, braces, guys and anchors, shall be kept in repair and in a proper state of preservation. The display surfaces of all signs shall be kept neatly painted or posted at all times.

(Code 1985, § 157.22; Ord. No. 3350, 1-15-1990)

Sec. 129-42. - Inspections.

- (a) All signs for which a permit is required shall be subject to inspection by the building commissioner.

- (b) Footing inspections may be required by the building commissioner for all signs having footings.
- (c) All signs containing electrical wiring shall be subject to the provisions of the governing electrical code, and the electrical components used shall bear the label of an approved testing agency.
- (d) The building commissioner may order the removal of any sign that is not maintained in accordance with the provisions of sections 129-37 through 129-47 and 129-96 through 129-99.

(Code 1985, § 157.23; Ord. No. 3350, 1-15-1990)

Sec. 129-43. - Permit required.

- (a) No sign shall hereafter be erected, reerected, altered, mounted, or suspended from any building or structure, or placed upon the ground for the public display of posters, reading material, painted signs, or any advertising, unless the person owning, or having control of the sign first obtains a permit for the sign from the building commissioner as provided herein.
- (b) This requirement shall not apply to any sign painted on the side of a building if the painted sign constitutes on-premises advertising of the owner or occupant of the building. No permit shall be required to change the advertising copy or message on a painted, printed or changeable letter sign. Painting, repainting, cleaning or repair maintenance shall not be considered an erection or alteration which requires a permit, unless a structural change in the sign or sign support is made.

(Code 1985, § 157.28; Ord. No. 3350, 1-15-1990)

Sec. 129-44. - Permit application and fee.

- (a) Applications for sign permits shall be made to the building commissioner upon forms furnished by him. Such applications shall contain the location by street address of the proposed sign, the name and address of the owner, and the name and address of the person erecting the sign. The building commissioner may require the filing of plans or other information relative to the erection and placement of the sign as he sees fit.
- (b) No permit for the erection or alteration of a sign shall be issued until the fee for the sign permit is paid to the building commissioner based upon the following schedule:
 - (1) Freestanding signs shall be calculated for each face measured on the skeleton framework at the rate of \$0.40 per square foot, with a minimum permit fee of \$15.00.
 - (2) Signs flat against a building shall be calculated per square foot measured as a total area of display surface at the rate of \$0.40 per square foot, with a minimum permit fee of \$15.00.
 - (3) All installations of new off-premises signs shall require a fee of \$50.00.

(Code 1985, § 157.29; Ord. No. 3350, 1-15-1990; Ord. No. 4535, 11-9-2000)

Sec. 129-45. - License required.

A sign erector license shall be required of any person erecting, reerecting, constructing, altering, attaching or mounting signs in the city.

(Code 1985, § 157.30; Ord. No. 3350, 1-15-1990)

Sec. 129-46. - License fees.

The sign erector license shall be issued by the building commissioner for a period of one year from July 1 to June 30 upon payment of an annual license fee of \$15.00 and proof of the filing of a bond as required in section 129-47.

(Code 1985, § 157.31; Ord. No. 3350, 1-15-1990)

Sec. 129-47. - Bond.

Every person erecting, altering or removing any sign within the city shall file annually with the building commissioner, a bond in the penal sum of \$5,000.00, conditioned that the person shall comply with the provisions of this Code with respect to alterations, locations, permit and construction requirements, and conditioned further to indemnify the city and its officials from any claims or damages sustained, brought, or obtained against the city or its officials because of the alteration, construction, removal or any accident caused by or resulting therefrom.

(Code 1985, § 157.32; Ord. No. 3350, 1-15-1990)

Sec. 129-48. - Notice of violation.

When written notice of violation of any of the provisions of this chapter has been served on the property owner, agent, occupant, contractor or builder, such violation shall be discontinued immediately.

(Code 1985, § 157.33; Ord. No. 3350, 1-15-1990)

Sec. 129-49. - Right of injunction.

The city planner or his designated representative and/or the building commissioner or his designated representative may institute a suit for injunction in the circuit court or superior court of the county to restrain an individual from violating the provisions of this chapter and may also institute a suit for a mandatory injunction directing the removal of any structure or improvement.

(Code 1985, § 157.34; Ord. No. 3350, 1-15-1990)

Secs. 129-50—129-71. - Reserved.

ARTICLE III. - SPECIFIC ON-PREMISES SIGN REGULATIONS

Sec. 129-72. - Prohibited signs in all zoning districts.

It shall be unlawful to erect or maintain:

- (1) Any sign which is not included in section 129-73, permitted signs by zoning district.
- (2) Off-premises signs, except as permitted in chapter 137, zoning.
- (3) Any sign which looks similar to any emergency vehicle warning light.
- (4) Any sign which looks similar to any traffic control sign.
- (5) Animated signs.
- (6) Beacon lights, except as permitted under section 129-75, temporary sign permits.
- (7) Flashing signs.

- (8) Roof signs.
- (9) Moving signs.
- (10) Obsolete signs.
- (11) Snipe signs.
- (12) Temporary signs, except as permitted under section 129-75, temporary sign permits.
- (13) Wind signs.
- (14) Signs which interfere with the vision clearance area of chapter 137, zoning.
- (15) Signs which project into, or are constructed on the public right-of-way without approval of the board of public works and safety and recorded with the county recorder's office.
- (16) Wall signs which block any door/window or ventilation facility, or extend above a roof eave or parapet.

(Code 1985, § 157.14; Ord. No. 3350, 1-15-1990)

Sec. 129-73. - Permitted signs by zoning district.

Only the following signs shall be permitted in the following zoning districts:

- (1) *R-1 single-family residential district.*
 - a. One nameplate.
 - b. One real estate sign per smallest street frontage.
 - c. One construction sign per subdivision.
 - d. One integral sign.
 - e. One monument sign for places of religious worship with a display area of no greater than four feet high vertical by six feet wide horizontal and 24 square feet total, and with a vertical height of the sign of no greater than five feet above the ground level.
 - f. One unilluminated monument sign at each street entrance to a platted subdivision with ten or more buildable lots, with a display area of no greater than four feet high vertical by eight feet wide horizontal and 32 square feet total, and with a vertical height of the sign of no greater than five feet above the ground level; however, no such sign shall be so placed as to obstruct the view of motorists.
- (2) *R-2 two-family residential district.*
 - a. One nameplate.
 - b. One real estate sign per smallest street frontage.
 - c. One construction sign per subdivision.
 - d. One integral sign.
 - e. One monument sign for places of religious worship with a display area of no greater than four feet high vertical by six feet wide horizontal and 24 square feet total, and with a vertical height of the sign of no greater than five feet above the ground level.
- (3) *R-3 multiple-family residential district.*
 - a. One nameplate.
 - b. One real estate sign per smallest street frontage.
 - c. One construction sign per principal building.
 - d. One integral sign.

- e. One wall sign of no greater than ten square feet and installed no higher than the interior ceiling of the first floor
- f. One monument sign for places of religious worship with a display area of no greater than four feet high vertical by six feet wide horizontal and 24 square feet total, and with a vertical height of the sign of no greater than five feet above the ground level.
- g. One monument sign for each multiple-family residential complex with a display area of no greater than four feet high vertical by eight feet wide horizontal and 32 square feet total, and with a vertical height of the sign of no greater than five feet above the ground level.

(4) *R-4 manufactured home residential district.*

- a. One nameplate.
- b. One real estate sign per smallest street frontage.
- c. One construction sign per subdivision.
- d. One integral sign.
- e. One monument sign for places of religious worship with a display area of no greater than four feet high vertical by six feet wide horizontal and 24 square feet total, and with a vertical height of the sign of no greater than five feet above the ground level.

(5) *C-1 general commercial district.*

- a. One nameplate.
- b. One real estate sign per smallest street frontage.
- c. One construction sign per principal building.
- d. One integral sign.
- e. One painted graphic.
- f. Banner signs.
- g. Canopy or awning signs.
- h. Directional signs.
- i. Directory signs.
- j. Marquee signs.
- k. Wall signs.
- l. Window identification signs.
- m. Projecting signs; and projecting signs as approved by the board of public works and safety with a minimum clearance of eight feet, six inches between the grade of the sidewalk and the lowest point of the sign, and shall be located at the center of the building facade.
- n. Freestanding sign.
 - 1. One freestanding sign from the following sign type list, or one sign which is a combination of the sign types from the following list:
 - (i) Changeable copy signs.
 - (ii) Institutional bulletins.
 - (iii) Public service message signs.
 - (iv) Automatic changing sign.
 - (v) Multiface freestanding signs.

2. The freestanding sign shall meet the following standards:

- (i) One foot of vertical height of sign structure per ten feet of lot frontage on the public right-of-way. The maximum vertical height of a sign structure shall be 35 feet. If the lot frontage is less than 150 feet wide the maximum vertical distance between the existing grade and the top of the sign may be 15 feet.
- (ii) Seventy-five-hundredths square foot of sign copy area per three linear feet of lot frontage on the public right-of-way and 1.25 feet of sign display area per three linear feet of lot frontage on the public right-of-way. If the lot frontage is less than 80 feet wide, the maximum sign copy area may be 20 square feet, and the maximum sign display area may be 33 square feet. The maximum display area shall be no greater than 450 square feet and the maximum copy area shall be no greater than 270 feet.
- (iii) One freestanding sign per lot.

o. One temporary sign as approved under section 129-75, temporary sign permits.

(6) *C-2 shopping center commercial district.*

- a. One nameplate.
- b. One real estate sign per smallest street frontage.
- c. One construction sign per principal building.
- d. One integral sign.
- e. One painted graphic.
- f. Banner signs.
- g. Canopy or awning signs.
- h. Directional signs.
- i. Directory signs.
- j. Marquee signs.
- k. Wall signs.
- l. Window identification signs.

m. Projecting signs; and projecting signs as approved by the board of public works and safety.

n. Freestanding sign.

1. One freestanding sign per street frontage on lots of ten acres or more from the following sign type list, or one sign which is a combination of the sign types from the following list:

- (i) Changeable copy signs.
- (ii) Institutional bulletins.
- (iii) Public service message signs.
- (iv) Automatic changing sign.
- (v) Multiface freestanding signs.

2. The freestanding sign shall meet the following standards:

- (i) One foot of vertical height of sign structure per ten linear feet of lot frontage on the public right-of-way. The maximum vertical height of a sign structure shall be 35 feet. If the lot frontage is less than 150 feet wide, the maximum vertical distance between the existing grade and the top of the sign may be 15 feet.

- (ii) Seventy-five-hundredths square foot of sign copy area per three linear feet of lot frontage on the public right-of-way and 1.25 feet of sign display area per three linear feet of lot frontage on the public right-of-way. If the lot frontage is less than 80 feet wide, the maximum sign copy area may be 20 square feet, and the maximum sign display area may be 33 square feet. The maximum display area shall be no greater than 450 square feet, and the maximum copy area shall be no greater than 270 square feet.
 - (iii) One freestanding sign per lot, except lots of ten or more acres located on the corner of two intersecting streets shall be permitted one sign per street frontage and each sign shall be subject to the above height and square footage regulations.
 - o. One temporary sign as approved under section 129-75, temporary sign permits.
- (7) *C-3 city center commercial district.*
- a. One nameplate.
 - b. One real estate sign per smallest street frontage.
 - c. One construction sign per principal building.
 - d. One integral sign.
 - e. One painted graphic.
 - f. Banner signs.
 - g. Canopy or awning signs.
 - h. Directional signs.
 - i. Directory signs.
 - j. Marquee signs.
 - k. Wall signs.
 - l. Window identification signs.
 - m. Projecting signs; and projecting signs as approved by the board of public works and safety with a clearance of eight feet, six inches between the grade or the sidewalk and the lowest point of the sign, and shall be located at the center of the building facade.
 - n. Freestanding sign.
 - 1. One freestanding sign from the following sign type list, or one sign which is a combination of the sign types from the following list:
 - (i) Changeable copy signs.
 - (ii) Institutional bulletins.
 - (iii) Public service message signs.
 - (iv) Automatic changing sign.
 - (v) Multiface freestanding signs.
 - 2. The freestanding sign shall meet the following standards:
 - (i) One foot of vertical height of sign structure per ten linear feet of lot frontage on the public right-of-way. The maximum vertical height of a sign structure shall be 35 feet. If the lot frontage is less than 150 feet wide the maximum vertical distance between the existing grade and the top of the sign may be 15 feet.
 - (ii) Seventy-five-hundredths square foot of sign copy per three linear feet of lot frontage on the public

right-of-way and 1.25 feet of display area per three linear feet of lot frontage on the public right-of-way. If the lot frontage is less than 80 feet wide, the maximum sign copy area may be 20 square feet, and the maximum sign display area may be 33 square feet. The maximum display area shall be no greater than 450 square feet and the maximum copy area shall be no greater than 270 feet.

(iii) One freestanding sign per lot.

o. One temporary sign as approved under section 129-75, temporary sign permits.

p. Street signs as approved by the board of public works and safety.

(8) *C-4 automobile oriented district.*

a. One nameplate.

b. One real estate sign per smallest street frontage.

c. One construction sign per principal building.

d. One integral sign.

e. One painted graphic.

f. Banner signs.

g. Canopy or awning signs.

h. Directional signs.

i. Directory signs.

j. Marquee signs.

k. Wall signs.

l. Window identification signs.

m. Projecting signs; and projecting signs as approved by the board of public works and safety with a minimum clearance of eight feet, six inches between the grade of the sidewalk and the lowest point of the sign, and shall be located at the center of the building facade.

n. Freestanding sign.

1. One freestanding sign from the following sign type list, or one sign which is a combination of the sign types from the following list:

(i) Changeable copy signs.

(ii) Institutional bulletins.

(iii) Public service message signs.

(iv) Automatic changing sign.

(v) Multifaceted freestanding signs.

2. The freestanding sign shall meet the following standards:

(i) One foot of vertical sign structure per ten feet of lot frontage on the public right-of-way. The maximum vertical height of a sign structure shall be 35 feet. If the lot frontage is less than 150 feet wide the maximum vertical distance between the existing grade and the top of the sign may be 15 feet.

(ii) Seventy-five-hundredths square foot of sign copy per three linear feet of lot frontage on the public right-of-way and 1.25 square feet of display area per three linear feet of lot frontage on the public right-of-way. If the lot frontage is less than 80 feet wide, the maximum sign copy area may be 20

square feet, and the maximum sign display area may be 33 square feet. The maximum display area shall be no greater than 450 square feet and the maximum copy area shall be no greater than 270 square feet.

- (iii) One freestanding sign per lot, except lots of five or more acres located on the corner of two intersecting public streets shall be permitted one sign per street frontage and each sign shall be subject to the above height and square footage restrictions.

- o. One temporary sign as approved under section 129-75, temporary sign permits.

(9) *C-5 neighborhood commercial district.*

- a. One nameplate.
- b. One real estate sign per smallest street frontage.
- c. One construction sign per principal building.
- d. One integral sign.
- e. One painted graphic.
- f. Banner signs.
- g. Canopy or awning signs.
- h. Directional signs.
- i. Directory signs.
- j. Marquee signs.
- k. Wall signs.
- l. Window identification signs.
- m. Projecting signs; and projecting signs as approved by the board of public works and safety with a minimum clearance of eight feet, six inches between the grade or the sidewalk and the lowest point of the sign, and shall be located at the center of the building facade.
- n. Freestanding sign.
 - 1. One freestanding sign from the following sign type list, or one sign which is a combination of the sign types from the following list:
 - (i) Changeable copy signs.
 - (ii) Institutional bulletins.
 - (iii) Public service message signs.
 - (iv) Electronic reader board.
 - (v) Multiface freestanding signs.
 - 2. The freestanding sign shall meet the following standards:
 - (i) One foot of vertical height of sign structure per ten linear feet of lot frontage on the public right-of-way. The maximum vertical height of a sign structure shall be 35 feet. If the lot frontage is less than 150 feet wide the maximum vertical distance between the existing grade and the top of the sign may be 15 feet.
 - (ii) Seventy-five-hundredths square foot of sign copy per three linear feet of lot frontage on the public right-of-way and 1.25 feet of sign display area per three linear feet of lot frontage on the public right-of-way. If the lot frontage is less than 80 feet wide, the maximum sign copy area may be 20 square

feet, and the maximum sign display area may be 33 square feet. The maximum display area shall be no greater than 450 square feet and the maximum copy area shall be no greater than 270 square feet.

(iii) One freestanding sign per lot.

o. One temporary sign as approved under section 129-75, temporary sign permits.

(10) *C-6 linear office district.*

a. One nameplate.

b. One real estate sign per smallest street frontage.

c. One construction sign per principal building.

d. One integral sign.

e. One painted graphic.

f. Banner signs.

g. Canopy or awning signs.

h. Directional signs.

i. Directory signs.

j. Marquee signs.

k. Wall signs.

l. Window identification signs.

m. Projecting signs; and projecting signs as approved by the board of public works and safety with a minimum clearance of eight feet, six inches between the grade of the sidewalk and the lowest point of the sign, and shall be located at the center of the building facade.

n. Freestanding sign.

1. One freestanding sign from the following sign type list, or one sign which is a combination of the sign types from the following list:

(i) Changeable copy signs.

(ii) Institutional bulletins.

(iii) Public service message signs.

(iv) Electronic reader board.

(v) Multiface freestanding signs.

2. The freestanding sign shall meet the following standards; only one sign for each lot shall be allowed with the following restrictions:

(i) Monument sign type only;

(ii) One foot of vertical height of sign structure per ten feet of lot frontage on the public right-of-way. The maximum vertical height of a sign structure shall be eight feet; and

(iii) Seventy five hundredths square foot of sign copy area per three linear feet of lot frontage on the public right-of-way and 1.25 feet of sign display area per three linear feet of lot frontage on the public right-of-way. The maximum display area shall be no greater than 60 square feet, and the maximum copy area shall be no greater than 36 square feet.

(11) *C-7 automobile oriented restaurant commercial district.*

a. One nameplate.

- b. One real estate sign per smallest street frontage.
 - c. One construction sign per principal building.
 - d. One integral sign.
 - e. One painted graphic.
 - f. Banner signs.
 - g. Canopy or awning signs.
 - h. Directional signs.
 - i. Directory signs.
 - j. Marquee signs.
 - k. Wall signs.
 - l. Window signs.
 - m. Projecting signs; and projecting signs as approved by the board of public works and safety with a minimum clearance of eight feet, six inches between the grade of the sidewalk and the lowest point of the sign, and shall be located at the center of the building facade.
 - n. Freestanding sign.
 - 1. One freestanding sign from the following sign type list or one sign which is a combination of the sign types from the following list:
 - (i) Changeable copy sign.
 - (ii) Institutional bulletins.
 - (iii) Public service message signs.
 - (iv) Automatic changing sign.
 - (v) Multiface freestanding signs.
 - 2. The freestanding sign shall meet the following standards:
 - (i) One foot of vertical height of sign structure per ten feet of lot frontage on the public right-of-way. The maximum vertical height of a sign structure shall be 35 feet. If the lot frontage is less than 150 feet wide the maximum vertical distance between existing grade and the top of the sign may be 15 feet.
 - (ii) Seventy-five-hundredths square foot of sign copy per three linear feet of lot frontage on the public right-of-way and 1.25 feet of sign display area per three linear feet of lot frontage on the public right-of-way. If the lot frontage is less than 80 feet wide, the maximum sign copy area may be 20 square feet and the maximum sign display area may be 33 square feet. The maximum display area shall be no greater than 450 square feet and the maximum copy area shall be no greater than 270 square feet.
 - (iii) One temporary sign per lot.
 - o. One temporary sign as approved under section 129-75, temporary sign permits.
- (12) *C-8 high-density suburban commercial district.*
- a. One nameplate.
 - b. One real estate sign per smallest street frontage.
 - c. One construction sign per principal building.
 - d. One integral sign.
 - e. One painted graphic.

- f. Banner signs.
 - g. Canopy or awning signs.
 - h. Directional signs.
 - i. Directory signs.
 - j. Marquee signs.
 - k. Wall signs.
 - l. Window identifications signs.
 - m. Projecting signs; and projecting signs as approved by the board of public works and safety with a minimum clearance of eight feet six inches between the grade of the sidewalk and the lowest point of the sign, and shall be located at the center of the building facade.
 - n. Freestanding sign.
 - 1. One freestanding sign from the following sign type list, or one sign which is a combination of the sign types from the following list:
 - (i) Changeable copy signs.
 - (ii) Institutional bulletins.
 - (iii) Public service message signs.
 - (iv) Electronic reader board.
 - (v) Multiface freestanding signs.
 - 2. The freestanding sign shall meet the following standards:
 - (i) One foot of vertical height of sign structure per ten feet of lot frontage on the public right-of-way. The maximum vertical height of a sign structure shall be 35 feet. If the lot frontage is less than 150 feet wide the maximum vertical distance between the existing grade and the top of the sign may be 15 feet.
 - (ii) Seventy-five-hundredths square foot of sign copy area per three linear feet of lot frontage on the public right-of-way and 1.25 feet of sign display area per three linear feet of lot frontage on the public right-of-way. If the lot frontage is less than 80 feet wide, the maximum sign copy area may be 20 square feet, and the maximum sign display area may be 33 square feet. The maximum display area shall be no greater than 450 square feet and the maximum copy area shall be no greater than 270 square feet.
 - (iii) One freestanding sign per lot.
 - o. One temporary sign as approved under section 129-75, temporary sign permits.
- (13) *C-9 automobile-oriented sales commercial district.*
- a. One nameplate.
 - b. One real estate sign per smallest street frontage.
 - c. One construction sign per principal building.
 - d. One integral sign.
 - e. One painted graphic.
 - f. Banner signs.
 - g. Canopy or awning signs.
 - h. Directional signs.

- i. Directory signs.
- j. Marquee signs.
- k. Wall signs.
- l. Window identifications signs.
- m. Projecting signs; and projecting signs as approved by the board of public works and safety with a minimum clearance of eight feet six inches between the grade of the sidewalk and the lowest point of the sign, and shall be located at the center of the building facade.
- n. Freestanding signs.
 - 1. One freestanding sign from the following sign type list, or one sign which is a combination of the sign types from the following list:
 - (i) Changeable copy signs.
 - (ii) Institutional bulletins.
 - (iii) Public service message signs.
 - (iv) Electronic reader board.
 - (v) Multiface freestanding signs.
 - 2. The freestanding sign shall meet the following standards:
 - (i) One foot of vertical height of sign structure per ten feet of lot frontage on the public right-of-way. The maximum vertical height of a sign structure shall be 35 feet. If the lot frontage is less than 150 feet wide the maximum vertical distance between the existing grade and the top of the sign may be 15 feet.
 - (ii) Seventy-five-hundredths square foot of sign copy area per three linear feet of lot frontage on the public right-of-way and 1.25 feet of sign display area per three linear feet of lot frontage on the public right-of-way. If the lot frontage is less than 80 feet wide, the maximum sign copy area may be 20 square feet, and the maximum sign display area may be 33 square feet. The maximum display area shall be no greater than 450 square feet and the maximum copy area shall be no greater than 270 square feet.
 - (iii) One freestanding sign per lot.
 - o. One temporary sign as approved under section 129-75, temporary sign permits.
- (14) *C-10 filling stations commercial district.*
 - a. One nameplate.
 - b. One real estate sign per smallest street frontage.
 - c. One construction sign per principal building.
 - d. One integral sign.
 - e. One painted graphic.
 - f. Banner signs.
 - g. Canopy or awning signs.
 - h. Directional signs.
 - i. Directory signs.
 - j. Marquee signs.

- k. Wall signs.
- l. Window identifications signs.
- m. Projecting signs; and projecting signs as approved by the board of public works and safety with a minimum clearance of eight feet six inches between the grade of the sidewalk and the lowest point of the sign, and shall be located at the center of the building facade.
- n. Freestanding signs.
 - 1. One freestanding sign from the following sign type list, or one sign which is a combination of the sign types from the following list:
 - (i) Changeable copy signs.
 - (ii) Institutional bulletins.
 - (iii) Public service message signs.
 - (iv) Electronic reader board.
 - (v) Multiface freestanding signs.
 - 2. The freestanding sign shall meet the following standards:
 - (i) One foot of vertical height of sign structure per ten feet of lot frontage on the public right-of-way. The maximum vertical height of a sign structure shall be 35 feet. If the lot frontage is less than 150 feet wide the maximum vertical distance between the existing grade and the top of the sign may be 15 feet.
 - (ii) Seventy-five-hundredths square foot of sign copy area per three linear feet of lot frontage on the public right-of-way and 1.25 feet of sign display area per three linear feet of lot frontage on the public right-of-way. If the lot frontage is less than 80 feet wide, the maximum sign copy area may be 20 square feet, and the maximum sign display area may be 33 square feet. The maximum display area shall be no greater than 450 square feet and the maximum copy area shall be no greater than 270 square feet.
 - (iii) One freestanding sign per lot.
- o. One temporary sign as approved under section 129-75, temporary sign permits.

(15) *I-I light industrial district.*

- a. One nameplate.
- b. One real estate sign per smallest street frontage.
- c. One construction sign per principal building.
- d. One integral sign.
- e. One painted graphic.
- f. Banner signs.
- g. Canopy or awning signs.
- h. Directional signs.
- i. Directory signs.
- j. Marquee signs.
- k. Wall signs.
- l. Window identifications signs.
- m. Projecting signs; and projecting signs as approved by the board of public works and safety with a minimum

clearance of eight feet six inches between the grade of the sidewalk and the lowest point of the sign, and shall be located at the center of the building facade.

n. Freestanding signs.

1. One freestanding sign from the following sign type list, or one sign which is a combination of the sign types from the following list:

- (i) Changeable copy signs.
- (ii) Institutional bulletins.
- (iii) Public service message signs.
- (iv) Electronic reader board.
- (v) Multiface freestanding signs.

2. The freestanding sign shall meet the following standards:

- (i) One foot of vertical height of sign structure per ten feet of lot frontage on the public right-of-way. The maximum vertical height of a sign structure shall be 35 feet. If the lot frontage is less than 150 feet wide the maximum vertical distance between the existing grade and the top of the sign may be 15 feet.
- (ii) Seventy-five-hundredths square foot of sign copy area per three linear feet of lot frontage on the public right-of-way and 1.25 feet of sign display area per three linear feet of lot frontage on the public right-of-way. If the lot frontage is less than 80 feet wide, the maximum sign copy area may be 20 square feet, and the maximum sign display area may be 33 square feet. The maximum display area shall be no greater than 450 square feet and the maximum copy area shall be no greater than 270 square feet.
- (iii) One freestanding sign per lot.

o. One temporary sign as approved under section 129-75, temporary sign permits.

(16) *I-2 heavy industrial district.*

- a. One nameplate.
- b. One real estate sign per smallest street frontage.
- c. One construction sign per principal building.
- d. One integral sign.
- e. One painted graphic.
- f. Banner signs.
- g. Canopy or awning signs.
- h. Directional signs.
- i. Directory signs.
- j. Marquee signs.
- k. Wall signs.
- l. Window identifications signs.
- m. Projecting signs; and projecting signs as approved by the board of public works and safety with a minimum clearance of eight feet six inches between the grade of the sidewalk and the lowest point of the sign, and shall be located at the center of the building facade.
- n. Freestanding signs.

1. One freestanding sign from the following sign type list, or one sign which is a combination of the sign types from the following list:
 - (i) Changeable copy signs.
 - (ii) Institutional bulletins.
 - (iii) Public service message signs.
 - (iv) Electronic reader board.
 - (v) Multiface freestanding signs.
 2. The freestanding sign shall meet the following standards:
 - (i) One foot of vertical height of sign structure per ten feet of lot frontage on the public right-of-way. The maximum vertical height of a sign structure shall be 35 feet. If the lot frontage is less than 150 feet wide the maximum vertical distance between the existing grade and the top of the sign may be 15 feet.
 - (ii) Seventy-five-hundredths square foot of sign copy area per three linear feet of lot frontage on the public right-of-way and 1.25 feet of sign display area per three linear feet of lot frontage on the public right-of-way. If the lot frontage is less than 80 feet wide, the maximum sign copy area may be 20 square feet, and the maximum sign display area may be 33 square feet. The maximum display area shall be no greater than 450 square feet and the maximum copy area shall be no greater than 270 square feet.
 - (iii) One freestanding sign per lot.
 - o. One temporary sign as approved under section 129-75, temporary sign permits.
- (17) *S-1 extensive open space and public use district.*
- a. One nameplate.
 - b. One real estate sign per smallest street frontage.
 - c. One construction sign per principal building.
 - d. One integral sign.
 - e. One painted graphic.
 - f. Banner signs.
 - g. Canopy or awning signs.
 - h. Directional signs.
 - i. Directory signs.
 - j. Marquee signs.
 - k. Wall signs.
 - l. Window identifications signs.
 - m. Projecting signs; and projecting signs as approved by the board of public works and safety with a minimum clearance of eight feet six inches between the grade of the sidewalk and the lowest point of the sign, and shall be located at the center of the building facade.
 - n. Freestanding signs.
 1. One freestanding sign from the following sign type list, or one sign which is a combination of the sign types from the following list:
 - (i) Changeable copy signs.

- (ii) Institutional bulletins.
 - (iii) Public service message signs.
 - (iv) Electronic reader board.
 - (v) Multiface freestanding signs.
2. The freestanding sign shall meet the following standards:
- (i) One foot of vertical height of sign structure per ten feet of lot frontage on the public right-of-way. The maximum vertical height of a sign structure shall be 35 feet. If the lot frontage is less than 150 feet wide the maximum vertical distance between the existing grade and the top of the sign may be 15 feet.
 - (ii) Seventy-five-hundredths square foot of sign copy area per three linear feet of lot frontage on the public right-of-way and 1.25 feet of sign display area per three linear feet of lot frontage on the public right-of-way. If the lot frontage is less than 80 feet wide, the maximum sign copy area may be 20 square feet, and the maximum sign display area may be 33 square feet. The maximum display area shall be no greater than 450 square feet and the maximum copy area shall be no greater than 270 square feet.
 - (iii) One freestanding sign per lot.
- o. One temporary sign as approved under section 129-75, temporary sign permits.
- (18) *S-2 planned unit development district*. All signage within a planned unit development that is adopted after the effective date of the ordinance from which this article is derived shall conform to the sign standards of the most restrictive zoning district in which the various land use would otherwise be permitted. The plan commission shall not deviate from these regulations.

(Code 1985, § 157.15; Ord. No. 3350, 1-15-1990; Ord. No. 3913, 1-3-1995; Ord. No. 4020, 2-20-1996; Ord. No. 4164, 5-5-1997; Ord. No. 4354, 11-16-1998)

Sec. 129-74. - Freestanding sign corridor overlay districts.

- (a) *Intent*. Due to the city's desire to maintain attractive gateways and streetscapes within the city; certain corridors have required special land use and transportation access planning. Aspects of individual corridors may include elements such as high-quality building design restrictions and construction, a physical location in a prime redevelopment area along a major transportation corridor, inclusion of structures identified as historically relevant based on the Mishawaka Historic Sites and Structures Inventory, and/or being located in an area that is predominantly undeveloped and is adjacent to existing or proposed corridors. All of these characteristics present a need for an attractive streetscape appearance potentially serving as gateways or entrances to the city. The following overlay sign restrictions identified under subsection (d) of this section shall apply to all freestanding signs in the areas described under subsection (b) of this section. These restrictions shall also apply to off-premises signs within all districts excepting only the areas identified under subsection (c) of this section.
- (b) *District areas*. The districts shall be described as areas of land 300 feet parallel to and on either side of the right-of-way of the following described corridors excepting any portions of right-of-way or area not within the corporation limit:
 - (1) *Main Street extended district*. Gumwood Road from the northernmost corporation limit south to the intersection of Main Street and State Road 23. Main Street from the intersection of State Road 23 and Gumwood Road south to the intersection of Church Street and Main Street. Church Street from the intersection of Church Street and

Main Street south to the intersection of Church Street and Union Street. Union Street from the intersection of Church Street and Union Street south to the intersection of Union Street and Bremen Highway. Bremen Highway from the intersection of Union Street and Bremen Highway south to the southmost corporation limit.

- (2) *Edison Lakes district.* Edison Lakes Parkway between the east right-of-way line of North Main Street and east right-of-way line of Grape Road. Day Road between the east right-of-way line of North Main Street and the easternmost corporation limit. Park Place between the south right-of-way of Day Road to the west right-of-way of Filbert Road. Division Street from the intersection of Division Street and McKinley Highway to the northernmost limit of Division Street.
 - (3) *Lincolnway district.* Lincolnway between the east right-of-way of Logan Street and the west right-of-way line of Capital Avenue.
 - (4) *State Road 23/Edwardsburg Highway district.* State Road 23/Edwardsburg Highway between the east right-of-way line of Main Street to the eastern most city limit.
 - (5) *Cass Road/University Drive district.* University Drive between the east right-of-way line of Main Street to the west right-of-way line of Fir Road. Cass Road from the south/east right-of-way line of University Drive to its terminus west of Fire Road.
- (c) *Exceptions for the development of off-premises signs within certain overlay districts.* Development of off-premises signs in the following areas shall not be subject to the overlay restrictions, but shall be subject to all other applicable restrictions on the development of off-premises signs identified by chapter 137.
- (1) *Main Street extended district exception.* Main Street from a point 300 feet south of the south right-of-way line of Guam Avenue to the north right-of-way line of Russ Street. Union Street from the intersection of Church Street and Union Street south to the intersection of Union Street and Bremen Highway (at the intersection, south right-of-way line, of Dragoon Trail).
 - (2) *State Road 23/Edwardsburg Highway district.* State Road 23/Edwardsburg Highway between the eastern edge of the Main Street extended overlay district to the easternmost city limit.
- (d) *Overlay sign restrictions.*
- (1) The number and area of any sign shall be limited by the standards identified by this article and shall be further supplemented by the following:
 - a. Individual sign display height shall be no greater than five-foot high/vertical.
 - b. Individual sign display width shall be no greater than 15-foot wide/horizontal.
 - c. Individual sign display area shall be no greater than 60 square feet.
 - d. The vertical height of the sign with base/support shall be no greater than eight feet above the ground level.
 - (2) For all new construction, sign bases/support shall be solid/opaque, void of open areas, and shall be faced or constructed of masonry materials to match the construction of the principal building. Existing buildings replacing or installing new signage may submit alternatives to the masonry as needed to match the appearance of existing construction, subject to the review and approval of the city planner.

(Code 1985, § 157.15A; Ord. No. 3913, 1-3-1995; Ord. No. 3923, 3-6-1995; Ord. No. 4358, 12-7-1998; Ord. No. 4583, 5-7-2001)

Sec. 129-75. - Temporary sign permits.

The city planner or his designated representative shall be authorized to issue an improvement location permit for the temporary installation and maintenance of one temporary sign per lot or shopping center, either for one period not to exceed 15 days during the calendar year, or for three periods not to exceed five days per period during the calendar year. Such signs

shall be located at least ten feet from the property line and shall not be located on public property or within a vision clearance area; the sign shall not rotate, shall not flash, and shall not exceed 32 square feet.

- (1) A bond in the penal sum of \$1,000.00 shall be filed with the building commissioner, conditional that the person shall comply with the provisions of this code and to indemnify the city and its officials from any claims or damages sustained, brought or obtained against the city or its officials because of the placement, removal or any accident caused by or resulting therefrom. The bond shall be returned after the sign is removed.
- (2) The sign shall be tied down in order to withstand a 60-mile-per-hour wind, and if electrified, shall be approved by an independent testing laboratory such as Underwriters' Laboratories, Inc., shall include underground metal conduit or approved underground wire, and adhere to all electric code requirements. Aerial wire, or ground wire, and extension cords shall be prohibited.
- (3) An improvement location permit for the sign shall be issued only for property in the C-1, C-2, C-3, C-4, C-5, C-7, I-1 and I-2 districts.
- (4) Temporary signs in existence on the date of approval of the ordinance from which this chapter is derived which do not conform to the provisions of this article, shall be regarded as nonconforming signs, which shall be either removed or modified to conform to the provisions of this article within six months.

(Code 1985, § 157.16; Ord. No. 3350, 1-15-1990)

Sec. 129-76. - Temporary signs not to become permanent signs.

Because of the added structural needs of permanent mounted signs, and the usual lack of a proper internal structure in temporary signs, temporary signs may not become permanent canopy or awning, directional, directory, marquee, wall, projecting and/or freestanding signs and neither an improvement location permit nor sign permit may be issued for such installation.

(Code 1985, § 157.17; Ord. No. 3350, 1-15-1990)

Secs. 129-77—129-95. - Reserved.

ARTICLE IV. - ON-PREMISES SIGN SPECIFICATIONS

Sec. 129-96. - Design and construction.

- (a) *Generally.* Signs and sign structures shall be designed and constructed to resist wind and seismic forces. All bracing systems shall be designed and constructed to transfer lateral forces to the foundations. For signs on buildings the dead and lateral loads shall be transmitted through the structural frame of the building to the ground in such a manner as not to overstress any of the elements thereof.
- (b) *Wind loads.* Signs and sign structures shall be designed and constructed to resist wind forces as specified in the Uniform Building Code.
- (c) *Seismic loads.* Signs and sign structures shall be designed and constructed to resist seismic forces as specified in the Uniform Building Code.
- (d) *Combined loads.*
 - (1) Wind and seismic loads need not be combined in the design of signs or sign structures; only that loading producing the larger stresses need be used.

- (2) Vertical design loads, except roof live loads, shall be assumed to be acting simultaneously with the wind or seismic loads.
- (e) *Allowable stresses.* The design of wood, concrete, steel or aluminum members shall conform to the requirements of the Uniform Building Code. Loads, both vertical and horizontal, exerted on the soil shall not produce stresses exceeding those specified in the Uniform Building Code.

(Code 1985, § 157.24; Ord. No. 3350, 1-15-1990)

Sec. 129-97. - Construction.

- (a) *Generally.* The supports for all signs or sign structures shall be placed in or upon private property and shall be securely built, constructed and erected in conformance with the requirements of this chapter.
- (b) *Materials.*
- (1) Materials of construction for signs and sign structures shall be of the quality and grade as specified for buildings in the Uniform Building Code, Standards No. 27-1 and 27-9.
 - (2) Anchors and supports when of wood and embedded in the soil, or within six inches of the soil, shall be all heartwood of a durable species or shall be pressure-treated with an approved preservative. Such members shall be marked or branded by an approved agency.
- (c) *Restrictions on combustible materials.*
- (1) Ground signs may be constructed of any material meeting requirements of this chapter. Combination signs, roof signs, wall signs, projecting signs and signs on marquees shall be constructed of noncombustible materials, except as provided in subsection (d) of this section. No combustible materials other than approved plastics shall be used in the construction of electric signs.
 - (2) Nonelectric wall signs may be constructed of unprotected combustible materials on walls permitted to be unprotected combustible construction.
- (d) *Nonstructural trim.* Nonstructural trim and portable display surfaces may be of wood, metal, approved plastics or any combination thereof.
- (e) *Anchorage.*
- (1) Members supporting unbraced signs shall be so proportioned that the bearing loads imposed on the soil in either direction, horizontal or vertical, shall not exceed the safe values. Braced ground signs shall be anchored to resist the specified wind or seismic load acting in any direction. Anchors and supports shall be designed for safe bearing loads on the soil for an effective resistance to pullout amounting to a force 25 percent greater than the required resistance to overturning. Anchors and supports shall penetrate to a depth below ground greater than that of the frost line (36 inches in this area).
 - (2) Signs attached to masonry, concrete or steel shall be safely and securely fastened thereto by means of metal anchors, bolts or approved expansion screws.
- (f) *Display surfaces.* Display surfaces in all types of signs may be made of metal, glass or approved plastics. Plastic wall signs shall not exceed 225 square feet in area.

(Code 1985, § 157.25; Ord. No. 3350, 1-15-1990)

Sec. 129-98. - Projection and clearance.

- (a) *Generally.* Signs shall conform to the clearance and projection requirements of this section and Table No. 4-B and 4-C of the Uniform Sign Code.
- (b) *Clearance from high voltage lines.* Signs shall be located not less than six feet horizontally or 12 feet vertically from

overhead electrical conductors which are energized in excess of 750 volts.

- (c) *Clearance from fire escapes, exits or standpipes.* No sign or sign structure shall be erected in such a manner that any portion of its surface or supports will interfere in any way with the free use of any fire escape, exit or standpipe.
- (d) *Obstruction of openings.*
 - (1) No sign shall obstruct any openings to such an extent that light or ventilation is reduced to a point below that required by this chapter.
 - (2) Signs erected within five feet of an exterior wall in which there are openings within the area of the sign shall be of noncombustible material.
- (e) *Projection.* Signs and sign structures, as approved by the board of public works and safety, shall not project into any public alley below the height of 16 feet above grade, nor project more than 36 inches into the public alley if the sign is located 16 feet or more above grade.
- (f) *Clearance from street.* Signs and sign structures, as approved by the board of public works and safety, shall not protect more than two feet of the curblin off a street.

(Code 1985, § 157.26; Ord. No. 3350, 1-15-1990)

Sec. 129-99. - Sign types.

All signs shall be erected as outlined in the Uniform Sign Code.

(Code 1985, § 157.27; Ord. No. 3350, 1-15-1990)

Chapter 133 - SUBDIVISION REGULATIONS

Footnotes:

--- (1) ---

State Law reference— *Subdivision control, IC 36-7-4-700 et seq.*

ARTICLE I. - IN GENERAL

Sec. 133-1. - Intent.

The intent of this chapter is to provide minimum rules, regulations, and standards in order to achieve orderly development in the city through land subdivision; to provide for the proper arrangement of streets in relation to other existing or planned streets; to promote the utilization of land to assure to the residents of the city the best possible environment; to cause land subdivision and resubdivision to be made in accordance with the zoning regulations; and to promote the health, safety, and welfare of the citizens. Any land which is improved or unimproved and which is to be divided into two or more lots for the purpose of sale, lease, or development, using varying types of financing methods, shall be subdivided. This chapter shall be administered to ensure the orderly growth and development, conservation, protection, and proper use of land by adequate provision for circulation, utilities, and services.

(Code 1985, § 158.02; Ord. No. 3065, 7-20-1987)

Sec. 133-2. - 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:

Administrator. The designated administrator is the city planner or his designated representative.

Block means a tract of land bounded by streets and any combination of boundary lines of public or institutionally owned lands, railroad rights-of-way, rivers, lakes, and other lines of demarcation.

Board means the city board of public works and safety.

Bond means any form of security, including cash, surety bond, or financial instrument of credit, as approved by the board of public works and safety, for the purpose of guaranteeing that improvements will be made in a subdivision according to the standards as adopted by the board.

Building setback lines means lines which are parallel to the lot lines in which no building may project closer to the lot lines.

Cemetery means an area set apart for and/or containing graves or tombs, and not bound by the regulations of this chapter.

Commission means the city plan commission.

Comprehensive plan means a plan for the physical development of the community, prepared and adopted by the plan commission, pursuant to state law, and including any part of such plan separately adopted and any amendment to the plan, or parts thereof.

Crosswalk means a right-of-way dedicated to public pedestrian use, which cuts across a block to facilitate pedestrian access between streets and sidewalks.

Developer means the owner of land proposed to be subdivided, or his representative.

Easement means a grant by a property owner to the general public, a public utility, a drainage district, or a private party for the use of land for a specifically stated purpose.

Flood protection regulations means chapter 121, as amended, which sets forth standards as recommended by the National Flood Insurance Program.

Frontage means in the case of an interior lot, a line separating the lot from the street; in the case of a corner lot, the line separating the narrowest street frontage dimension from the street.

Gradient means the slope of a lot, street, or other public right-of-way in terms of percentage.

Improvement means any permanent physical construction associated with subdivision and building site development.

Infrastructure means the fixed public works and facilities necessary in a community, such as, but not limited to, sewers, water systems, streets, sidewalks, street lights, fire hydrants, street name signs, and traffic control signs.

Interested parties means property owners within 300 feet of a proposed subdivision, the staff of the plan commission, and the subdivider.

Lot means a parcel or portion of land separated from other parcels or portions by description as on a subdivision of record or survey map for purposes of sales, leases, or separate use. The term "lot" includes the terms "parcel" and "tract."

Lot, double frontage, means a lot, other than a corner lot, which fronts on two streets.

Major subdivision means any land, vacant or improved, which is subdivided into two or more lots for the purpose of sale, lease, or development, using varying types of financing methods, and includes construction of infrastructure that will be publicly or privately owned.

Minor subdivision means any land, vacant or improved, which is divided into two or more lots for the purpose of sale, lease, or development, using varying types of financing methods, and does not include construction of any infrastructure.

Model home means a dwelling unit used initially for display purposes, which typifies the type of units that will be constructed in the subdivision.

Monument means any permanent marker used to identify the boundary lines of any lot, parcel, tract, street lines, or survey control point for streets.

Owner means any person, firm, association, syndicate, sole proprietorship, corporation, or any other legal entity having title to the land sought to be subdivided under these regulations.

Planned unit development means residential, commercial, or industrial development, or combination thereof, of a tract of land under single ownership or control according to an approved final site development plan.

Plat of subdivision means the drawing on which the subdivider's plan of subdivision is presented to the plan commission for approval, and which, if approved, shall be submitted to the county recorder for filing.

Public utility company means a firm, corporation, municipal department or board duly authorized to furnish or furnishing under regulation to the public, electricity, gas, steam, communication, central antenna television, transportation, drainage, sewer, or water.

Registered engineer means an engineer who is licensed in compliance with the laws of this state.

Registered land surveyor means a surveyor who is licensed in compliance with the laws of this state.

Replat means the process of allowing for an adjustment of a lot line or lines and/or easements, as shown on a recorded subdivision, which may or may not affect any street layout, whether existing or proposed, and may or may not increase the total number of lots within the area proposed to be replatted.

Rerecording means the process allowing for an adjustment of an easement or easements, or correction of a drafting or typographical error, as shown on an approved and recorded subdivision, which does not affect the size or configuration of the lot in question.

Reserve strip means an area of land adjacent to a public right-of-way which is retained in ownership by an individual for the purpose of denying access to adjacent land.

Right-of-way means a strip of land occupied or intended to be occupied by transportation facilities, public utilities, or other special public uses. Rights-of-way intended for any use involving maintenance by a public agency shall be dedicated to the public use by the developer of the property on which the right-of-way is established.

Should means the act referred to is a preferred requirement.

Staff means the staff of the city plan commission.

Standards means a specific and detailed listing of materials and construction methods for subdivision improvements, standards of construction and design, and performance bond schedules as adopted by the board of public works and safety.

Street means a general term denoting a public way for purposes of vehicular travel, including the entire area within the right-of-way. The term "street" also includes the terms highway, parkway, road, thoroughfare, avenue, boulevard, lane, court, place, drive, trail, terrace, way, and other such terms.

- (1) *Arterial* means those major streets which serve major centers of activity, have the highest traffic volume, and service a large geographic area.
- (2) *Collector* means those streets which are used to carry traffic from local streets to arterials, including the principal entrance streets to a residential development and circulation streets within such developments; have a minimum of 60 feet of right-of-way, and are built to current board standards.
- (3) *Local* means those streets used primarily for access to the abutting property; have a minimum of 50 feet of right-of-way and are built to current board standards.
- (4) *Service* means streets which are parallel to and adjacent to arterial streets and highways, which provide access to abutting property and protection from through traffic, and have a minimum of 40 feet of right-of-way and are built to current board standards.
- (5) *Alley* means minor ways which are used as a convenience primarily for public utility service at the rear or side of properties otherwise abutting on a street.
- (6) *Cul-de-sac* means a short local or service street of not more than 600 feet in length having one end open to traffic and the other end permanently terminated by a vehicle turnaround built to current board standards.

Subdivider means the owner, or duly authorized representative for the owner, of a piece of property either proposed for subdivision or an existing subdivision.

Subdivision means any land, vacant or improved, which is divided into two or more lots for the purpose of sale, lease, or development, using varying types of financing methods. These regulations do not apply to:

- (1) The willing or unwilling sale of land as a result of legal condemnations as defined and allowed by state statutes.
- (2) Widening of existing streets to conform to the comprehensive plan.
- (3) The acquisition of street rights-of-way by a public agency in conformance with the comprehensive plan.

Traffic control devices means all signs, signals, markings, and devices placed or erected by authority of the board, the county department of highways, or the state department of highways for the purpose of regulating, warning, or guiding traffic.

Used or occupied includes the words "intended, arranged, or designed to be used or occupied."

Variance means a modification of the strict terms of the relevant regulations of this chapter where modification will not be contrary to the public interest, and where, owing to conditions peculiar to the property and not the result of the action of the applicant, a literal enforcement of this chapter would result in unnecessary and undue hardship. Variances in subdivision regulations are granted only by the plan commission as set forth in section 133-201.

Zoning regulations means chapter 137 of the municipal code of the city, as amended.

(Code 1985, § 158.10; Ord. No. 3065, 7-20-1987; Ord. No. 3258, 3-20-1989)

Sec. 133-3. - Administrative authority.

The city plan commission, as established by virtue of Acts of 1947, Chapter 174, of the Indiana General Assembly, as amended, is established as the administrative agency for this chapter.

(Code 1985, § 158.03; Ord. No. 3065, 7-20-1987)

Sec. 133-4. - Interpretation.

In interpretation and application, the provisions of this chapter shall be held to be the minimum requirements for the promotion of the health, safety, comfort, prosperity, and general welfare of the citizens of the city.

(Code 1985, § 158.04; Ord. No. 3065, 7-20-1987)

Sec. 133-5. - Effect of judgments.

- (a) If any court of competent jurisdiction shall adjudge any provision of this chapter or amendments thereto to be invalid, such judgment shall not affect any other provisions of this chapter or amendment thereto, not specifically included in the judgment.
- (b) If any court of competent jurisdiction shall adjudge invalid the application of any provision of this chapter or amendments thereto to a particular subdivision, that judgment shall not affect the application of that provision to any other subdivision not specifically included in that judgment.

(Code 1985, § 158.05; Ord. No. 3065, 7-20-1987)

Sec. 133-6. - Applicability; compliance.

- (a) This chapter shall apply to all land within the corporate limits of the city as now or hereafter established, with the following exceptions:
 - (1) All lots in a recorded subdivision at the time of adoption of this chapter shall not be required to meet the regulations of this chapter.
 - (2) All recorded single lots described by metes and bounds at the time of adoption of this chapter shall not be required to meet the regulations of this chapter.
- (b) No new subdivision, or replat of any lot, tract, or parcel of land, shall be affected, nor shall any street, sanitary sewer, storm sewer, water main, or other facility in connection therewith be laid out, constructed, opened, or dedicated for public use or for the common use of occupants of buildings abutting thereon, except in strict accordance with the provisions of this chapter.
- (c) No lot shall be sold, nor shall an improvement location permit or a building permit to erect any building upon land be issued, unless and until a final plat has been approved and recorded, and until the infrastructure and improvements required by the city in connection therewith have been constructed or guaranteed by posting a performance bond or an irrevocable letter of credit with the board of public works and safety for 100 percent of the public infrastructure construction costs. However, if a new subdivision or subdivision replat has received preliminary plat approval, an improvement location permit and building permit may be issued for two model homes, provided that those homes shall not be occupied until the subdivision has been approved by the plan commission and recorded.
- (d) All planned unit developments as adopted by the plan commission shall also be platted in accordance with the regulations of this chapter.

(Code 1985, § 158.06; Ord. No. 3065, 7-20-1987; Ord. No. 4020, 2-20-1996)

Sec. 133-7. - Minimum lot width and area.

All lots in a subdivision shall meet the zoning regulations of the district in which the use is permitted.

(Code 1985, § 158.07; Ord. No. 3065, 7-20-1987)

Sec. 133-8. - Privately owned infrastructure to remain privately owned.

All privately owned infrastructure, including sewer, water, sidewalk, curb, roadway, and street light systems, shall remain in private ownership in perpetuity, unless the systems are built to current board of public works and safety standards or have been rebuilt to meet current board standards. The board may accept privately owned infrastructure as public infrastructure only if those facilities meet the current board standards.

(Code 1985, § 158.08; Ord. No. 3065, 7-20-1987)

Sec. 133-9. - Financing of infrastructure costs.

- (a) All infrastructure construction and dedication costs shall be financed by the person developing the subdivision, unless the state utility regulatory commission requires otherwise. The city and the municipal utilities shall not finance or pay for infrastructure construction and dedication costs unless the state regulatory commission requires otherwise.
- (b) Infrastructure oversizing in anticipation of future new development outside the subdivision may be financed by the city and/or municipal utilities.

(Code 1985, § 158.09; Ord. No. 3065, 7-20-1987)

Sec. 133-10. - Penalty.

Any person who violates a provision of this chapter shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than \$25.00 and not more than is prescribed by IC 36-1-3-8 as may be amended from time to time. Each day that a violation continues to exist shall constitute a separate offense.

(Code 1985, § 158.99; Ord. No. 3065, 7-20-1987)

Secs. 133-11—133-40. - Reserved.

ARTICLE II. - DESIGN STANDARDS

Sec. 133-41. - Conformance to zoning and flood protection regulations.

The subdivision shall conform to all regulations as set forth in the zoning regulations, chapter 137, as amended, and to all regulations as set forth in the flood protection regulations, chapter 121, as amended.

(Code 1985, § 158.20; Ord. No. 3065, 7-20-1987)

Sec. 133-42. - Streets.

- (a) Street rights-of-way and pavement widths shall adhere to the appropriate classification under the definition of streets in section 133-2, if the street is to become publicly owned.
- (b) The arrangement, character, extent, width, grade, and location of all streets shall be correlated to existing and planned streets, existing topography, public safety, and in appropriate relation to the proposed uses of the land to be served by the streets.
- (c) Local streets shall be laid out so that their use by through traffic will be discouraged.

- (d) No new street shall have a name which duplicates or so nearly duplicates so as to be confused with any existing street within the city, unless the new street is to be an extension of an existing street. Continuous local and collector streets which have major directional changes may require a change in street name for each directional change.

(Code 1985, § 158.21; Ord. No. 3065, 7-20-1987)

Sec. 133-43. - Alleys.

New alleys are prohibited.

(Code 1985, § 158.22; Ord. No. 3065, 7-20-1987)

Sec. 133-44. - Easements.

Easements centered on rear or side lot lines shall be provided for utilities where necessary, and shall be 7.5 feet wide on both sides, unless the board of public works and safety approves an easement of no less than five feet wide on both sides of the property line. Easements shall be continuous to the street at the end of the block to connect with adjoining blocks in the shortest direct route. Easements on end lot lines shall be a minimum of ten feet wide.

(Code 1985, § 158.23; Ord. No. 3065, 7-20-1987)

Sec. 133-45. - Electrical, communication, and central antenna television distribution lines.

(a) Underground installation is required in residential areas.

(b) Underground installation is recommended but not required in commercial and industrial areas.

(Code 1985, § 158.24; Ord. No. 3065, 7-20-1987)

Sec. 133-46. - Blocks.

(a) The width of blocks shall be sufficient to allow two tiers of lots, except where double frontage on a major thoroughfare is required.

(b) In the event of a block length exceeding 1,000 feet, a crosswalk easement of not less than ten feet in width may be required near center and entirely across any block, should it be determined that pedestrian access to a school will be impeded. Crosswalks shall be constructed according to sidewalk standards as adopted by the board of public works and safety, and dedicated to the public use.

(Code 1985, § 158.25; Ord. No. 3065, 7-20-1987)

Sec. 133-47. - Lots.

(a) Lot sizes shall be platted according to the minimum regulations as set forth in the zoning regulations, chapter 137, as amended.

(b) Every lot shall abut and front on a public or private street.

(c) Lots should be consecutively numbered, and addresses shall be assigned by the city plan commission, or its designated representative, in accordance with the uniform address grid system of the city.

(d) Lot closure calculations shall be provided to the city planner or city engineer.

(Code 1985, § 158.26; Ord. No. 3065, 7-20-1987; Ord. No. 4020, 2-20-1996)

Sec. 133-48. - Drainage.

So as not to negatively affect surrounding property owners, storm runoff from the developed subdivided land should not be greater than the natural runoff of the undeveloped land. Runoff calculations to support design shall be required.

(Code 1985, § 158.27; Ord. No. 3065, 7-20-1987)

Secs. 133-49—133-69. - Reserved.

ARTICLE III. - NEW SUBDIVISIONS

Sec. 133-70. - Consultation required.

Prior to the submission of an application for a new subdivision, the subdivider shall prepare a preliminary plat and consult with the city planner. The consultation will foster an understanding between the subdivider and the staff which will help alleviate future misunderstandings and reduce the possibility of extensive revisions. If the preliminary plat meets the provisions of this chapter, the city planner shall recommend to the subdivider that an application for new subdivision be submitted to the plan commission.

(Code 1985, § 158.30; Ord. No. 3065, 7-20-1987)

Sec. 133-71. - Planned unit development encouraged.

The imaginative and creative use of planned unit developments is encouraged. The subdivision standards as set forth in this chapter shall not be altered by a planned unit development ordinance.

(Code 1985, § 158.31; Ord. No. 3065, 7-20-1987)

Sec. 133-72. - Name of subdivision.

To avoid confusion, the name of the subdivision shall not duplicate or closely approximate the name of any other subdivision within the city.

(Code 1985, § 158.32; Ord. No. 3065, 7-20-1987)

Sec. 133-73. - Preliminary plat contents.

The drawing shall include:

- (1) A properly drafted drawing of not less than one inch equals 100 feet.
- (2) The name of the subdivision.
- (3) North arrow and graphic scale.
- (4) Boundary line of proposed subdivision, all existing easements, and property lines in exact dimensions.
- (5) Location, width, and names of prior subdivided streets and lots, and shall show all previously recorded streets and lots in dotted lines.
- (6) Layout, bearings, and dimensions of the proposed lots and streets.
- (7) Parcels to be dedicated for the public use.

- (8) Existing topographic contours at vertical intervals of five feet or less.
- (9) The layout of streets, curbs, and sidewalks in the area 300 feet distant from and parallel to the boundary of the proposed subdivision.
- (10) A conceptual subdivision plan for adjacent property owned by the subdivider but not included as part of the proposed subdivision application at hand.
- (11) Preliminary plans for street, curb, sidewalk, and sewer and water installation.
- (12) Name, address and signature of the property owner.

(Code 1985, § 158.33; Ord. No. 3065, 7-20-1987; Ord. No. 3683, 5-3-1993)

Sec. 133-74. - Procedures for preliminary plat approval.

- (a) Within one working day after filing of the plat of subdivision and the requisite fees with the staff, the staff shall refer the prints to the electric department, the water department, the engineering department, the fire department, the public utility companies, and the department of natural resources, if the subdivision lies within a designated flood hazard area as defined in the flood protection regulations contained in chapter 121.
- (b) The staff of each agency shall review the proposed plat of subdivision and submit a report to the plan commission staff.
- (c) The staff shall incorporate these reports into the site analysis report and make recommendation to the commission.
- (d) If the subdivision complies with the regulations of this chapter, the staff shall place the subdivision on the agenda of the first available meeting of the commission for public hearing.
- (e) The staff shall then notify the subdivider in writing of the time, date, and place of the commission hearing.
- (f) The staff shall notify all property owners within 300 feet of the edge of the subdivision of the time, date, and place of the commission hearing.
- (g) The staff shall place a legal notice, at least ten days prior to the hearing, in a local newspaper of general circulation, stating the time, place, and date of the hearing, a legal description and a common description of the location of the subdivision. Notification shall be on a form as prescribed by the commission and in a method prescribed by IC 5-3-1-2.
- (h) Commission action.
 - (1) If, after the public hearing, the commission finds that the subdivision complies with all regulations as set forth in this chapter, the commission shall approve the subdivision with or without modifications, and make written findings of fact which shall include the modifications and conditions imposed.
 - (2) If, after the public hearing, the commission finds that the subdivision does not comply with all standards regarding approval of subdivisions, the commission shall deny approval of the subdivision and make written findings of fact and decision which set forth its reasons for disapproval. The staff shall then release the original drawing to the subdivider.
- (i) Preliminary approval of a subdivision shall be effective indefinitely.

(Code 1985, § 158.34; Ord. No. 3065, 7-20-1987)

Sec. 133-75. - Preliminary plat site analysis by staff.

The following shall be used as a basis for staff site analysis and recommendation:

- (1) The drawing requirements as set forth in section 133-73.

- (2) Natural features such as wooded areas, swamps, wetlands, streams, and natural drainage courses.
- (3) Existing public utilities and capacities.
- (4) The comprehensive plan.
- (5) The zoning regulations.
- (6) The flood protection regulations.
- (7) The property list showing names and addresses of property owners within 300 feet of the edges of the proposed subdivision, as provided by the subdivider.
- (8) A completed application form, letter to the plan commission, stating that the subdivider is the owner or agent for the owner of the land, and/or a copy of a purchase agreement.
- (9) The appropriate application fees as prescribed by the commission.

(Code 1985, § 158.35; Ord. No. 3065, 7-20-1987)

Sec. 133-76. - Final plat contents.

- (a) An original ink drawing on not less than 8½-inch by 14-inch vellum, linen, or Mylar film at a scale of not less than one inch equals 100 feet, with six prints of the drawing. A one-inch border shall be incorporated into the drawing.
- (b) The drawing shall show:
 - (1) Name of subdivision.
 - (2) Location of subdivision by section, range, township, and boundary legal description.
 - (3) Name and address of subdivider.
 - (4) Name, address, seal, and signature of the registered surveyor preparing the subdivision.
 - (5) Scale, graphic bar scale, north arrow, and date.
 - (6) Boundary line of proposed subdivision, all existing easements and property lines in exact dimensions of feet and hundredths thereof; all boundary lines shall have length and bearing designated on the plat.
 - (7) Location, width, and names of prior subdivided streets and lots in the proposed subdivision, and showing all previously recorded streets and lots in dotted lines on the preliminary submittal.
 - (8) Layout and dimensions of proposed lots to the nearest one-hundredth of a foot.
 - (9) Layout and elevations of proposed streets, which include the classification of each street, street names, street widths, walkways, crosswalks, and easements.
 - (10) Parcels of land to be dedicated for public use shall be shown and labeled as to use.
 - (11) Dimensioned building setback lines.
 - (12) Vertical control data which shall be based on United States Geodetic Survey Sea Level Datum.
 - (13) An area four inches vertical by nine inches horizontal, within which the plan commission shall affix its certificate of approval.
 - (14) Name, address and signature of the property owner.

(Code 1985, § 158.36; Ord. No. 3065, 7-20-1987; Ord. No. 3683, 5-3-1993)

Sec. 133-77. - Procedures for final plat approval.

- (a) Within one working day after the filing of the final plat and the requisite fees with the staff, the staff shall place the subdivision on the agenda of the first available meeting of the plan commission.

(b) Public hearing is not required.

(c) Commission action.

- (1) If the commission finds that the final plat, together with the modifications or conditions, complies with all regulations as set forth in this chapter, the commission shall approve the final plat. The staff shall then provide the subdivider with the original drawings with the commission's seal affixed thereto after the drawing has been recorded.
- (2) After the subdivision has been recorded, the staff shall distribute copies to the county assessor, county surveyor, county health department, the appropriate township assessor, the city engineer and city municipal utilities.
- (3) If the commission finds that the final plat together with the modifications or conditions does not comply with all regulations as set forth in this chapter, the commission shall deny approval of the final plat and make written findings of fact and decision which set forth its reasons for disapproval. The staff shall then release the original drawing to the subdivider.

(Code 1985, § 158.37; Ord. No. 3065, 7-20-1987)

Sec. 133-78. - Final plat site analysis by staff.

The following shall be used as a basis for staff site analysis and recommendation:

- (1) The approved preliminary plat with modifications and conditions.
- (2) The drawing requirements as set forth in section 133-76.
- (3) The appropriate application fees as prescribed by the plan commission.

(Code 1985, § 158.38; Ord. No. 3065, 7-20-1987)

Sec. 133-79. - Recording.

Within one week of plan commission approval of the final plat, the staff shall record the subdivision in the county recorder's office at the subdivider's expense.

(Code 1985, § 158.39; Ord. No. 3065, 7-20-1987)

Sec. 133-80. - Final plans, deeds of easement, and deeds of dedication.

Final engineering plans and cross-sections for public streets, sewers, water lines, and electric lines shall be submitted to the board of public works and safety for approval and acceptance. Deeds of easement and deeds of dedication shall be submitted to the board for approval and acceptance.

(Code 1985, § 158.40; Ord. No. 3065, 7-20-1987)

Secs. 133-81—133-103. - Reserved.

ARTICLE IV. - SUBDIVISION REPLATS

Sec. 133-104. - Consultation required.

In order to make substantial changes to a previously approved subdivision, a subdivision replat may be submitted to the plan commission. Prior to the submission of an application for a subdivision replat, the subdivider shall prepare a preliminary plat and consult with the city planner. The consultation will foster an understanding between the subdivider and the staff which will help to alleviate future misunderstandings and reduce the possibility of extensive revisions. If the preliminary plat meets the provisions of this chapter, the city planner shall recommend to the subdivider that an application for subdivision replat be submitted to the commission.

(Code 1985, § 158.50; Ord. No. 3065, 7-20-1987)

Sec. 133-105. - Planned unit development encouraged.

The imaginative and creative use of planned unit developments is encouraged. The subdivision standards as set forth in this chapter shall not be altered by a planned unit development ordinance.

(Code 1985, § 158.51; Ord. No. 3065, 7-20-1987)

Sec. 133-106. - Name of subdivision.

The name of the subdivision shall not duplicate or closely approximate the name of any other subdivision within the city.

(Code 1985, § 158.52; Ord. No. 3065, 7-20-1987)

Sec. 133-107. - Preliminary plat contents.

Plat approval shall be in conformance with section 133-73.

(Code 1985, § 158.53; Ord. No. 3065, 7-20-1987)

Sec. 133-108. - Procedures for preliminary plat approval.

Procedures shall be in conformance with section 133-74.

(Code 1985, § 158.54; Ord. No. 3065, 7-20-1987)

Sec. 133-109. - Preliminary plat site analysis by staff.

Site analysis shall be made in conformance with section 133-75.

(Code 1985, § 158.55; Ord. No. 3065, 7-20-1987)

Sec. 133-110. - Final plat contents.

The drawing shall be prepared in conformance with section 133-76.

(Code 1985, § 158.56; Ord. No. 3065, 7-20-1987)

Sec. 133-111. - Procedures for final plat approval.

Procedures shall be in conformance with section 133-77.

(Code 1985, § 158.57; Ord. No. 3065, 7-20-1987)

Sec. 133-112. - Final plat site analysis by staff.

Site analysis shall be made in conformance with section 133-78.

(Code 1985, § 158.58; Ord. No. 3065, 7-20-1987)

Sec. 133-113. - Recording.

Recording shall be made in conformance with section 133-79.

(Code 1985, § 158.59; Ord. No. 3065, 7-20-1987)

Sec. 133-114. - Final plans, deeds of easement, and deeds of dedication.

Approval and acceptance shall be in conformance with section 133-80.

(Code 1985, § 158.60; Ord. No. 3065, 7-20-1987)

Secs. 133-115—133-141. - Reserved.

ARTICLE V. - SUBDIVISION RERECORDINGS

Sec. 133-142. - Application.

- (a) Subdivision rerecording may be submitted at the convenience of the subdivider in order to correct minor technical errors to a previously recorded subdivision or subdivision replat. The name of the subdivision shall not be altered.
- (b) The submission shall include:
 - (1) The original drawing and six copies of the recorded subdivision with a revision date drafted onto the original plat.
 - (2) A written comment in detailed form of the technical changes performed.
 - (3) The seal and certification of the surveyor preparing the drawing changes.
 - (4) Proof of ownership.
 - (5) The applicable fee as prescribed by the plan commission.

(Code 1985, § 158.70; Ord. No. 3065, 7-20-1987)

Sec. 133-143. - Procedures for approval.

- (a) After filing, the staff may, if necessary, refer the prints of the subdivision to the appropriate agencies as listed in section 133-74. The agencies shall review the subdivision and submit a report to the staff.
- (b) Upon receipt of the reports from those agencies, the staff shall review the subdivision.
- (c) If the staff finds that the subdivision complies with all regulations as set forth in this chapter, the plan commission president shall sign the plat. The staff shall then provide the subdivider with the original drawing with the commission's seal affixed thereto after the drawing has been rerecorded.
- (d) If the staff finds that the subdivision does not comply with all standards regarding approval of subdivisions, the commission president shall not sign the plat. The staff shall then release the original drawing to the subdivider.

(Code 1985, § 158.71; Ord. No. 3065, 7-20-1987)

Sec. 133-144. - Rerecording.

Within one week of staff approval and signature by the commission president, the staff shall rerecord the subdivision in the county recorder's office at the expense of the subdivider.

(Code 1985, § 158.72; Ord. No. 3065, 7-20-1987)

Secs. 133-145—133-171. - Reserved.

ARTICLE VI. - CONSTRUCTION OF INFRASTRUCTURE AND IMPROVEMENTS

Sec. 133-172. - Standards for infrastructure construction, inspection, and acceptance.

- (a) All required public infrastructure shall be designed and constructed in accordance with the latest standards as adopted by the board of public works and safety.
- (b) Construction of public infrastructure shall commence only after construction documents have been approved and accepted by the board of public works and safety.
- (c) Inspection of the construction of all required public infrastructure shall be approved by the city engineer, and then accepted by the board.
- (d) As-built plans for public infrastructure shall be accepted and approved by the board before the board shall accept the public infrastructure.
- (e) A one-year maintenance bond shall be submitted to the board for ten percent of the market value of the public infrastructure. The maintenance bond shall take effect on the date the board accepts the public infrastructure.

(Code 1985, § 158.80; Ord. No. 3065, 7-20-1987)

Sec. 133-173. - Required improvements.

- (a) All lot corners shall be marked by a monument constructed of ferrous pipe or bar at least 24 inches in length and one-half inch in diameter. The top of the monument is to be set level with the established grade of the ground.
- (b) Proper and adequate provision shall be made by the subdivider for drainage to provide for the disposal of stormwater. The developer shall sod all drainage swales that exceed a two percent gradient. The city engineer shall review the subdivision plans in order to assist in determining the location, capacity, and extent of drainage swales.
- (c) The subdivision shall be provided with a complete public or private sewer and water system. If the sewer system is to become part of the public system, the work shall be done in conformance with plans, profiles, and specifications prepared by a registered engineer or registered land surveyor, and all work shall meet the construction standards as adopted by the board and the state board of health prior to the commencement of construction.
- (d) If publicly owned sidewalks are to be constructed, the sidewalks shall be constructed on both sides of the street in conformance with standards as adopted by the board. The board may temporarily waive construction of public sidewalks in order to prevent damage to the sidewalks during construction of the buildings in the subdivision.
- (e) If publicly owned street lights are to be installed, the system shall be installed with underground wiring and shall be constructed in accordance with standards as adopted by the board.
- (f) Trees of a variety approved by the board may be planted in the tree lawn if the street will be publicly owned. Trees shall be spaced no closer than 40 feet apart. The trees shall be no less than two inches in caliper diameter, and shall

be located so as not to interfere with public lighting once the trees are mature.

- (g) If streets are to become publicly owned, they shall be constructed according to specifications and profiles designed by a registered engineer or registered land surveyor, and shall meet the latest standards as approved by the board. Horizontal and vertical alignment shall be reviewed with the city engineer.
- (h) If streets are to become publicly owned, curbs and gutters shall be constructed according to specifications and profiles designed by a registered engineer or registered land surveyor and meeting the latest standards as approved by the board. Privately owned streets shall be paved.

(Code 1985, § 158.81; Ord. No. 3065, 7-20-1987)

Secs. 133-174—133-199. - Reserved.

ARTICLE VII. - ADMINISTRATION

Sec. 133-200. - Amendments.

The plan commission may from time to time recommend changes to this chapter to the common council, in accordance with state statutes.

(Code 1985, § 158.90; Ord. No. 3065, 7-20-1987)

Sec. 133-201. - Variances.

- (a) Where the plan commission finds that extraordinary hardships or practical difficulties may result from strict compliance with these regulations, the commission may approve variances to these subdivision regulations so that substantial justice may be done and the public interest secured, provided that variances shall not have the effect of nullifying the intent and purpose of these regulations; and further provided the commission shall not approve variances unless it shall make findings based upon the evidence presented to it in each specific case that:
 - (1) Granting of the variance will not be detrimental to the public health, safety, or welfare, or injurious to other property.
 - (2) The conditions upon which the request for a variance is based are unique to the property for which the variance is sought and are not applicable generally to other property.
 - (3) Because of the particular physical surroundings, shape, or topographical conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from a mere inconvenience, if the strict letter of these regulations are carried out.
- (b) Financial hardship does not constitute grounds for a variance.
- (c) The variance shall not in any manner vary the regulations of the zoning regulations, the flood control regulations, the publicly owned infrastructure construction standards as adopted by the board, or the tree variety standards as adopted by the board.
- (d) A petition for any such variance shall be submitted in writing by the subdivider at the same time the preliminary plat is filed for consideration by the staff. The petition shall state fully the grounds for the application and all of the facts relied upon by the petitioner.
- (e) It is not within the jurisdiction of the board of zoning appeals to grant variances to the subdivision regulations.

(Code 1985, § 158.91; Ord. No. 3065, 7-20-1987)

Sec. 133-202. - Appeals.

- (a) Every decision of the plan commission shall be subject to review by writ of certiorari.
- (b) Any person aggrieved by a decision of the commission may present to the circuit or superior court of the county a petition, duly verified, setting forth that the decision is illegal in whole or in part, and specifying the grounds of the illegality. The petition shall be presented to the court within 30 days after the entry of the decision of the commission that is being challenged.

(Code 1985, § 158.92; Ord. No. 3065, 7-20-1987)

Sec. 133-203. - Notice of violation.

When written notice of a violation of any of the provisions of this chapter has been served by the city planner or his designated representative on the property owner, agent, occupant, contractor, or builder, the violation shall be discontinued immediately.

(Code 1985, § 158.93; Ord. No. 3065, 7-20-1987)

Sec. 133-204. - Right of injunction.

The city planner or his designated representative may institute a suit for injunction in the circuit court or superior court of the county to restrain an individual from violating the provisions of this chapter, and may also institute a suit for a mandatory injunction directing the removal of any structure or improvement.

(Code 1985, § 158.94; Ord. No. 3065, 7-20-1987)

Chapter 137 - ZONING

Footnotes:

--- (1) ---

State Law reference— *Zoning ordinance, IC 36-7-4-601 et seq.*

ARTICLE I. - IN GENERAL

Sec. 137-1. - Purpose.

The purpose of this chapter is to regulate and restrict the location and use of buildings, structures, and land for commerce, industry, residence, and for institutions and open spaces, or other specified uses; to regulate and limit the height and area of buildings and other structures; to regulate and to determine the size of yards and open spaces; to regulate and limit density of population; for these purposes, to divide the city into districts, and establishing the boundaries thereof; providing for changes in the regulations, restrictions, and boundaries of those districts; defining certain terms used herein; providing for enforcement; and imposing penalties for the violation of this chapter.

(Code 1985, § 159.001; Ord. No. 2988, 12-15-1986)

Sec. 137-2. - Preamble.

Pursuant to the authority conferred by Acts 1947, Chapter 174 of the State of Indiana, the acts amendatory thereto, in such case, made and provided and for the purpose of promoting and protecting the public health, safety, and general welfare of the inhabitants of the city by protecting and conserving the character and social and economic stability of the residential, commercial, industrial, and other use areas; by securing the most appropriate use of land; providing adequate light, air, and reasonable access; and facilitating adequate and economical provision of transportation, water, sewer, schools, recreation, and other public requirements; and by other means all in accordance with a comprehensive plan.

(Code 1985, § 159.002; Ord. No. 2988, 12-15-1986)

Sec. 137-3. - Interpretation.

- (a) In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements for the promotion of the health, safety, comfort, prosperity, or general welfare of the citizens of the city.
- (b) Where the conditions imposed by any provision 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.
- (c) This chapter is not intended to abrogate any easement, covenant, or any other private agreement, provided that where the regulations of the 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.
- (d) The provisions in this chapter are cumulative and additional limitations upon all other laws and ordinances heretofore passed or which may be passed hereafter, governing any subject matter in this chapter.

(Code 1985, § 159.004; Ord. No. 2988, 12-15-1986)

Sec. 137-4. - Definitions.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Access means the way by which pedestrians or vehicles shall have adequate and suitable ingress and egress to and from a land use.

Accessory building or use.

- (1) The term "accessory building or use" means one which:
 - a. Is subordinate to and serves a principal building or principal use;
 - b. Is subordinate in area, extent, or purpose to the principal building or principal use served;
 - c. Contributes to the comfort, convenience, or necessity of occupants of the principal building or principal use served; and
 - d. Is located on the same lot as the principal building or principal use served, with the single exception of such accessory off-street parking facilities as are permitted to locate elsewhere than on the same zoning lot with the building or use served.
- (2) The term "accessory building" or "accessory use" includes, but is not limited to:
 - a. A children's playhouse, garden house, gazebo, private greenhouse, and doghouse.
 - b. A garage, shed, or building for domestic storage.

- c. Incinerators.
- d. Storage of merchandise normally carried in stock on the same lot with any retail service or business use, unless that storage is prohibited by the district regulations.
- e. Storage of goods used in or produced by manufacturing activities, on the same lot or parcel of ground with those activities, unless that storage is prohibited by the district regulations.
- f. A nonpaying guesthouse or rooms for guests within an accessory building, if those facilities are used for the occasional housing of guests of occupants of the principal building and not for permanent occupancy by others as housekeeping units.
- g. Servants' quarters if part of an accessory garage, and solely for occupancy by a servant or household employee of the occupants of the principal dwelling, and the family of that servant or employee.
- h. Off-street motor vehicle parking areas, and loading and unloading facilities.
- i. Signs, other than advertising signs as permitted and regulated in each district incorporated in this chapter.
- j. Carports.
- k. Boathouse, if not more than ten feet high as measured from normal water level.
- l. Swimming pool, if private, being incidental to use by the owner and guests.
- m. Public utility communication, electric, gas, water, and sewer lines, their supports and incidental equipment.
- n. Athletic courts such as volleyball, softball, tennis, badminton and horseshoe.
- o. Wood decks if detached from the principal building.
- p. Antennas, including, but not limited to, AM, FM, UHF, VHF, CB, HAM, microwave, satellite dish, and all devices used for the reception of electronic communications of whatever nature.
- q. Amateur radio antennas.

Adult bookstore means any establishment having as a substantial or significant portion of its stock in trade books, magazines, other periodicals, videotapes, or motion pictures which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, or an establishment with a segment or section devoted to the sale, rental, or display of such material.

Adult business means and includes the following:

- (1) Adult bookstore;
- (2) Adult mini motion picture theater;
- (3) Adult motion picture theater; and
- (4) Class B cabaret.

Adult care home means the legal residence of a person in which accommodation, board, care, supervision, instruction, and/or maintenance of adult people unrelated by blood or marriage to the owner of the residence is provided for any part of the day for two or more consecutive weeks; provided, however, that the number of adults so provided for does not exceed four; and the number of people employed on the premises, by the adult care home, shall not exceed one at any one specific time. All adult care homes shall be inspected annually by the fire department, building department, and health department for fire, structural, and health safety. The owner of an adult care home, upon passing inspections by the fire, building, and health departments, shall be registered and licensed by the controller's office. The city licensing fee of \$75.00 shall be paid to the office of the city controller. Fees charged by the health department shall be paid directly to the health department.

Adult day care center means a commercial facility, other than an adult care home, which is used by a person to provide care and maintenance of adults, other than their own family for a part of the day for two or more consecutive weeks.

Adult mini motion picture theater means an enclosed building with a capacity of 150 or less persons, and predominantly used for presenting material 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 motion picture theater means an enclosed building with a capacity of more than 150 persons, and predominantly used for presenting material 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.

Alley means a public right-of-way which affords only secondary means of vehicular access to abutting property, and which is not over 20 feet in width.

Amateur radio antennas means any system of electrical conductors designed to receive and transmit on amateur radio frequencies as described by the Federal Communications Commission.

Amusement device means any mechanical or electrical device, which upon insertion of money, token slug, plate, disc or coin may be operated for use as a game, contests of skill or amusement, whether or not registering a score and which is neither a gambling device nor a device which tends to encourage gambling. This definition shall include, but not be limited to electronic video games, football game machines, basketball game machines, bowling game machines, shuffleboard game machines, card game machines, skill ball game machines, marble game machines, mechanical grab machines, or devices similar thereto under whatever game they may be indicated. This definition does not include jukeboxes, public telephones, or machines that sell consumable merchandise.

Antenna means any system of electrical conductors designed to receive communications from a broadcasting transmitter, transmitter relay, or a transmitter relay located in planetary orbit.

Apartment means a suite of rooms in a two-family dwelling, duplex, apartment complex, apartment house, or commercial building, in which each suite is arranged, intended, and designed to be occupied as a residence of a single family or individual, and which has only one complete kitchen and at least one complete bathroom.

Apartment complex means two or more apartment houses which are built on the same parcel of land.

Apartment house means a building or structure arranged, intended, and designed to be occupied by three or more families living independently of each other, and each including its own separate kitchen and bathroom accommodations. Rowhouses shall be considered as an apartment house.

Assembly hall means a building or portion of a building used for the gathering together of 50 or more persons for such purposes as entertainment, amusement, drinking or dining. Assembly halls include, but are not limited to, auditoriums, clubs, lodges, community centers, gymnasiums, and places of worship.

Automobile body shop means a facility which provides collision repair services, including body frame straightening, replacement of damaged parts and painting.

Automobile detailing means a facility which provides automobile-related services such as applying paint protectors, interior and exterior cleaning and polishing as well as the installation of after-market accessories such as tinting, auto alarms, spoilers, sunroofs, headlight covers, and similar items. Engine degreasing or similar automobile cleaning services shall not be included under this definition.

Automobile maintenance facility (quick service) means a facility which provides engine tune-ups and servicing of brakes, air conditioning, exhaust systems, oil change or lubrication; wheel alignment or balancing; or similar servicing, rebuilding or repairs that normally do not require significant disassembly of automobiles or the overnight storage of automobiles.

Automobile service shop means a facility which provides general repair, rebuilding or reconstruction of engines, motor vehicles or trailers, collision services including body, frame, or fender straightening or repair, overall painting or paint shop, steam cleaning or detailing.

Awning means a rooflike cover which projects from the wall of a building.

Balcony means a raised, railed platform projecting from the wall of a building.

Basement means a portion of the building located below the main story, partly underground, but having more than half of its clear floor to ceiling height below the average grade of the adjoining ground. A basement shall not be counted as a story for the purpose of height regulations.

Bed and breakfast means a dwelling providing lodging with meals, and having accommodations for less than 25 guests.

Best practical technology means the best practical technology as defined by the state department of environmental management and/or the Environmental Protection Agency.

Beverage shop means a retail store which sells packaged alcoholic or packaged nonalcoholic beverages.

Block means a tract of land bounded by any combination of the following:

- (1) Streets.
- (2) Railroad rights-of-way, when located at or above ground level, but not including sidings or spurs in the same ownership as the zoning lot.
- (3) Corporate boundary lines.
- (4) Major natural features such as a river or lake.

Board of zoning appeals means the board of zoning appeals of the city.

Boiling point means the boiling point of a liquid at a pressure of 14.7 psia (pounds per square inch absolute) and as defined in the state fire prevention code, as may be amended from time to time.

Branding establishment means any room or space where strike or draw branding is performed for compensation. Strike branding means a placement in, upon or under the skin of any indelible design, letter, scroll, figure, symbol or other mark placed with the aid of a steel or sheet metal pattern that is warmed, then struck against the skin. Draw branding means a placement in, upon or under the skin of any indelible design, letter, scroll, figure, symbol or other mark placed with the aid of steel surgical wire that is warmed and then used to draw upon the skin.

Buffer means an opaque fence, wall, earthen berm, or dense landscaping that moderates possible adverse impacts between two differing land uses.

Building means any structure designed or intended for the shelter, support, or enclosure of persons, animals, or property of any kind. When separated by party walls, without openings, from the ground up, each portion of a building, so separated, shall be deemed a separate building.

Building area means that portion of a lot remaining after required setbacks have been provided.

Building, attached, means a building which has any part of its exterior or bearing wall in common with another building or which is connected to another building by a roof.

Building height means the vertical distance measured from the established grade opposite the middle of the front wall of the building to the highest point of the roof. Whenever a building is located upon a terrace or slope, height may be measured from the average grade level of the building wall.

Building permit means a permit issued by the building commissioner or his designated representative for the erection or alteration of a building or structure.

Bulk storage tanks means storage tanks used for dispensing of flammable or combustible liquids or gases into smaller containers or for use in industrial processes and distributed to the process by closed circuit piping. Storage and use of fuel oil tanks and containers connected with oil-burning equipment as defined in the state fire prevention code are exempt.

Business means engaging in the purchase, sale, barter, or exchange of goods, wares, merchandise, or services.

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

Cabaret.

- (1) *Class A* means any establishment, not including a class B cabaret, where persons congregate for the purpose of eating, drinking, dancing, or singing, and where musical or live entertainment is provided.
- (2) *Class B* means any cabaret which features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers.

Campground means any tract of land used, designed, or designated to accommodate two or more camping parties, including cabins, tents, recreational vehicles, campers, or travel trailers.

Canopy means a rooflike cover which projects from the wall of a building.

Carport means a roofed structure designed and intended to shelter motor vehicles on residential property, with at least one of the four sides open to the weather.

Cellar means a portion of the building located below the main story, partly underground, but having more than half of its clear floor to ceiling height below the average grade of the adjoining ground. A cellar shall not be counted as a story for the purpose of height regulations.

Certificate of occupancy means a certificate issued by the building commissioner or his designated representative, authorizing occupancy of buildings or land under this chapter.

Child care home means a residential structure in which at least six children, not including the children for whom the provider is a parent, stepparent, guardian, custodian or other relative, at any time receive child care from a provider:

- (1) While unattended by a parent, legal guardian or custodian;
- (2) For regular compensation; and
- (3) For more than four hours but less than 24 hours in each of ten consecutive days per year, excluding intervening Saturdays, Sundays and holidays.

A child care home shall be allowed any combination of up to 16 fulltime and parttime children at any one time. A child for whom a provider of care in the child care home is a parent, stepparent, guardian, custodian or other relative, and is at least seven years of age, shall not be counted in determining whether the child care home is within the limit set forth in this definition.

Clinic for humans means a professional or medical office serving outpatients, and dealing with human physical, emotional, or psychological problems.

Clinic, medical, dental, or optical. See *Clinic for humans*.

Combustible liquid means a liquid having a flash point at or above 100 degrees Fahrenheit and as set forth in the state fire prevention code, as may be amended from time to time.

Commercial means engaging in the purchase, sale, barter, or exchange of goods, wares, merchandise, or services.

Commercial storage means the storage of goods or materials for sale in a business located on the premises.

Commission means the plan commission of the city.

Community center. See *Community recreational building*.

Community recreational building means a building built to the commercial building codes, which includes one or more of the following facilities: meeting rooms, recreation rooms, dining rooms, kitchen facilities, or day nurseries; all for the common use of the residents of the development.

Comprehensive car care center means a building which shall be fully enclosed and include full-service carwash, detailing, and lube/oil change combined under one contiguous roof with all washing, drying, detailing and lube/oil change performed inside the fully enclosed building. The facility is to consist of no less than 1.5 acres of land and at least 50 spaces of vehicle queuing before the carwash entrance. The carwash conveyor is to begin and end no closer than 40 feet from the inside of the entrance and exit doors of the facility so as to avoid unattractive display of washing and drying equipment and to assure appearance quality.

Comprehensive plan means a composite, or portion thereof, of the written and mapped proposals and recommendations relative to the growth and development of the city as adopted by ordinance of the common council.

Compressed gas means gas or mixture of gases or liquids as defined in the state fire prevention code, as may be amended from time to time.

Controlled uses means those uses of property which are recognized as having serious objectionable characteristics, particularly when several of them are concentrated, thereby having a deleterious effect upon the adjacent areas; and shall include the following:

- (1) Adult book store;
- (2) Adult motion picture theater;
- (3) Adult mini motion picture theater;
- (4) Class A cabaret;
- (5) Class B cabaret;
- (6) Establishment for the sale of beer or intoxicating liquor for consumption on the premises;
- (7) Pawnshop; and
- (8) Public dance hall.

Cul-de-sac means a street having one open end and being permanently terminated by a vehicle turnaround.

Curb means a structure located on either edge of the roadway, but within the right-of-way line, which is designed to channel stormwater to drainage inlets.

Curb cut means a lowered curb level which allows motorized vehicular ingress to, and egress from, property.

Day care center means a commercial facility, other than a child care home, which is run by a person licensed by a department of the state to provide care and maintenance for any number of children, other than the person's own children and the children of close relatives, for a part of the day for two or more consecutive days.

Development plan means a specific final site plan for the development of real property and approved in accordance with section 137-35 final site plan approval, as may be amended from time to time.

District means a section of the city for which uniform regulations governing the use, height, area, size, bulk, and density of buildings and land are herein established.

Drive-in restaurant means any establishment designed, constructed, altered, or used for the primary purpose of catering to those persons driving autos, where provisions are made for customers to drive across curb or sidewalk lines so as to be served food and beverages for consumption while seated in the auto on the drive-in restaurant premises. Inside restaurant facilities may be provided by drive-in restaurants.

Drive-through restaurant means any establishment wholly or partially designed, constructed, altered, or used for the purpose of catering to those persons driving automobiles, where provisions are made for customers to drive across curb or sidewalk lines so as to order and be served food or beverages while seated in the automobile; consumption takes place in the automobile on the drive-through restaurant premises or off the premises. Inside restaurant facilities may be provided by drive-through restaurants.

Dwelling means any building or portion thereof which is designed or used exclusively for residential purposes.

Dwelling, duplex, means a building designed for occupancy by no more than two families, in which separate living quarters are arranged side by side.

Dwelling, multiple, means an apartment house designed for occupancy by more than two families.

Dwelling, single-family, means a building designed for occupancy by no more than one family.

Dwelling, two-family, means an apartment house designed for occupancy by no more than two families, in which separate living quarters are arranged one over the other.

Easement means a portion or strip of land which is part of a lot or parcel, but which has been reserved for a specific use for access for persons, utilities, or services.

Erected means built, constructed, altered, reconstructed, moved upon, or any physical operations on the premises required for the construction. Excavation, fill, drainage, and the like shall be considered a part of erection.

Family means one or more persons living in the same housekeeping accommodations. The term "family" also means one or more individuals occupying premises as a single household with single kitchen accommodations.

Fence means a structure partially or completely surrounding a part of or the whole of a lot, which is intended to prevent intrusion from without and straying from within the area controlled.

Filling station means a building or other structure used primarily for the storage and sale of gasoline or other motor fuels, and for any uses accessory thereto.

- (1) The sale of lubricants, accessories, or supplies, the lubrication of motor vehicles, the minor adjustment or repair of motor vehicles, or the washing of motor vehicles are permitted accessory uses.
- (2) A public parking lot or public parking garage is not a permitted accessory use.
- (3) Uses permitted at a filling station do not include motor vehicle sales, major mechanical or body work, straightening of body parts, painting, welding, storage of automobiles not in operating condition, or other work involving noise, glare, fumes, smoke, or other characteristics to an extent greater than normally found in automotive service stations.
- (4) An automotive service station is not a body shop.

- (5) Aboveground storage tanks containing flammable liquids, LP gas and compressed gases for use as motor vehicle fuels other than motor vehicle fuels are permitted when constructed, installed and dispensed in accordance with the prevention code and/or the National Fire Code, as may be amended from time to time.

Fire department means the fire department of the city.

Fixture means the assembly that houses the lamp or lamps, and can include all or some of the following parts: housing, mounting bracket or pole socket, lamp holder, ballast, reflector or mirror and/or refractor of lens.

Flammable liquid means any liquid having a flash point at or above 100 degrees Fahrenheit and as subdivided in the state fire prevention code, as may be amended from time to time.

Flash point means the minimum temperature at which a liquid gives off vapors in sufficient concentrations for an ignitable mixture with air near the surface of the liquid and as defined in the state fire prevention code, as may be amended from time to time.

Flood area ratio means the floor area of a building on a zoning lot divided by the area of the zoning lot, or, in the case of a planned unit development, by the net site area. The floor area ratio requirements set forth in each zoning district shall determine the maximum floor area allowable for the building.

Floodplain means land subject to inundation by the maximum flood of reasonable regional expectancy (100-year flood) as determined by the state department of natural resources, division of water.

Floodway means the channel of a river or stream and those portions of the floodplain which are reasonably required to efficiently carry and discharge the floodwater of the river or stream, so designated by the Federal Insurance Administration.

Floodway fringe means that portion of a flood hazard area outside the limits of the floodway, so designated by the Federal Insurance Administration.

Fraternity, sorority means a building occupied by and maintained exclusively for students affiliated with an academic or professional college or university or other recognized institution of higher learning, and when regulated by the institution.

Freestanding sign means any permanently installed sign which is supported wholly by a foundation, uprights, braces, or poles in the ground.

Frontage means, in the case of an interior lot, a line separating the lot from the street; and in the case of a corner lot, the line separating the narrowest street frontage dimension from the street.

Game arcade means any establishment, owned and/or operated by a person, in which the principal business is to provide a location for the operation of amusement devices.

Garage, commercial, means any building or premises, except those defined herein as a private garage, used for the storage or servicing of vehicles.

Garage, private, means an accessory building which is no greater than 24 feet by 30 feet and 720 square feet, which is used for storage of automobiles, and has at least one automobile access door.

Garage sale. See *Rummage sales, private* and *Rummage sales, public*.

Gas bulk storage and wholesale distributing means bulk storage tanks of flammable and combustible liquids, compressed gases or liquefied petroleum gas (LP gas) for business use, retail sale, wholesale, and/or wholesale distributing; and which tanks shall be installed in accordance with the state fire prevention code and/or the National Fire Code, as may be amended from time to time.

Glare means light emitting from a luminaire with an intensity great enough to reduce a viewer's ability to see and in extreme cases to cause momentary blindness.

Grade, established, means the elevation of a street grade in front of a property as fixed by the city engineer.

Greenbelt or *buffer strip* means a strip of land of definite width and location reserved for the planting of shrubs or trees to serve as an obscuring screen or buffer strip in carrying out the requirements of this chapter.

Gross floor area means the sum of the gross horizontal areas of all the floors of all buildings on the lot, measured from the exterior walls or from the centerline of walls separating the buildings, including any area used for residential, commercial, or industrial purposes, but not including a basement or portion of a basement used for storage or housing of mechanical or central heating or air conditioning equipment, unfinished attics, garages, outside balconies, or any floor area within a building which is used for off-street parking.

Gross weight means the net weight of a vehicle plus the net design cargo weight from the manufacturer's specifications for the vehicle.

Group home means a residential facility licensed by a department of the state that provides residential services for not more than eight developmentally-disabled persons, and such staff, not to exceed two at any one time, as are necessary to adequately manage the home.

Half story means a story which is situated in a sloping roof; or a basement in which half of the vertical distance is below the established grade.

Hardwood trees includes oak, walnut, ash, hickory, beech, hard maple, sycamore, and birch trees.

Health facility.

- (1) The term "health facility" means any building, structure, institution, or other place for the reception, accommodation, board, care, or treatment extending beyond a continuous 24-hour period in any week of five or more individuals in need or desire of such services by reason of physical or mental illness, infirmity, or impairment.
- (2) For purposes of this chapter, the terms "health facility" and "adult care home" do not include the following uses:
 - a. In the case of reception and accommodation, board, care or treatment in a household or family, for compensation, of a person related by blood to the head of household or family (or to the spouse of the head of household or family) within the degree of consanguinity of first cousins, the premises in which the person received, boarded, accommodated, cared for, or treated do not constitute a health facility;
 - b. Hotels or motels when used as such;
 - c. Hospitals;
 - d. Day care centers; and
 - e. Residential facility for the developmentally disabled.

Height of building means the vertical distance, measured from the established grade opposite the middle of the front wall of the building to the highest point of the roof. Whenever a building is located upon a terrace or slope, height may be measured from the average grade level of the building wall.

Historic review board means the historic review board of the city.

Home occupation means an occupation or profession carried on by a member of the immediate family residing on the premises, in connection with which there is used no sign other than a nameplate of no more than one square foot in area that is flush-mounted to an outside wall. A home occupation is one in which no commodity is stored or sold on the premises; no person is employed there other than a member of the immediate family residing on the premises; and no mechanical equipment is used, except such as is permissible for purely domestic or household purposes. A residential building shall not be structurally altered or physically altered in order to accommodate a home occupation. The exterior of a residential building shall not be painted, structurally altered, or physically altered to indicate from the exterior that the building is being utilized for any purpose other than that of a residential dwelling.

Hospital means a facility in which patients are rendered medical or surgical care on an episodic basis with the standard provision of continuous 24-hour medical care on an inpatient basis.

Hospital, animal, means a medical facility for the treatment of domestic animals and birds. For purposes of this chapter, an animal hospital shall also be considered a veterinary clinic.

Hotel means a building designed or occupied as a temporary abode and where lodging is provided with or without meals for 25 or more guests; a building in which lodging is provided and offered to the public for compensation and which is open to transient guests.

Improvement location permit means a permit issued by the city planner or his designated representative stating that the proposed erection, construction, enlargement, or moving of a building or structure referred to therein complies with the provisions of this chapter.

Indirect light means direct light that has been reflected or has scattered off other surfaces.

Indoor shooting gallery means a building open to the general public wherein the shooting of firearms is permitted for the practice of marksmanship, except indoor shooting galleries maintained or operated by any police department, which are not available to the general public.

Industry means any use in which the major activity is the treatment, processing, rebuilding, repairing, or bulk storage of material, products, or items, and where the finished product is not acquired by the ultimate user on the premises.

Institution means a building or premises occupied by a nonprofit corporation or a nonprofit establishment for public use.

Kenel means any lot or premises on which four or more animals, at least four months of age, are kept.

Lamp means the component of a luminaire that produces the actual light.

Light trespass means the shining of light produced by a luminaire beyond the boundaries of the property on which it is located.

Liquefied petroleum gas (LP gas) means any material which is composed predominantly of the following hydrocarbons or mixture of the following hydrocarbons: propane, propylene, butane (normal butane or isobutane) and butylenes.

Loading space, off-street, means space logically and conveniently located for both pick-ups and deliveries, and accessible to such vehicles when required off-street parking spaces are filled. Required off-street loading space is not to be included as off-street parking space in the computation of required off-street parking space.

Lot means a parcel of land occupied or suitable for occupancy by one main building or use, together with its accessory buildings or uses, and including the open spaces required under these regulations. A lot shall be held under common ownership and shall be so recorded in the office of the county recorder. A lot may include contiguous parts of lots or a combination of

more than one lot when contiguous to one another and used as one parcel. Open spaces necessary for compliance with these regulations for one building or use shall not be again counted as open space required for any other building or use. The word "lot" includes the words "parcel" and "tract."

Lot, corner, means a lot at the junction of two streets.

Lot depth means the mean horizontal difference between the front and rear lot lines.

Lot, interior, means a lot with frontage on one street.

Lot line means the property boundary lines of a lot. (See diagrams in the appendix to this chapter.).

Lot line, exterior side, means a lot line which is perpendicular or approximately perpendicular to the front lot line, which separates the longest street frontage dimension of a corner lot from the street.

Lot line, front, means, in the case of an interior lot, a lot line separating the lot from the street; and in the case of a corner lot, the lot line separating the narrowest street frontage of a lot from the street.

Lot line, interior side, means a lot line which is perpendicular or approximately perpendicular to the front lot line, which separates two lots.

Lot line, rear, means a lot which is opposite and most distant from the front lot line, and in the case of an irregular or triangular shaped lot, a line ten feet in length within the lot parallel to and at the maximum distance from the front lot line.

Lot of record no. means a lot which is a part of a subdivision, the map or plat of the subdivision having been recorded in the office of the county recorder, for which a deed has been recorded in the office of the county recorder.

Lot, through, means a lot having frontage on two parallel or two approximately parallel streets.

Luminaire means a complete lighting system and includes a lamp and a fixture.

Manufactured home means a residential dwelling unit which is fabricated in one or more modules at a location other than the homesite, by assembly-line type production techniques.

- (1) *Manufactured home, type I*. A manufactured home which is more than 23 feet wide, at least 950 square feet of occupied area, is installed on a permanent masonry foundation, meets the required aesthetic standards for roofing and siding, and exhibits stick-built single-family design characteristics.
- (2) *Manufactured home, type II*. A manufactured home which does not meet one or more of the requirements for a type I manufactured home as defined in this section.
- (3) *Manufactured home, type III*. A manufactured home which does not meet any of the requirements for a type I manufactured home as defined in this section.

Manufactured home park means a business which provides rented or leased space for the placement of type II and/or type III manufactured homes for residential purposes.

Manufactured home subdivision means a subdivision providing lots for sale for the placement of type II and/or type III manufactured homes for residential purposes.

Medical clinic means a professional or medical office serving outpatients and dealing with human physical, emotional, or psychological problems.

Mobile home. See *Manufactured home*.

Motel means a building designed or occupied as a temporary abode and where lodging is provided with or without meals for 25 or more guests. A building in which lodging is provided and offered to the public for compensation and which is open to transient guests and catering primarily to the public traveling by vehicle.

Nonconforming means any building or land use which at the time of the passing of the ordinance from which this chapter is derived or an amendment thereto does not conform to the regulations of the zoning district in which it is situated.

Nonconforming lot means a lot of record which does not conform to the lot area or lot width regulations of this chapter.

Noxious matter means offensive to the human senses.

Nursing facility means a facility licensed by the state and/or the United States for the accommodation, board, care, supervision, instruction and/or maintenance of five or more people.

Official zoning map means the official maps showing the location and boundaries of the districts established by this chapter. The official zoning map, together with all the explanatory matter thereon and all amendments thereto, is adopted by reference and is a part of this chapter. The official zoning maps shall be quarter-section maps which are kept and maintained by the city planner or his designated representative.

Off-premises sign means any structure or part thereof on which lettered or pictorial matter is displayed for off-premises advertising purposes.

On-premises sign means any sign identifying or advertising a business, person, activity, good, product, or service located on the premises where the sign is installed and maintained; also known as appurtenant or accessory signs.

Open space means the portion of the lot that is landscaped or that is usable and maintained for recreational purposes, including lawns and patios.

Outdoor lighting means the illumination of an outside area or object by any manmade device located outdoors that produces light by any means.

Parking lot means a durable, paved parcel of land devoted to unenclosed parking spaces for vehicles for compensation or otherwise.

Parking space means a durable, paved, surfaced area enclosed in a principal building, in an accessory building, or unenclosed, which is sufficient in size to store one standard automobile, and which comprises an area of not less than 180 square feet.

Pavement means a uniform, hard, and durable material composed of cementations concrete or asphaltic concrete.

Plan commission means the plan commission of the city.

Planned unit development (PUD) means a residential, commercial, or industrial development unit, or combination thereof, of a tract of land under single ownership or management, according to an approved final site development plan.

Plot means a parcel of land occupied or suitable for occupancy by one main building or use, together with its accessory buildings or uses, and including the open spaces required under these regulations. A lot shall be held under common ownership and shall be so recorded in the office of the county recorder. A lot may include contiguous parts of lots or a combination of more than one lot when contiguous to one another and used as one parcel. Open spaces necessary for compliance with these regulations for one building or use shall not be again counted as open space required for any other building or use.

Pool hall or billiard hall means any establishment, the principal business of which is to provide a location for individuals to engage in the games or practice of the game of pool, billiards, or similar games played on a pool table or a billiard table.

Porch means a roofed-over structure projecting out from the wall of a principal structure and open to the weather.

Principal use means the main use of a building, distinguished from an accessory building or accessory use.

Professional office means an office used in the practice of a profession.

Public right-of-way means land which is subject to use by the general public for general transportation purposes or conveyance of utilities, including, but not limited to, streets, alleys, boulevards, highways and roads, and other easements and rights-of-way, whether or not, in fact, improved or actually used for such purposes.

Public utility means any person, firm, or corporation, municipal department, board, or commission duly authorized to furnish and furnishing under federal, state, or municipal regulations to the public natural gas, steam, electricity, sewage, communication, telegraph, transportation, or water.

Recreational vehicle includes boats, motor homes, travel trailers, campers, and other similar items designed and intended specifically for temporary living such as travelling, camping, and vacationing, whether self-propelled or towed. All recreational vehicles shall be stored in the rear yard area in all zoning districts, and shall not be used for residential purposes.

Right-of-way line means the dividing line between a lot and a right-of-way.

Rummage sales, private, means a temporary sale of used clothing or household items conducted only by the immediate members of one or two families, in a residence, private garage, porch, or yard.

Rummage sales, public, means a temporary sale, conducted by a nonprofit organization such as a church or club, where the members of the group bring articles or items to a central building to be sold to raise money for use by the organization.

Salvage material storage yard means an open-air lot where any solid waste, salvage metals, salvage electrical, plumbing, heating, or air conditioning equipment, salvage materials, house or building salvage materials, salvaged structural steel, vehicles in an inoperable condition, vehicle parts, and salvaged machinery is stored, bought, sold, exchanged, baled, cleaned, or processed.

Scarifying establishment means any room or space where scarifying is performed for compensation. Scarifying means a placement in, upon or under the skin of any indelible design, letter, scroll, figure, symbol or other mark placed with the aid of a surgical scalpel or other instruments.

School means an elementary school, middle school, high school, college, or university.

Screening means a berm, hedge, fence, or wall, or any combination thereof, used to reduce visual and audible effects of adjoining uses.

Self-service storage facility, mini storage means a building consisting of individual, compartmentalized, self-contained and controlled-access stalls or lockers of various sizes that are leased or owned for the storage of business or household goods.

Setback line means lines which are parallel to the lot lines, in which no building may project closer to the lot lines. (See diagrams in the appendix to this chapter.)

Setback line, exterior side, means the minimum horizontal distance between the exterior side lot line and the fascia board or parapet of the side wall of a building, excluding open steps and stoops.

Setback line, front, means the minimum horizontal distance between the front lot line and the fascia board or parapet of the side wall of a building, excluding open steps and stoops.

Setback line, interior side, means the minimum horizontal distance between the interior side lot line and the fascia board or parapet of the side wall of a building, excluding open steps and stoops.

Setback line, rear, means the minimum horizontal distance between the rear lot line and the fascia board or parapet of the rear wall of a building, excluding open steps and stoops.

Shopping center means a group of three or more contiguous stores or buildings which are planned and developed, owned, or managed as a unit, with off-street parking and loading provided on the premises.

Should indicates a preferred requirement.

Sign means a name, identification, description, display, or illumination which is affixed to, painted, or represented directly or indirectly upon a building (including window area), structure, or land which is in view of the general public and which directs attention to a person, place, commodity, activity, institution, organization, or business.

Specified anatomical areas means and includes the following:

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

Specified sexual activities means and includes the following:

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

Story means that portion of a building between the surfaces of a floor and the surface of the floor above, and, if there is no floor above, to the ceiling above.

Story, half, means a story which is situated in a sloping roof; or a basement in which half of the vertical distance is below the established grade.

Street means a public right-of-way other than an alley.

Structural alteration means any change in the supporting members of a building, such as bearing walls, columns, beams, or girders, or any substantial change in the roof or exterior walls.

Structure means an edifice or building of any kind, or any piece of work artificially built up or composed of parts jointed together in some definite manner. Anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground. Advertising signs, billboards, backstops, tennis courts, antennas, spires, belfries, cupolas, water towers and tanks, chimneys, ventilators, swimming pools, and other appurtenances shall be included in this definition.

Subdivision means all divisions of a tract or parcel of land into two or more lots, selling immediately or in the future.

Swimming pool means a structure built up as an artificial or semiartificial basin or tank, including all appurtenant equipment and facilities, for the purpose of impounding water to a depth of more than 2½ feet for the immersion or partial immersion therein of human beings.

Tattoo establishment means any room or space where tattooing is performed for compensation.

Tattooing means a placement in human tissue of any indelible design, letter, scroll, figure, symbol or other mark placed with the aid of needles or other instrument; or any design, letter, scroll, figure or symbol done by scarring upon or under the skin.

Tavern means a public establishment where food is sold and served, but where the principal business is the selling and serving of alcoholic beverages for consumption on the premises.

Temporary means a period of time less than or equal to 365 consecutive days.

Temporary building means a building which is used by a contractor during the construction or reconstruction of a principal building, and which is located on the same lot as the principal building under construction or reconstruction.

Toxic materials means those pollutants or combinations of pollutants, including disease-causing agents as defined by the Environmental Protection Agency and/or the state, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will, on the basis of information available, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in those organisms or their offspring.

Trade school means a privately-owned school not conducted by or under the sponsorship of an organization, which teaches industrial or technical arts.

Truck terminal means any place where trucks are stored, serviced, or dispatched, or where freight is brought and dispatched by truck.

Used or occupied includes the words, "intended, arranged, or designed to be used or occupied."

Variance means a variation of the use, lot size, or width requirements, yard requirements, height restrictions, sign regulations, parking and loading requirements, or other development standards from those set forth in this chapter, granted by the board of zoning appeals in accordance with the provisions of this chapter, where strict enforcement of the terms of this chapter would create undue hardship, owing to the unique characteristics of the property for which the variance is sought.

Vehicle means any device used for carrying passengers, goods, or equipment.

Vehicle wrecking yard means any place where two or more motor vehicles not in running condition or otherwise legally operable on public ways, or parts thereof, are stored in the open and are not being restored to operation, or any land, building, or structure used for wrecking or storing of such motor vehicles or parts thereof, including farm machinery stored in the open and not being restored to operating condition.

Vehicles sales lot means any premises where three or more motor vehicles are offered for sale or sold during any calendar year.

Yard means an open space area between the lot lines and the required setback lines. (See diagrams in the appendix to this chapter.).

Yard, exterior side, means an open space area between the exterior side lot line and the required exterior side building setback line, extending between the front building setback line and the rear building setback line.

Yard, front, means an open space area between the front lot line and the required front building setback line, extending across the full width of the lot.

Yard, interior side, means an open space area between the interior side lot line and the required interior side building setback line, extending between the front building setback line and the rear building setback line.

Yard, rear, means an open space area between the rear lot line and the required rear building setback line, extending across the full width of the lot.

Yard sale. See Rummage sales, private and Rummage sales, public.

Zone means a section of the city for which uniform regulations governing the use, height, area, size, bulk, and density of buildings and land are herein established.

Zone map. See Official zoning map.

(Code 1985, § 159.012; Ord. No. 2988, 12-15-1986; Ord. No. 3160, 5-6-1988; Ord. No. 3263, 4-17-1989; Ord. No. 3466, 3-4-1991; Ord. No. 3614, 8-3-1992; Ord. No. 3662, 3-1-1993; Ord. No. 3686, 5-3-1993; Ord. No. 3698, 6-21-1993; Ord. No. 3725, 8-2-1993; Ord. No. 3838, 6-20-1994; Ord. No. 3934, 5-8-1995; Ord. No. 4020, 2-20-1996; Ord. No. 4078, 8-5-1996; Ord. No. 4098, 10-7-1996; Ord. No. 4170, 5-19-1997; Ord. No. 4302, 8-17-1998; Ord. No. 4303, 8-17-1998; Ord. No. 4401, 6-21-1999)

Sec. 137-5. - Scope of regulations.

- (a) All buildings or structures erected hereafter, all uses of land, buildings, or structures established hereafter, all structural alteration, enlargement, or relocation of existing buildings or structures occurring hereafter, shall be subject to all regulations of this chapter which are applicable to the zoning districts in which the buildings, structures, uses, or land shall be located.
- (b) 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 this chapter is derived, and provided that construction is begun within six months of the effective date and diligently prosecuted to completion, that building or structure may be completed in accordance with the approved plans on the basis of which the building permit has been issued, and further may, upon completion, be occupied under a certificate of occupancy by the use for which originally designated, subject thereafter, if applicable, to the provisions herein for nonconforming buildings, structures, and uses.

(Code 1985, § 159.006; Ord. No. 2988, 12-15-1986)

Sec. 137-6. - Establishment and control.

- (a) *New uses.* In all districts, all buildings or structures erected hereafter, all uses of land, buildings, or structures established hereafter, all structural alteration, enlargement, or relocation of existing buildings or structures occurring hereafter shall be subject to all regulations of this chapter which are applicable to the zoning districts in which the buildings, structures, uses, or land shall be located, unless a variance is granted by the board of zoning appeals.
- (b) *Existing uses.* In all districts, after the effective date of the ordinance from which this chapter is derived, the existing use of any existing lot, building, or other structure may be continued, changed, enlarged or extended, reconstructed, or relocated only in accordance with all applicable regulations of this chapter.

(Code 1985, § 159.007; Ord. No. 2988, 12-15-1986)

Secs. 137-7—137-34. - Reserved.

ARTICLE II. - ADMINISTRATION

DIVISION 1. - GENERALLY

Sec. 137-35. - Final site plan approval.

- (a) Applications for final site plan approval of all new structures in all zoning districts shall adhere to the following criteria and approval process, with the exception of the following structures and districts:
 - (1) Detached single-family dwellings;
 - (2) Two-family dwellings or duplex dwellings;

- (3) Detached single-family type II and III manufactured dwellings;
- (4) Accessory buildings or uses;
- (5) The S-2 planned unit development district;
- (6) New paved parking lots or new additions to existing paved lots with an area not to exceed 9,600 square feet in all zoning districts;
- (7) New additions with an area of 7,500 square feet or less if the existing structure is 15,000 square feet or less in all industrial districts; and
- (8) New additions to existing structures if the area of the addition is:
 - a. 50,000 square feet or less; or
 - b. Ten percent or less of the area of the existing structures.

Subsection (a)(8)a of this section shall only be applicable to the multiple-family residential district, the extensive open space and public use district, all commercial districts, and all industrial districts.

- (b) In order to decrease time delays for certain projects, applications for final site plan approval for the following listed structures shall not be required to be filed with the plan commission but shall be submitted to the city planner for administrative review. The final site plan shall include the written and graphic information listed in subsections (c)(1) through (15) and (d)(1) through (4) of this section. If the final site plan adheres to those written and graphic information requirements, the city planner shall approve the final site plan and shall issue an improvement location permit. All administrative approvals shall be reported by memorandum to the plan commission at the next regularly scheduled plan commission meeting. The applicant may seek final site plan approval from the plan commission, but the decision rests solely with the applicant. The following is a list of structures that shall adhere to this approval.
 - (1) New structures of 8,000 square feet or less in the C-1 general commercial district, C-3 city center commercial district, C-5 neighborhood commercial district, and C-6 linear office commercial district.
 - (2) New structures of 15,000 square feet or less in all industrial districts.
 - (3) New additions to existing structures if the area of the addition is greater than 50,000 square feet and less than or equal to 100,000 square feet in the multiple-family district, the extensive open space and public use district, all commercial districts, and all industrial districts.
- (c) All applications shall be submitted to the plan commission and shall be accompanied by a site plan with the following written and graphic information required.
 - (1) Current and correct description of property.
 - a. Site plan drawings must be to scale not less than 1 inch = 100 feet and submitted in standard drawing format of not less than 18 inches by 24 inches or greater than 30 inches by 42 inches.
 - b. Site plan drawings must show the following information.
 - 1. Property boundary lines with dimensions, dimension setback lines, street rights-of-way lines, and any known existing easements.
 - 2. Vicinity map showing surrounding streets.
 - 3. Location, size and other pertinent data of all proposed improvements, including location and size of buildings, parking and drives, open areas, screening/fencing, and landscaping.
 - 4. Tabulated land use data, including at least:
 - (i) Land coverage.
 - A. Buildings.

B. Parking and drives.

C. Open space.

(ii) Parking ratio.

5. Name, address and telephone number of property owner.

6. Name, address and telephone number of person preparing site plan drawing.

- (2) The documented height, area, and developmental standards as required by the pertinent zoning district.
 - (3) A statement detailing the location, size, and material to be used for both sanitary sewer disposal and water supply.
 - (4) A storm drainage system designed to retain all stormwater on site, with a minimum storage capacity based on a 100-year storm frequency, 24-hour duration with post-developmental discharge not exceeding undeveloped discharge and time of travel. In the event a natural waterway is accessible to the site as a stormwater outlet and all approvals are obtained from the appropriate state and federal agencies, a ten-year undeveloped release rate will be allowed with the greatest storage volume of the 100-year storm iteration being satisfied in the stormwater management design.
 - (5) The location, legal description, and legal documents of all rights-of-way or utility easements to be dedicated to the city.
 - (6) Locations and dimensions of proposed curb cuts, driveways, private entrances, acceleration/deceleration lanes, passing blisters and documentation that the curb cut, driveway, private entrances, acceleration/deceleration lanes, and passing blisters shall be constructed according to section 54-19, as may be amended from time to time.
 - (7) Plans, profiles, and typical sections of required service roads, passing blisters, or acceleration/deceleration lanes.
 - (8) Location and description of any traffic hazard or existing curb cut located on either side of the roadway within 100 feet of the property line of the subject property.
 - (9) Location and description of all publicly-owned fire hydrants, storm inlets, utility poles, and the like that are located on the proposed site or within 100 feet of the property line of the subject property.
 - (10) Location of existing and proposed plant materials and landscaping.
 - (11) A uniform grid of existing and finish grade elevations and contours based on U.S.G.S. sea level datum for all parcels and/or lots.
 - (12) Delineation of all phases of proposed developments.
 - (13) Building facade rendering, in order to assure that the building design and the type of construction shall reasonably relate to the surrounding neighborhood.
 - (14) Payment of filing fees as prescribed by the plan commission.
 - (15) Nine copies of the site plan shall be filed.
 - (16) All final site plans shall meet the provisions of the comprehensive plan.
- (d) The department of city planning staff shall distribute the site plan to the following agencies and in accordance with the following.
- (1) Fire protection information must be approved in writing by the division of fire prevention in the following manner:
 - a. Discuss with the division of fire prevention requirements for fire protection;
 - b. Determine whether any new fire hydrants are required; and
 - c. Determine whether additional water main capacity is required.
 - (2) Water service information must be approved in writing by the city water department in the following manner:

- a. Discuss with the city water department requirements for water service;
 - b. Determine whether existing, city-owned water mains have adequate capacity to handle the development's load;
 - c. Determine if the city will require the developer to oversize a new water line extension; and
 - d. Determine whether existing easements are adequate to handle the new main or whether new dedicated easements will be required;
 - e. If the new main will be deeded to the city, as-built plans shall be provided if constructed by a private contractor.
- (3) Sanitary sewer service information must be approved in writing by the department of city engineering in the following manner:
- a. Discuss with the department of city engineering requirements for service, including tap-in fees and applicable land improvement charges;
 - b. Determine that existing city-owned sewers have adequate capacity to handle the development's load by submission of information on the projected volume of waste to be generated by proposed project;
 - c. Determine whether the city will require the developer to oversize a new sanitary sewer extension;
 - d. Discuss whether existing easements are adequate to handle the new sewer or whether new dedicated easements will be required;
 - e. Submit as-built plans and infiltration/exfiltration and deflection test results, acceptable to the city engineer, for all sanitary sewers; and
 - f. Obtain the required state department of environmental management permits prior to commencing construction of sanitary sewers.
- (4) Electrical service information must be approved in writing by the electric department in the following manner:
- a. Discuss with the electric department requirements for electric service;
 - b. Determine whether existing city-owned electric lines have adequate capacity to handle the development's load;
 - c. Determine if the city will require the developer to oversize a new electric line extension; and
 - d. Discuss whether existing easements are adequate to handle new lines or whether new dedicated easements will be required.
- (e) No site plan shall be placed on the agenda of the plan commission for consideration until all of the foregoing requirements of the applicant and of the city planning staff have been fully met.
- (f) Written findings of fact must be completed for each final site plan. Within one week of plan commission approval of the final site plan, the final site plan shall be recorded with the county recorder's office by the staff of the department of city planning, at the expense of the developer.
- (g) In all cases where a final site plan is submitted for approval, the person responsible for the payment for construction in conformity with said site plan shall, contemporaneously, submit in a signed statement to the plan commission his specific commitments with respect to lighting, screening, plantings, and all other factors which the applicant has, is, or will be requesting the commission to consider in granting final site plan approval. Any and all final site plan approvals shall be contingent upon the applicant fully completing those written commitments. The plan commission, acting through the city planner, may require a performance bond, money deposit, or other suitable guarantees that written commitments shall be satisfactorily completed. The plan commission may refuse to hear new matters from an

applicant in default with respect to completion of previous commitments. The commitment shall be recorded by the city planner or his designated representative with the county recorders office within ten days and all recording fees shall be paid by the individual or corporate entity.

(Code 1968, tit. 580, art. XIX, § 4; Code 1985, § 159.275; Ord. No. 1378, 11-21-1966; Ord. No. 2364, 5-5-1980; Ord. No. 3159, 5-4-1988; Ord. No. 3263, 4-17-1989; Ord. No. 3429, 10-15-1990; Ord. No. 3459, 2-4-1991; Ord. No. 3774, 11-1-1993; Ord. No. 3935, 5-8-1995; Ord. No. 4020, 2-20-1996)

Sec. 137-36. - Improvement location permit required.

- (a) An improvement location permit (ILP) shall be required and shall have been issued by the city planner or his designated representative prior to the erection, exterior alteration, exterior reconstruction, change of use, and/or addition to any structure, building, accessory structure or use, billboard, or swimming pool. No building permit shall be issued by the building commissioner or his representative unless an improvement location permit has been issued.
- (b) An application for an improvement location permit shall be accompanied by a site plan showing the following:
 - (1) The boundaries of the subject property, all existing easements, section lines, and property lines, existing streets, buildings, watercourses, waterways, and lakes, and other physical features in or adjoining the property;
 - (2) Location and dimensions of proposed buildings and structures, including height, bulk, setbacks, open space, screening, landscaping, outdoor lighting, and signs; and
 - (3) Location, dimensions, and type of construction of proposed streets, alleys, driveways, curb cuts, entrances and exits, and loading and parking areas, including numbers of parking and loading spaces.
- (c) The city planner or his designated representative shall approve or deny an application for an improvement location permit, and issue the permit or address the reasons for its denial in writing to the applicant.
- (d) An improvement location permit shall become null and void unless the building permit shall have been issued and work thereon is substantially underway within one year of the issuance of the improvement location permit.

(Code 1985, § 159.276; Ord. No. 2988, 12-15-1986; Ord. No. 3698, 6-21-1993)

Sec. 137-37. - Certificate of occupancy required for buildings.

No building hereafter erected or structurally altered shall be occupied or used until a certificate of occupancy has been issued by the building commissioner or his designated representative. The certificate of occupancy shall not be issued by the building commissioner or his designated representative unless the building meets all provisions of this chapter, or until the board of zoning appeals has granted a variance from specific requirements to this chapter. If the building meets all provisions of this chapter, or the board of zoning appeals has granted a variance from specific requirements of this chapter, the certificate of occupancy shall be issued within ten consecutive days.

(Code 1985, § 159.277; Ord. No. 2988, 12-15-1986)

Sec. 137-38. - Certificate of occupancy required for land.

No change of the use of land shall occur until a certificate of occupancy has been issued by the building commissioner or his designated representative, unless the use of the land meets all provisions of this chapter. If the use of the land meets all provisions of this chapter, the certificate of occupancy shall be issued within ten consecutive days.

(Code 1985, § 159.278; Ord. No. 2988, 12-15-1986)

Sec. 137-39. - Administration vested.

The administration of this chapter shall be vested with the city planner or his designated representative.

(Code 1985, § 159.279; Ord. No. 2988, 12-15-1986; Ord. No. 3116, 11-17-1987)

Sec. 137-40. - Powers and duties of city plan commission.

The city plan commission shall have the following powers and duties:

- (1) To initiate proposals to amend, supplement, change, or repeal this chapter.
- (2) To review an ordinance for amendment, supplement, change, or repeal of this chapter proposed by other than the plan commission.
- (3) To review and approve, modify, or deny the final site plan for a rezoning amendment approved subject to final site plan approval.
- (4) To review and make a recommendation to the city council relative to petitions for rezoning.
- (5) To hold public hearings in matters pertaining to applications for amendment, and submit reports to the city council setting forth its findings and recommendations.
- (6) To initiate, direct, and review, from time to time, studies of the provisions of this chapter, and to make reports of its recommendations to the city council.
- (7) To provide clerical and technical assistance as may be required by the board of zoning appeals in exercise of its duties.

(Code 1985, § 159.280; Ord. No. 2988, 12-15-1986)

State Law reference— Establishment of plan commission, IC 36-7-4-202.

Sec. 137-41. - Amendment of this chapter and the zoning map.

- (a) The city council may, from time to time, amend, supplement, change, modify, or repeal this chapter, including the zoning map, by proceeding in the manner prescribed herein.
- (b) A zoning map amendment or an amendment to this chapter may be initiated by:
 - (1) The city council.
 - (2) The plan commission.
 - (3) The department of city planning.
 - (4) Any individual, corporation, or agency, other than those listed in subsection (b)(1), (2), or (3) of this section.
- (c) Except for subsections (b)(1), (2), and (3) of this section, any request for an amendment shall be submitted in writing to the plan commission, along with payment of fees established herein.
- (d) The city council shall not consider any proposed amendment to the zoning map which is substantially the same as any other proposed amendments submitted within the previous 12 months and which has been rejected by the city council.
- (e) Commission hearings on this chapter: The plan commission shall prepare recommendations regarding the boundaries of districts, and the regulations and restrictions to be enforced in all districts. The commission shall prepare the report on its own initiative and submit to the city council.
- (f) When considering a change to the zoning map or to this chapter, the plan commission and city council shall pay

reasonable regard to:

- (1) Existing conditions;
- (2) The character of buildings erected in each district;
- (3) The most desirable use for which the land in each district may be adapted; and
- (4) The conservation of property values throughout the municipality or county;
- (5) The recommendation of the comprehensive plan.

(Code 1985, § 159.281; Ord. No. 2988, 12-15-1986; Ord. No. 3698, 6-21-1993)

Sec. 137-42. - Board of zoning appeals.

The board of zoning appeals shall hear and determine the following:

- (1) Any order, requirement, decision, or determination made by an administrative official, hearing officer, or staff member under this chapter.
- (2) Any order, requirement, decision, or determination made by an administrative board or other body, except a plan commission, in relation to the enforcement of this chapter.
- (3) Any order, requirement, decision, or determination made by an administrative board or other body, except a plan commission, in relation to the enforcement of an ordinance requiring the procurement of an improvement location or occupancy permit.
- (4) Approve or deny variances of use from the terms of this chapter. The board may impose reasonable conditions as part of its approval. A variance may be approved under this section upon a determination in writing that:
 - a. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
 - b. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;
 - c. The need for the variance arises from some condition peculiar to the property involved;
 - d. The strict application of the terms of this chapter will constitute an unnecessary hardship if applied to the property for which the variance is sought; and
 - e. The approval does not interfere substantially with the comprehensive plan.
- (5) Approve or deny variances from the development standards, such as height, bulk, or area, of this chapter. A variance may be approved under this section only upon a determination in writing that:
 - a. The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
 - b. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
 - c. The strict application of the terms of this chapter will result in practical difficulties in the use of the property.
- (6) Approve or deny one-year extensions to allow the continuance of a temporary building for the construction industry which is incidental to erection of buildings.
- (7) Approve or deny all conditional use permit applications, but only in the particular situations as specified in each zoning district. The board may impose additional, but reasonable conditions as part of its approval. A conditional use permit may be approved under this section upon a determination in writing that:
 - a. The approval will not be injurious to the public health, safety, morals and general welfare of the community;
 - b. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner;

- c. Adequate conditions will be stipulated to mitigate any potentially adverse impact of the conditional use permit upon adjacent property;
- d. Adequate measures have been taken to provide proper utilities, drainage, paved access roads, landscape buffering, fencing, leakproof dikes, safety precautions, and to minimize traffic congestion; and
- e. The granting of the conditional use permit is in the best interests of the community.

(Code 1985, § 159.282; Ord. No. 2988, 12-15-1986; Ord. No. 3256, 3-20-1989)

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

Sec. 137-43. - Conditional use permits.

- (a) It is recognized that there are certain land uses which, because of their unique characteristics cannot be classified as a permitted use in a particular zoning district without consideration in each specific case the impact of those uses upon surrounding land and neighborhoods, and therefore it is recognized that conditional use permits approved by the board of zoning appeals under the provisions of this chapter and with other reasonable conditions imposed, may ensure that the land use will not negatively impact upon the surrounding land and neighborhoods.
- (b) A conditional use permit shall not vary the applicable sections on height, area, and developmental regulations.
- (c) The board of zoning appeals may, from time to time and after the property owner has filed a petition requesting a conditional use permit, grant conditional use permits in the manner prescribed as follows:
 - (1) A request for a conditional use permit shall be submitted in writing on a form prescribed by the board of zoning appeals, along with the payment of fees as prescribed by the board of zoning appeals. A site plan shall be submitted with all conditional use permit requests and become part of the conditional use permit.
 - (2) The board of zoning appeals shall hold a public hearing on the request in accordance with state statute.
 - (3) The board of zoning appeals shall not consider any proposed conditional use permit which is substantially the same as any proposed conditional use permit submitted within the previous 12 months and which has been rejected by the board of zoning appeals.
 - (4) The staff shall distribute a copy of the site plan to the following agencies for review and comment:
 - a. Fire department.
 - b. Water department.
 - c. Electric department.
 - d. Department of engineering.
 - e. County health department.

The staff of the department of city planning shall utilize comments from those departments, and then prepare and submit a written analysis and recommendation to the board of zoning appeals.
 - (5) The board of zoning appeals shall use the staff analysis, recommendations and other information as a basis from which to impose additional but reasonable conditions, should the board of zoning appeals decide that approval of the request is in order.
- (d) A conditional use permit shall be held invalid after a period of one year from the date of board of zoning appeals approval unless the facility is completed and in operation, or a building permit has been obtained and construction is diligently being pursued to completion.
- (e) Whenever the property for which a conditional use permit has been granted by the board of zoning appeals under the terms of this chapter is abandoned or becomes vacant for six months or more, such conditional use permit shall

terminate.

- (f) A conditional use permit shall be valid only for the property as legally described in the approved conditional use permit, and the conditional use permit shall not be valid on any other property, contiguous or otherwise.
- (g) Should any provisions of the conditional use permit be violated, the city planner or his designated representative shall pursue the violation as required under sections 137-45 through 137-47 which may be amended from time to time.

(Code 1985, § 159.283; Ord. No. 3256, 3-20-1989)

Sec. 137-44. - Reversion to previous zoning.

Any vacant or undeveloped property, which is rezoned or annexed and zoned, shall be required to obtain an improvement location permit within two years of the date of the passage of an ordinance approving zoning by the common council. If an improvement location permit is not obtained within the specified time, the city planner shall provide written notice of such fact to the common council. Upon receiving the notice, if the common council deems the current zoning classification appropriate, the common council shall take no further action. If the common council deems the zoning classification should otherwise be changed, the common council shall direct the plan commission to prepare the desired change in zoning in accordance with IC 36-7-4-602.

(Code 1985, § 159.284; Ord. No. 4078, 8-5-1996; Ord. No. 4563, 1-15-2001)

Sec. 137-45. - Notice of violation.

When written notice of violation of any of the provisions of this chapter has been served by the city planner or his designated representative on the property owner, agent, occupant, contractor, or builder, the violation shall be discontinued immediately.

(Code 1985, § 159.997; Ord. No. 2988, 12-15-1986; Ord. No. 3116, 11-17-1987)

Sec. 137-46. - Right of injunction.

The city planner or his designated representative may institute a suit for injunction in the circuit court or superior court of the county to restrain an individual from violating the provisions of this chapter, and may also institute a suit for a mandatory injunction directing the removal of any structure or improvement.

(Code 1985, § 159.998; Ord. No. 2988, 12-15-1986; Ord. No. 3116, 11-17-1987)

State Law reference— Remedies and enforcement; allowable actions, IC 36-7-4-1014; injunctive relief, IC 36-7-4-1015.

Sec. 137-47. - Penalty.

Any person who violates a provision of this chapter shall be guilty of a misdemeanor, and upon conviction, shall be fined according to the provisions of section 1-7 not less than \$25.00 and not more than is prescribed by IC 36-1-3-8 as may be amended from time to time. Each day that a violation continues to exist shall constitute a separate offense.

(Code 1985, § 159.999; Ord. No. 2988, 12-15-1986)

State Law reference— Procedures for amending zoning ordinance, IC 36-7-4-602.

Secs. 137-48—137-67. - Reserved.

DIVISION 2. - NONCONFORMING USES

Sec. 137-68. - Continuation of nonconforming structures, uses, and lots.

Any lawful building or other structure, or any lawful use of a building or other structure or land, existing on the effective date of the ordinance from which this chapter is derived, which does not conform with the provisions of this chapter, shall be considered a lawful nonconforming building, structure, or use, and may be continued, except as otherwise herein provided.

(Code 1985, § 159.260; Ord. No. 2988, 12-15-1986)

Sec. 137-69. - Change of nonconforming use.

A nonconforming use shall not be changed to any other use or expanded in size, area, volume or scope, unless the proposed use conforms to the zoning requirements of the applicable zoning district.

(Code 1985, § 159.261; Ord. No. 2988, 12-15-1986; Ord. No. 3698, 6-21-1993)

Sec. 137-70. - Restoration of nonconforming structures.

Any lawful nonconforming structure which has been involuntarily damaged or destroyed by fire, explosion, wind storm, or other similar active cause, to an extent of not more than 75 percent of its fair market value, may be reconstructed in the same location, provided that:

- (1) The reconstructed building or structure shall not exceed the height, area, or volume of the damaged or destroyed structure.
- (2) Reconstruction shall begin within six months from the date of damage or destruction and shall be carried on without interruption.

(Code 1985, § 159.262; Ord. No. 2988, 12-15-1986)

Sec. 137-71. - Abandonment of nonconforming structures, uses, and lots.

If a lawful nonconforming structure, use, or lot is abandoned or discontinued for a continuous period of six months or more, subsequent use of that structure or lot shall be in conformity with the provisions of this chapter.

(Code 1985, § 159.263; Ord. No. 2988, 12-15-1986)

Secs. 137-72—137-100. - Reserved.

ARTICLE III. - ZONING DISTRICTS ESTABLISHED; ZONING MAP

Sec. 137-101. - Establishment of districts.

In order to carry out the purposes and provisions of this chapter, the following districts are hereby established:

- (1) Residential districts.
 - a. R-1 single-family residential district.
 - b. R-2 two-family residential district.

- c. R-3 multiple-family residential district.
- d. R-4 manufactured home residential district.

(2) Commercial districts.

- a. C-1 general commercial district.
- b. C-2 shopping center commercial district.
- c. C-3 city center commercial district.
- d. C-4 automobile-oriented district.
- e. C-5 neighborhood commercial district.
- f. C-6 linear office commercial district.
- g. C-7 automobile-oriented restaurant commercial district.
- h. C-8 high-density suburban commercial district.
- i. C-9 automobile-oriented sales district.
- j. C-10 filling stations.

(3) Industrial districts.

- a. I-1 light industrial district.
- b. I-2 heavy industrial district.

(4) Special districts.

- a. S-1 extensive open space and public use district.
- b. S-2 planned unit development district.

(5) H historic overlay district.

(Code 1985, § 159.008; Ord. No. 2988, 12-15-1986; Ord. No. 3256, 3-20-1989; Ord. No. 3263, 4-17-1989; Ord. No. 4302, 8-17-1998)

Sec. 137-102. - Incorporation of maps.

- (a) The locations and boundaries of the districts established by this chapter are shown upon the zoning map, which is hereby incorporated into the provisions of this chapter and which in its entirety, including all amendments thereto, shall be as much a part of this chapter as if fully set forth and described herein.
- (b) The zoning map, and amendments thereto, shall be maintained by the city planner or his designated representative.
 - (1) Unless shown otherwise, the boundaries of the districts are lot lines, the centerlines of streets, alleys, roads, or such lines extended, and the corporate limits of the city.
 - (2) Where, due to the scale, lack of detail, or illegibility of the zoning map there is any uncertainty, contradiction, or conflict as to the intended location of any district boundaries shown thereon, interpretation concerning the exact location of district boundary lines shall be determined upon written application to, or upon its own motion by, the board of zoning appeals. Such changes shall be made to the zoning map by the city planner or his designated representative within five days after the decision has been made by the board of zoning appeals.
 - (3) If, in accordance with the provisions of this chapter, changes are made in district boundaries of the zoning map, those changes shall be made to the zoning map by the city planner or his designated representative within five days after the amendment has been approved by the city council, signed by the mayor, and all legal publication requirements have been adhered to.
 - (4) No changes of any nature shall be made in the zoning map except in conformity with the procedures set forth in

this chapter.

- (5) Regardless of the existence of purported copies of the zoning map which may from time to time be made or published, the zoning map which shall be located in the city planning office shall be the final authority as to the current zoning status of land, water areas, buildings, and other structures in the city.

(Code 1985, § 159.009; Ord. No. 2988, 12-15-1986)

Sec. 137-103. - Replacement of zoning map.

In the event that the zoning map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes and additions, the city council may by resolution adopt a new zoning map which shall supersede the prior zoning map. The new zoning map may correct drafting or other errors or omissions in the prior zoning map, but no such correction shall have the effect of amending the original zoning map or any subsequent amendment thereof.

(Code 1985, § 159.010; Ord. No. 2988, 12-15-1986)

Sec. 137-104. - Zoning of vacated areas and annexed areas.

- (a) Whenever any street, alley, railroad, or other public right-of-way is vacated by official action, the zoning district adjoining each side of the street, alley, railroad, or other public right-of-way shall be automatically extended to the center of the vacation, and all areas included in the vacation shall then and henceforth be subject to all appropriate regulations of the extended districts.
- (b) Any area annexed to the city shall immediately, upon annexation, be classified R-1 residential district, unless the petition for annexation specifically designates a zoning classification.

(Code 1985, § 159.011; Ord. No. 2988, 12-15-1986)

Secs. 137-105—137-121. - Reserved.

ARTICLE IV. - ZONING DISTRICT REGULATION

DIVISION 1. - GENERALLY

Secs. 137-122—137-140. - Reserved.

DIVISION 2. - RESIDENTIAL DISTRICTS

Subdivision I. - In General

Secs. 137-141—137-163. - Reserved.

Subdivision II. - Residential R-1 District

Sec. 137-164. - Intent.

The residential R-1 district is designed for detached single-family dwellings on individual lots, and vacant land which is to be developed for detached single-family residential neighborhoods. The regulations are designed to keep single-family residential neighborhoods stable and to provide a suitable environment for family living.

(Code 1985, § 159.025; Ord. No. 2875, 4-7-1986)

Sec. 137-165. - Uses.

(a) *Permitted uses.*

- (1) Detached single-family dwellings.
- (2) Churches, synagogues, and similar places of worship. Rescue missions or temporary revival tents are not permitted.
- (3) Elementary and high schools, private parks and playgrounds, public libraries, private or community swimming pools, community recreational buildings, colleges, universities, and accessory buildings incidental to these uses, including athletic fields.
- (4) Customary agricultural operations (truck farming); provided, however, that no storage of manure will be permitted within 1,000 feet of any property line.
- (5) One temporary building for the construction industry which is incidental to erection of buildings permitted by this section.
- (6) Permitted accessory uses located on the same lot with the permitted principal use shall be limited to the following:
 - a. Private garages.
 - b. Customary home occupations, professional offices or day nurseries conducted by the resident only; provided that there be no external evidence of that use except a professional sign not over one square foot in area attached to an outside wall and flush mounted. No electrical signs shall be permitted.
 - c. All signs shall conform with the requirements of chapter 129.
- (7) Adult care home.
- (8) Child care home.

(b) *Conditional uses.* The following uses may be conditionally approved by the board of zoning appeals for property already zoned R-1 single-family residential district: Nursing facility.

(Code 1985, § 159.026; Ord. No. 2875, 4-7-1986; Ord. No. 3270, 5-1-1989; Ord. No. 3363, 3-19-1990; Ord. No. 3614, 8-3-1992; Ord. No. 3686, 5-3-1993; Ord. No. 3838, 6-20-1994)

Sec. 137-166. - Height, area, and developmental regulations.

In the residential R-1 district, the height of buildings, the minimum dimensions of yards and setbacks, and the minimum lot area per single-family dwelling shall be as follows:

- (1) *Height.* No building hereafter erected or structurally altered shall exceed 35 feet or 2½ stories.
- (2) *Front building setback.*
 - a. There shall be a front building setback of at least 25 feet for all new principal buildings. Nonconforming buildings shall adhere to the applicable sections regulating nonconformances.
 - b. On through lots the required front building setback shall be provided on both streets. No accessory buildings

shall project beyond the front building setback line on either street.

(3) *Side building setback.*

- a. A side building setback shall not be less than five feet in width as measured from the fascia board to the side lot line.
- b. On corner lots the usual front building setback and side building setback regulations shall apply; however, the exterior side building setback shall not be less than 50 percent of the front building setback required for lots facing the street upon which the side yard abuts. This regulation shall not be so interpreted as to reduce the building width of a corner lot of record at the front building setback required for lots facing the street upon which the side yard abuts. This regulation shall not be so interpreted as to reduce the buildable width of a corner lot of record at the time of the passage of this section to less than 25 feet, nor to prohibit the erection of an accessory building where this regulation cannot reasonably be complied with.

(4) *Rear building setback.* There shall be a rear building setback of not less than 25 feet in depth. In the case of a through lot, no rear building setback is required, but each street frontage shall be subject to the front building setback requirements of this section.

(5) *Accessory buildings.*

- a. Accessory buildings not over 15 feet high may be located in the rear half yard area, provided that, the accessory buildings come no nearer than 30 inches to any rear lot line or side lot line. Additionally, accessory buildings shall not be greater than 720 square feet in floor area.
- b. No accessory building shall be used in whole or part for living or residential purposes.
- c. No accessory building or accessory building area shall be used for commercial storage purposes.

(6) *Minimum lot area and maximum intensity of use.*

- a. Every lot upon which a building is erected or altered shall have a front lot width dimension and area as follows:
 1. Sewer and water available: 60 feet frontage at front lot line, 6,600 square feet.
 2. Sewer or water unavailable: 70 feet frontage at front lot line, 10,000 square feet.
 3. Sewer and water unavailable: 100 feet frontage at front lot line, 15,000 square feet.
- b. Any lot which has been recorded in a subdivision plat or deed with the office of the county recorder prior to November 21, 1966, and which is 4,000 square feet or more in area, may be used as a building site.
- c. No building with its accessory buildings shall be erected or increased in ground area so that more than 45 percent of the area of the lot will be occupied.

(7) *Off-street parking requirements.*

a. *Ratio requirements.*

1. Single-family dwellings, two per residential unit.
2. Churches and synagogues, one per four seats or 80 inches of seating length in the main sanctuary or auditorium.
3. Elementary schools, two per classroom, based upon design capacity.
4. High schools, one per five students, based upon design capacity.
5. Public libraries, two per 1,000 square feet of gross floor area.
6. Community swimming pools, ten per 1,000 square feet of water area.
7. Community recreation buildings, two per 1,000 square feet of gross floor area.

8. Colleges and universities, one per five students, based upon design capacity.
- b. *Construction parameters.* The following shall apply to all parking lots, excluding single-family driveways:
 1. All parking spaces required to service the principal building shall be located on the same lot as the principal building, or on a separate lot which is within 300 feet of the main entrance to the principal building.
 2. When a principal building undergoes an increase in the gross floor area, seating capacity, or number of units, the required off-street parking availability shall be increased to equal or exceed the off-street parking requirements.
 3. All parking lots shall be surfaced with an all-weather paving material capable of carrying a wheel load of 4,000 pounds without damaging the pavement. The lot shall be properly maintained at all times.
 4. All lots shall be lighted if used after sunset. Lights shall be so located, shielded, and directed upon the parking lot as to not shine or reflect onto adjacent property or into the public right-of-way. Lighting shall not exceed three footcandles as measured at that portion of the lot line which abuts residentially-zoned property.
 5. A minimum five-foot parking lot setback shall be provided between the property line and edge of the parking lot pavement. A minimum ten-foot parking lot setback shall be provided between any public road right-of-way or private access easement and the edge of parking lot pavement. A minimum ten-foot parking lot setback shall be provided between internal vehicular collector drives and the edge of parking lot pavement. Slag, gravel or any type of pavement shall be prohibited within the setback area. The setback area shall be landscaped with vegetative ground cover or grass and/or decorative trees or shrubs.
 6. Public address systems shall not be permitted in any parking lot.
 7. Parking spaces shall be a minimum of 180 square feet in area, with a minimum width of 8½ feet. Small car parking spaces may be constructed, but shall be no smaller than 130 square feet in area with a minimum width of 8½ feet. A maximum of 25 percent of the total off-street parking spaces may be used for small cars, and each parking space shall be marked by an above-grade sign as a small car parking space.
 8. Parking lots shall be properly graded and drained so that stormwater drainage is collected and disposed of on site.
- (8) *Vision clearance.* No structure, fence, hedge, or other plantings with a height in excess of 36 inches above the ground shall be permitted within a ten-foot radius of the corner of the lot where the corner lot adjoins the intersecting right-of-way. There shall be a complete vision clearance from 36 inches above the ground to not less than ten feet above the ground on all corner lots. Any fence located within the ten-foot radius shall have a minimum of 75 percent of its surface open to permit visibility through it.
- (9) *Fences.*
 - a. *Interior lots.*
 1. No fence over seven feet in height shall be erected between the rear lot line and the front building setback line; along the front setback line between the side wall of the building and the side lot line; or along the rear lot line between the two side lot lines.
 2. No fence over four feet in height shall be erected between the front building setback line and the front lot line, or along the front lot line between the two side lot lines; such fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
 - b. *Corner lots.*

1. A seven-foot-high fence may be erected only on the exterior side building setback line and the rear building setback line; if extended, between the rear building setback line and the rear lot line, a seven-foot-high fence may be erected along the interior side lot line between the front building setback line and the rear lot line; if extended, a seven-foot-high fence may be erected along the rear lot line between the interior side lot line and the intersection of the rear lot line and the exterior side building setback line, if extended. Four-foot-high fences may be erected in the exterior side yard area between the front building setback line and the rear lot line; such fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
 2. No fence over four feet in height shall be erected between the front building setback line and the front lot line, or along the front lot line between the interior side lot line and the exterior side building setback line; such fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
- c. *Prohibited fencing.* Electrified fencing, barbed wire, and razor wire or the equivalents under whatever name or designation shall be prohibited.
- (10) *Trees.* Only hardwood trees shall be planted between the curb and sidewalk in the tree lawn. No trees shall be planted in tree lawns of less than five feet in width. The spacing of trees in tree lawns shall be not less than 40 feet apart.

(Code 1985, § 159.027; Ord. No. 2875, 4-7-1986; Ord. No. 2989, 12-15-1986; Ord. No. 3064, 7-20-1987; Ord. No. 3297, 8-7-1989; Ord. No. 3662, 3-1-1993; Ord. No. 3698, 6-21-1993; Ord. No. 3703, 6-21-1993; Ord. No. 4565, 2-12-2001; Ord. No. 4576, 4-2-2001)

Secs. 137-167—137-185. - Reserved.

Subdivision III. - Residential R-2 District

Sec. 137-186. - Intent.

The residential R-2 district is designed for duplex or two-family units so as to ensure their proper location in terms of the social and economic requirements of the community, the need for duplex or two-family units, the effect of two-family units on the value of adjacent residential areas, and the ability of the city, now and in the future, to provide the additional services that may be required in duplex or two-family areas.

(Code 1985, § 159.035; Ord. No. 2876, 4-7-1986; Ord. No. 3263, 4-17-1989)

Sec. 137-187. - Uses.

(a) *Permitted uses.*

- (1) Two-family dwellings or duplex dwellings.
- (2) Churches, synagogues, and similar places of worship. Rescue missions or temporary revival tents are not permitted.
- (3) Elementary and high schools, private parks and playgrounds, public libraries, private or community swimming pools, community centers, community recreational buildings, colleges, universities, and accessory buildings incidental to these uses, including athletic fields.
- (4) Customary agricultural operations (truck farming); provided, however, that no storage of mature crops will be permitted within 1,000 feet of any property line.
- (5) One temporary building for the construction industry which is incidental to erection of buildings permitted by this

section.

(6) Permitted accessory uses located on the same lot with the permitted principal use shall be limited to the following:

- a. Private garages.
- b. Customary home occupations, professional offices or day nurseries conducted by the resident only; provided that there be no external evidence of such use except a professional sign not over one square foot in area attached to an outside wall and flush mounted. No electrical signs shall be permitted.
- c. Signs pertaining to the lease or sale of a lot or building may be placed thereon, provided that the total area of all the signs does not exceed eight square feet. No electrical signs shall be permitted.

(7) Detached single-family dwellings.

(8) Adult care home.

(9) Child care home.

(b) *Conditional uses.* The following uses may be conditionally approved by the board of zoning appeals for property already zoned R-2 two-family residential district: Nursing facility.

(Code 1985, § 159.036; Ord. No. 2876, 4-7-1986; Ord. No. 3270, 5-1-1989; Ord. No. 3363, 3-19-1990; Ord. No. 3614, 8-3-1992; Ord. No. 3686, 5-3-1993; Ord. No. 3838, 6-20-1994)

Sec. 137-188. - Height, area, and developmental regulations.

In the residential R-2 district, the height of buildings, the minimum dimensions of yards and setbacks, and the minimum lot area per family shall be as follows:

(1) *Height.* No building hereafter erected or structurally altered shall exceed 35 feet or 2½ stories.

(2) *Front building setback.*

- a. There shall be a front building setback of at least 25 feet for all new principal buildings. Nonconforming buildings shall adhere to the applicable sections regulating nonconformances.
- b. On through lots the required front building setback shall be provided on both streets. No accessory buildings shall project beyond the front building setback line on either street.

(3) *Side building setback.*

- a. A side building setback shall not be less than five feet in width as measured from the facade board to the side lot line.
- b. On corner lots the usual front building setback and side building setback regulations shall apply. The exterior side building setback shall not be less than 50 percent of the front building setback required for lots facing the street upon which the side yard abuts. This regulation shall not be so interpreted as to reduce the buildable width of a corner lot of record at the front building setback required for lots facing the street upon which the side yard abuts. This regulation shall not be so interpreted as to reduce the buildable width of a corner lot of record at the time of passage of the ordinance from which this section is derived to less than 25 feet, nor to prohibit the erection of an accessory building where this regulation cannot reasonably be complied with.

(4) *Rear building setback.* There shall be a rear building setback of not less than 25 feet in depth. In the case of a through lot, no rear building setback is required, but each street frontage shall be subject to the front building setback requirements of this section.

(5) *Accessory buildings.*

- a. Accessory buildings not over 15 feet high may be located in the rear half yard area, provided the accessory building is nearer than 30 inches to any rear lot line or side lot line. Additionally, accessory buildings shall not be greater than 10 feet in floor area.
- b. No accessory building shall be used in whole or part for living or residential purposes.
- c. No accessory building or accessory building area shall be used for commercial storage purposes.

(6) *Minimum lot area and maximum intensity of use.*

- a. Every lot upon which a building is erected or altered shall have a front lot width dimension and area as follows:
 - 1. Sewer and water available: 60 feet frontage at front lot line, 6,600 square feet.
 - 2. Sewer or water unavailable: 70 feet frontage at front lot line, 10,000 square feet.
 - 3. Sewer and water unavailable: 100 feet frontage at front lot line, 15,000 square feet.

Any lot which has been recorded in a subdivision plat or deed with the office of the county recorder prior to November 21, 1966, and which is 4,000 square feet or more in area, may be used as a building site.

- b. No building with its accessory buildings shall be erected or increased in ground area so that more than 45 percent of the area of the lot will be occupied.

(7) *Off-street parking requirements.*

a. *Ratio requirements.*

- 1. Single-family, two-family, or duplex dwellings: two per residential unit.
- 2. Churches and synagogues, one per four seats or 80 inches of seating length in the main sanctuary or auditorium.
- 3. Elementary schools, two per classroom, based upon design capacity.
- 4. High schools, one per five students, based upon design capacity.
- 5. Public libraries, two per 1,000 square feet of gross floor area.
- 6. Community swimming pools, ten per 1,000 square feet of water area.
- 7. Community center, two per 1,000 square feet of gross floor area.
- 8. Community recreation buildings, two per 1,000 square feet of gross floor area.
- 9. Colleges and universities, one per five students, based upon design capacity.

b. *Construction parameters.* The following shall apply to all parking lots, excluding two-family dwellings or duplex dwellings, and detached single-family dwelling driveways:

- 1. All parking spaces required to service the principal building shall be located on the same lot as the principal building, or on a separate lot which is within 300 feet of the main entrance to the principal building.
- 2. When a principal building undergoes an increase in the gross floor area, seating capacity, or number of units, the required off-street parking availability shall be increased to equal or exceed the off-street parking requirements.
- 3. All parking lots shall be surfaced with an all-weather paving material capable of carrying a wheel load of 4,000 pounds without damaging the pavement. The lot shall be properly maintained at all times.
- 4. All lots shall be lighted if used after sunset. Lights shall be so located, shielded, and directed upon the parking lot as to not shine or reflect onto adjacent property or into the public right-of-way. Lighting shall not exceed three footcandles as measured at that portion of the lot line which abuts residentially-zoned property.

property.

5. A minimum five-foot parking lot setback shall be provided between the property line and edge of the parking lot pavement. A minimum ten-foot parking lot setback shall be provided between any public road right-of-way or private access easement and the edge of parking lot pavement. A minimum ten-foot parking lot setback shall be provided between internal vehicular collector drives and the edge of parking lot pavement. Slag, gravel or any type of pavement shall be prohibited within the setback area. The setback area shall be landscaped with vegetative ground cover or grass and/or decorative trees or shrubs.
 6. Public address systems shall not be permitted in any parking lot.
 7. Parking spaces shall be a minimum of 180 square feet in area with a minimum width of 8½ feet. Small car parking spaces may be constructed, but shall be no smaller than 130 square feet in area with a minimum width of 8½ feet. A maximum of 25 percent of the total off-street parking spaces may be used for small cars, and each parking space shall be marked by an above-grade sign as a small car parking space.
 8. Parking lots shall be properly graded and drained so that stormwater drainage is collected and disposed of on site.
- (8) *Vision clearance.* No structure, fence, hedge, or other plantings with a height in excess of 36 inches above the ground shall be permitted within a ten-foot radius of the corner of the lot where the corner lot adjoins the intersecting right-of-way. There shall be a complete vision clearance from 36 inches above the ground to not less than ten feet above the ground on all corner lots. Any fence located within the ten-foot radius shall have a minimum of 75 percent of its surface open to permit visibility through it.
- (9) *Fences.*
- a. *Interior lots.*
 1. No fence over seven feet in height shall be erected between the rear lot line and the front building setback line; along the front setback line between the side wall of the building and the side lot line; or along the rear lot line between the two side lot lines.
 2. No fence over four feet in height shall be erected between the front building setback line and the front lot line or along the front lot line between the two side lot lines; the fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
 - b. *Corner lots.*
 1. A seven-foot-high fence may be erected only along the exterior side building setback line and the rear building setback line and along the exterior side building setback line, if extended, between the rear building setback line and the rear lot line. A seven-foot-high fence may be erected along the interior side lot line between the front building setback line and the rear lot line, and may be erected along the rear lot line between the interior side lot line and the intersection of the rear lot line and the exterior side building setback line, if extended. Four-foot-high fences may be erected in the exterior side yard area between the front setback line and the rear lot line; such fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
 2. No fence over four feet in height shall be erected between the front building setback line and the front lot line, or along the front lot line between the interior side lot line and the exterior side building setback line; the fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
 - c. *Prohibited.* Electrified fencing, barbed wire, and razor wire or the equivalents under whatever name or designation shall be prohibited.

- (10) *Trees.* Only hardwood trees shall be planted between the curb and sidewalk in the tree lawn. No trees shall be

planted in tree lawns of less than five feet in width. The spacing of trees in tree lawns shall be not less than 40 feet apart.

(Code 1985, § 159.037; Ord. No. 2876, 4-7-1986; Ord. No. 2989, 12-15-1986; Ord. No. 3064, 7-20-1987; Ord. No. 3263, 4-17-1989; Ord. No. 3297, 8-7-1989; Ord. No. 3662, 3-1-1993; Ord. No. 3698, 6-21-1993; Ord. No. 3703, 6-21-1993; Ord. No. 4565, 2-12-2001; Ord. No. 4576, 4-2-2001)

Secs. 137-189—137-214. - Reserved.

Subdivision IV. - Residential R-3 District

Sec. 137-215. - Intent.

The residential R-3 district is designed to accommodate higher density multiple unit residential areas so as to ensure their proper location in terms of the social and economic requirements of the community, the need for multiple unit residential buildings, the effect of multiple unit residential uses on the value of adjacent areas, and the ability of the municipality, now and in the future, to provide the additional services which may be required for higher density multiple unit residential areas.

(Code 1985, § 159.045; Ord. No. 2893, 6-2-1986)

Sec. 137-216. - Uses.

Only the following uses are permitted:

- (1) Apartment complex.
- (2) Apartment house.
- (3) Nursing facility.
- (4) Health facility.
- (5) Clinics for humans.
- (6) Personal service shops. Personal service shops may be permitted when designed as a structural component of one high-density multiple unit residential building of at least 100 dwelling units, provided that the total shop area does not exceed 5,000 square feet, and that all personal service uses are below the first story ceiling, limited to the following uses:
 - a. Pre-school.
 - b. Day care center.
 - c. Barbershop.
 - d. Beauty shop.
 - e. Self-service laundry facilities.
 - f. Bank, savings and loan, credit union.
 - g. Private community center.
 - h. Pharmacy.
 - i. Dry cleaning, pickup and delivery station.
 - j. Postal substation.

k. Travel bureau.

- (7) Churches, synagogues, and similar places of worship. Rescue missions or temporary revival tents are not permitted.
- (8) Elementary and high schools, private parks and playgrounds, public libraries, private or community swimming pools, community recreational buildings, colleges, universities, and accessory buildings incidental to these uses, including athletic fields.
- (9) Customary agricultural operations (truck farming); provided, however, that no storage of manure will be permitted within 1,000 feet of any property line.
- (10) One temporary building for the construction industry which is incidental to erection of buildings permitted by this section.
- (11) Adult day care center.
- (12) Permitted accessory uses located on the same lot with the permitted principal use shall be limited to the following:
 - a. Private garages.
 - b. Customary home occupations or professional offices conducted by the resident only; provided that there be no external evidence of the use except a professional sign not over one square foot in area attached to an outside wall and flush mounted. No electrical signs shall be permitted.
 - c. All signs shall conform with requirements of chapter 129.
- (13) Two-family dwellings or duplex dwellings.

(Code 1985, § 159.046; Ord. No. 2893, 6-2-1986; Ord. No. 3270, 5-1-1989; Ord. No. 3363, 3-19-1990; Ord. No. 3686, 5-3-1993; Ord. No. 3838, 6-20-1994; Ord. No. 4020, 2-20-1996)

Sec. 137-217. - Height, area, and developmental regulations.

In the residential R-3 district, the height of buildings, the minimum dimensions of yards and setbacks, and the minimum lot area per multiunit dwelling shall be as follows:

- (1) *Height*. No building hereafter erected or structurally altered shall exceed 120 feet or ten stories in height.
- (2) *Front building setback*.
 - a. There shall be a front building setback of at least 25 feet for all new principal buildings. Nonconforming buildings shall adhere to the applicable sections regulating nonconformances.
 - b. On through lots the required front building setback shall be provided on both streets. No accessory buildings shall project beyond the front building setback line on either street.
- (3) *Side building setback*.
 - a. *Interior lots*.
 - 1. A side building setback shall not be less than five feet in width as measured from the fascia board or parapet to the side lot line.
 - 2. For buildings greater than 35 feet or 2½ stories in height, the minimum width of each side building setback shall be increased by a total of five feet for each additional one story in height.
 - b. *Corner lots*.
 - 1. On corner lots the front building setback and interior side building setback regulations shall apply; however, the exterior side building setback shall not be less than 50 percent of the required front building

setback.

2. Accessory structures shall not be permitted within the established exterior side building setback areas.

(4) *Rear building setback.*

- a. For buildings up to 2½ stories or 35 feet in height there shall be a rear building setback on every lot, and that setback shall have a minimum depth of not less than 25 feet.
- b. For buildings greater than 35 feet or 2½ stories in height, the minimum rear building setback shall be increased by five feet for each additional one story in height; provided that the rear building setback need not exceed 50 feet in depth.
- c. In the case of a through lot, no rear building setback is required, but each street frontage shall be subject to the front building setback requirements of this section.

(5) *Accessory buildings.* Accessory buildings not over 15 feet in height may be located in the rear building setback area, provided the accessory buildings come no nearer than five feet to any rear lot line or interior side lot line. Accessory buildings shall not be permitted within the exterior side building setback area. No accessory building shall be used in whole or part for industrial or commercial purposes.

(6) *Minimum lot area and maximum intensity of use.*

- a. Every lot upon which a building is erected or altered shall have a front lot width dimension and area as follows:
 1. Sewer and water available: 60 feet frontage at front lot line; 6,600 square feet.
 2. Sewer or water unavailable: 70 feet frontage at front lot line; 10,000 square feet.
 3. Sewer and water unavailable: 100 feet frontage at front lot line; 15,000 square feet.
- b. Any lot which has been recorded in a subdivision plat or deed with the office of the county recorder prior to November 21, 1966, and which is 4,000 square feet or more in area, may be used as a building site.

-
- c. Every lot upon which a four- or more unit apartment building is erected or structurally altered in the residential R-3 district shall have a minimum width of at least 90 feet as measured at the front lot line, and shall have a lot area of not less than 10,000 square feet. The lot area requirements shall be determined by using the arithmetic average number of bedrooms per unit, and then applying that arithmetic average to the following table; in no case shall the minimum lot area be less than 10,000 square feet:

Average number of bedrooms per unit	Minimum (square feet)
Less than 1.5 bedrooms	1,500
Between greater than or equal to 1.5 and less than 2.5 bedrooms	2,500
Between greater than or equal to 2.5 and less than 3.5 bedrooms	4,000
Greater than or equal to 3.5 bedrooms	5,000

-
- d. No building with its accessory buildings shall be erected or increased in ground area so that more than 60 percent of the area of the lot will be occupied.

(7) *Off-street parking requirements.*

a. *Ratio requirements.*

1. Apartment complex and apartment house, 1½ per residential unit.
2. Convalescent homes, nursing homes, homes for the aged, one per 1,000 square feet of gross floor area.
3. Clinics for humans, four per 1,000 square feet of gross floor area.
4. Personal service shops, four per 1,000 square feet of gross floor area.
5. Churches and synagogues, one per four seats or 80 inches of seating length in the main sanctuary or auditorium.
6. Elementary schools, two per classroom, based upon design capacity.
7. High schools, one per five students, based upon design capacity.
8. Public libraries, two per 1,000 square feet of gross floor area.
9. Private or community swimming pools, ten per 1,000 square feet of water area.
10. Community recreation buildings, two per 1,000 square feet of gross floor area.
11. Colleges and universities, one per five students, based upon design capacity.

b. *Construction parameters.* The following shall apply to all parking lots:

1. All parking spaces required to service the principal building shall be located on the same lot as the principal building, or on a separate lot which is within 300 feet of the main entrance.
 2. When a principal building undergoes an increase in the gross floor area, seating capacity, or number of units, the required off-street parking availability shall be increased to equal or exceed the off-street parking requirements.
 3. All parking lots shall be surfaced with an all-weather paving material capable of carrying a wheel load of 4,000 pounds without damaging the pavement. The lot shall be properly maintained at all times.
 4. All lots shall be lighted if used after sunset. Lights shall be located, shielded, and directed upon the parking lot in such a manner as to not shine or reflect onto adjacent property or into the public right-of-way. Lighting shall not exceed three footcandles as measured at that portion of the lot line which abuts residentially-zoned property.
 5. A minimum five-foot parking lot setback shall be provided between the property line and edge of the parking lot pavement. A minimum ten-foot parking lot setback shall be provided between any public road right-of-way or private access easement and the edge of parking lot pavement. A minimum ten-foot parking lot setback shall be provided between internal vehicular collector drives and the edge of parking lot pavement. Slag, gravel or any type of pavement shall be prohibited within the setback area. The setback area shall be landscaped with vegetative ground cover or grass and/or decorative trees or shrubs.
 6. Public address systems shall not be permitted in any parking lot.
 7. Parking spaces shall be a minimum of 180 square feet in area, with a minimum width of 8½ feet. Small car parking spaces may be constructed, but shall be no smaller than 130 square feet in area with a minimum width of 8½ feet. A maximum of 25 percent of the total off-street parking spaces may be used for small cars, and each parking space shall be marked by an above-grade sign as a small car parking space.
 8. Parking lots shall be properly graded and drained so that stormwater drainage is collected and disposed of on site.
- (8) *Vision clearance.* No structure, fence, hedge, or other plantings with a height in excess of 36 inches above the ground shall be permitted within a ten-foot radius of the corner of the lot where the corner lot adjoins the intersecting right-of-way. There shall be a complete vision clearance from 36 inches above the ground to not less

than ten feet above the ground on all corner lots. Any fence located within the ten-foot radius shall have a minimum of 75 percent of its surface open to permit visibility through it.

(9) *Fences.*

a. *Interior lots.*

1. No fence over seven feet in height shall be erected between the rear lot line and the front building setback line; along the front setback line between the side wall of the building and the side lot line; or along the rear lot line between the two side lot lines.
2. No fence over four feet in height shall be erected between the front building setback line between the two side lot lines; the fence shall have a minimum of 75 percent of its surface open to permit visibility through it.

b. *Corner lots.*

1. A seven-foot-high fence may be erected only along the exterior side building setback line and the rear building setback line and along the exterior side building setback line, if extended, between the rear building setback line and the rear lot line. A seven-foot-high fence may be erected along the interior side lot line between the front building setback line and the rear lot line, and may be erected along the rear lot line between the interior side lot line and the intersection of the rear lot line and the exterior side building setback line, if extended. Four-foot-high fences may be erected in the exterior side yard area between the front setback line and the rear lot line; such fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
2. No fence over four feet in height shall be erected between the front building setback line and the front lot line, or along the front lot line between the interior side lot line and the exterior side building setback line; the fence shall have a minimum of 75 percent of its surface open to permit visibility through it.

c. *Prohibited fencing.* Electrified fencing, barbed wire, and razor wire or the equivalents under whatever name or designation shall be prohibited.

(10) *Trees.* Only hardwood trees shall be planted between the curb and sidewalk in the tree lawn. No trees shall be planted in tree lawns of less than five feet in width. The spacing of trees in tree lawns shall be not less than 40 feet apart.

(Code 1985, § 159.047; Ord. No. 2893, 6-2-1986; Ord. No. 2989, 12-15-1986; Ord. No. 3064, 7-20-1987; Ord. No. 3263, 4-17-1989; Ord. No. 3297, 8-7-1989; Ord. No. 3662, 3-1-1993; Ord. No. 3698, 6-21-1993; Ord. No. 3703, 6-21-1993; Ord. No. 4576, 4-2-2001)

Secs. 137-218—137-242. - Reserved.

Subdivision V. - Residential R-4 District

Sec. 137-243. - Intent.

The residential R-4 district is designed to provide a healthy and attractive atmosphere for detached single-unit, manufactured home parks. The regulations are designed to keep these areas stable and to promote a suitable environment for family living.

(Code 1985, § 159.055; Ord. No. 2894, 6-2-1986)

Sec. 137-244. - Uses.

Only the following uses are permitted:

- (1) Detached single-family type II or type III manufactured dwellings.
- (2) Churches, synagogues, and similar places of worship. Rescue missions or temporary revival tents are not permitted.
- (3) Elementary and high schools, private parks and playgrounds, public libraries, private or community swimming pools, community recreational buildings, colleges, universities, and accessory buildings incidental to these uses, including athletic fields.
- (4) Customary agricultural operations (truck farming); provided, however, that no storage of manure will be permitted within 1,000 feet of any property line.
- (5) One temporary building for the construction industry which is incidental to erection of buildings permitted by this section.
- (6) Permitted accessory uses located on the same lot with the permitted principal use shall be limited to the following:
 - a. Private garages.
 - b. Customary home occupations or professional offices conducted by the resident only; provided that there be no external evidence of the use except a professional sign not over one square foot in area attached to an outside wall and flush mounted. No electrical signs shall be permitted.
 - c. All signs shall conform with requirements of chapter 129.
- (7) One permanent building for each 100 manufactured homes, of not more than 5,000 square feet, may be erected, which is necessary for management offices, self-service laundry, or maintenance use, only when designed as an integral part of a manufactured home park.

(Code 1985, § 159.056; Ord. No. 2894, 6-2-1986; Ord. No. 3270, 5-1-1989; Ord. No. 3363, 3-19-1990)

Sec. 137-245. - Height, area, and developmental regulations.

In the residential R-4 district, the height of buildings, the minimum dimensions of yards and setbacks, and the minimum lot area per detached single-family manufactured dwelling shall be as follows:

- (1) *Height*. No manufactured dwelling hereafter erected or structurally altered shall exceed 15 feet as measured from the finished grade.
- (2) *Front building setback*. There shall be a minimum front building setback of not less than 20 feet.
- (3) *Side building setback*.
 - a. A side building setback shall not be less than five feet in width as measured from the fascia board to the side lot line.
 - b. On corner lots the usual front building setback and side building setback regulations shall apply. However, the exterior side building setback shall not be less than 50 percent of the front building setback required for lots facing the street upon which the side yard abuts. This regulation shall not be so interpreted as to reduce the buildable width of a corner lot of record at the front building setback required for lots facing the street upon which the side yard abuts. This regulation shall not be so interpreted as to reduce the buildable width of a corner lot of record at the time of the passage of this section to less than 25 feet, nor to prohibit the erection of an accessory building where this regulation cannot reasonably be complied with.
- (4) *Rear building setback*. There shall be a rear building setback of not less than 25 feet in depth. In the case of a

through lot, no rear building setback is required, but each street frontage shall be subject to the front building setback requirements of this section.

(5) *Accessory buildings.*

- a. Accessory buildings not over 15 feet high may be located in the rear half yard area, provided the accessory buildings come no nearer than 30 inches to any rear lot line or side lot line. Additionally, accessory buildings shall not be greater than 24 feet by 30 feet, and 720 square feet in floor area.
- b. No accessory building shall be used in whole or part for living or residential purposes.
- c. No accessory building or accessory building area shall be used for commercial storage purposes.

(6) *Minimum lot area and maximum intensity of use.*

- a. Every lot upon which a manufactured dwelling is erected or structurally altered shall have a minimum frontage of 40 feet at the front lot line and a minimum area of 4,000 square feet.
- b. No building with its accessory buildings shall be erected or increased in ground area so that more than 50 percent of the area of the lot will be occupied.

(7) *Off-street parking requirements.*

a. *Ratio requirements.*

1. Detached single-family, type II or type III manufactured dwellings, two per residential unit.
2. Churches and synagogues, one per four seats or 80 inches of seating length in the main sanctuary or auditorium.
3. Elementary schools, two per classroom, based upon design capacity.
4. High schools, one per five students, based upon design capacity.
5. Public libraries, two per 1,000 square feet of gross floor area.
6. Community swimming pools, ten per 1,000 square feet of water area.
7. Community recreation buildings, two per 1,000 square feet of gross floor area.
8. Colleges and universities, one per five students, based upon capacity.
9. One permanent building for each 100 manufactured homes, two per 1,000 square feet of gross floor area.

b. *Construction parameters.* The following shall apply to all parking lots, excluding detached single-family type II or type III manufactured dwelling driveways:

1. All parking spaces required to service the principal building shall be located on the same lot as the principal building, or on a separate lot which is within 300 feet of the main entrance to the principal building.
2. When a principal building undergoes an increase in the gross floor area, seating capacity, or number of units, the required off-street parking availability shall be increased to equal or exceed the off-street parking requirements.
3. A parking lot shall be surfaced with an all-weather paving material capable of carrying a wheel load of 4,000 pounds without damaging the pavement. The lot shall be properly maintained at all times.
4. All lots shall be lighted if used after sunset. Lights shall be located, shielded, and directed upon the parking lot in such a manner as to not shine or reflect onto adjacent property or into the public right-of-way. Lighting shall not exceed three footcandles as measured at that portion of the lot line which abuts residentially-zoned property.
5. A minimum five-foot parking lot setback shall be provided between the property line and edge of the

parking lot pavement. A minimum ten-foot parking lot setback shall be provided between any public road right-of-way or private access easement and the edge of parking lot pavement. A minimum ten-foot parking lot setback shall be provided between internal vehicular collector drives and the edge of parking lot pavement. Slag, gravel or any type of pavement shall be prohibited within the setback area. The setback area shall be landscaped with vegetative ground cover or grass and/or decorative trees or shrubs.

6. Public address systems shall not be permitted in any parking lot.
 7. Parking spaces shall be a minimum of 180 square feet in area with a minimum width of 8½ feet. Small car parking spaces may be constructed, but shall be no smaller than 130 square feet in area with a minimum width of 8½ feet. A maximum of 25 percent of the total off-street parking spaces may be used for small cars, and each parking space shall be marked by an above-grade sign as a small car parking space.
 8. Parking lots shall be properly graded and drained so that stormwater drainage is collected and disposed of on site.
- (8) *Vision clearance.* No structure, fence, hedge, or other plantings shall be permitted within a ten-foot radius of the corner of the lot where the corner lot adjoins the intersecting street right-of-way. There shall be a complete vision clearance for a distance of not less than ten feet above the ground on all corner lots.
- (9) *Fences.*
- a. *Interior lots.*
 1. No fence over seven feet in height shall be erected between the rear lot line and the front building setback line; along the front setback line between the side wall of the building and the side lot line; or along the rear lot line between the two side lot lines.
 2. No fence over four feet in height shall be erected between the front building setback line and the front lot line, or along the front lot line between the two side lot lines; the fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
 - b. *Corner lots.*
 1. A seven-foot-high fence may be erected only along the exterior side building setback line and the rear building setback line and along the exterior side building setback line, if extended, between the rear building setback line and the rear lot line. A seven-foot-high fence may be erected along the interior side lot line between the front building setback line and the rear lot line, and may be erected along the rear lot line between the interior side lot line and the intersection of the rear lot line and the exterior side building setback line, if extended. Four-foot-high fences may be erected in the exterior side yard area between the front setback line and the rear lot line; such fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
 2. No fence over four feet in height shall be erected between the front building setback line and the front lot line, or along the front lot line between the interior side lot line and the exterior side building setback line; the fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
 - c. *Prohibited fencing.* Electrified fencing, barbed wire, and razor wire or the equivalents under whatever name or designation shall be prohibited.
- (10) *Trees.* Only hardwood trees shall be planted between the curb and sidewalk in the tree lawn. No trees shall be planted in tree lawns of less than five feet in width. The spacing of trees in tree lawns shall be not less than 40 feet apart.

(Code 1985, § 159.057; Ord. No. 2894, 6-2-1986; Ord. No. 2989, 12-15-1986; Ord. No. 3064, 7-20-1987; Ord. No. 3263, 4-17-1989; Ord. No. 3297, 8-7-1989; Ord. No. 3662, 3-1-1993; Ord. No. 3698, 6-21-1993; Ord. No. 4576, 4-2-2001)

Secs. 137-246—137-268. - Reserved.

DIVISION 3. - COMMERCIAL DISTRICTS

Subdivision I. - In General

Secs. 137-269—137-299. - Reserved.

Subdivision II. - Commercial C-1 District

Sec. 137-300. - Intent.

The purpose of this general commercial district is to provide convenient retail and service establishments for the day-to-day needs of a large area with minimum impact on surrounding residential areas. This district is designed to provide for freestanding commercial uses which require limited comparison shopping. Customers usually arrive by automobile, making a separate stop for each errand.

(Code 1985, § 159.065; Ord. No. 2930, 9-2-1986)

Sec. 137-301. - Uses.

(a) *Permitted uses.* Only the following uses are permitted:

- (1) Adult day care center.
- (2) Animal hospitals.
- (3) Animal kennels.
- (4) Animal veterinarians.
- (5) Antique shops.
- (6) Appliance sales and services.
- (7) Art galleries.
- (8) Art supply stores.
- (9) Assembly hall.
- (10) Auctions.
- (11) Automobile accessory shops.
- (12) Automobile leasing offices.
- (13) Bait shops.
- (14) Bakery shops.
- (15) Ballrooms.
- (16) Banks, savings and loans, credit unions, and loan offices.
- (17) Barbershops and beauty shops.
- (18) Bed and breakfasts.

- (19) Beverage stores.
- (20) Bicycle sales and service.
- (21) Book and stationery stores.
- (22) Bowling alleys.
- (23) Candy stores.
- (24) Carry-out restaurants.
- (25) Cafeterias.
- (26) Catering services.
- (27) Ceramic tile sales.
- (28) Churches, synagogues, and similar places of worship.
- (29) Clothing and apparel stores.
- (30) Clubs and lodges.
- (31) Coin-operated laundries.
- (32) Colleges and universities.
- (33) Community centers, private or public.
- (34) Community welfare or health centers.
- (35) Comprehensive car care centers.
- (36) Computer sales.
- (37) Confectionery stores.
- (38) Controlled uses as defined in section 137-4.
- (39) Convents or rectories.
- (40) Dairy stores.
- (41) Dance schools.
- (42) Day nurseries or day care centers.
- (43) Delicatessens.
- (44) Department stores.
- (45) Design studios.
- (46) Detective agencies.
- (47) Driving schools.
- (48) Drug stores.
- (49) Dry cleaning, pick up and delivery.
- (50) Eating and drinking establishments without drive-in or drive-through service.
- (51) Floor covering sales.
- (52) Florist shops.
- (53) Furnace and air conditioning sales and service.
- (54) Funeral homes and mortuaries.
- (55) Furniture stores.
- (56) Game arcade and pool hall or billiard hall.

- (57) Glass sales.
- (58) Gift shops.
- (59) Grocery and food stores.
- (60) Governmental buildings.
- (61) Gymnasiums and gymnastic schools.
- (62) Handicraft shops.
- (63) Hardware stores.
- (64) Health clubs.
- (65) Health facility.
- (66) Hobby shops.
- (67) Home improvement retail stores.
- (68) Hospitals.
- (69) Hotels.
- (70) Household pest extermination shops.
- (71) Ice cream shops.
- (72) Janitorial offices.
- (73) Jewelry stores.
- (74) Laundries, pick up and delivery.
- (75) Lawn mower sales and service.
- (76) Libraries.
- (77) Liquor stores.
- (78) Locksmiths.
- (79) Marine accessory shops.
- (80) Medical clinics.
- (81) Medical laboratories.
- (82) Motels.
- (83) Motor bus terminals.
- (84) Motorcycle accessory shops.
- (85) Museums.
- (86) Music stores.
- (87) Newspaper offices.
- (88) Nursing facility.
- (89) Office buildings.
- (90) Office supply and equipment sales.
- (91) Offices.
- (92) Optical shops.
- (93) Paint, wallpaper, and decorating stores.
- (94) Parking garages.

- (95) Parking lots.
- (96) Personal service establishments.
- (97) Pet shops.
- (98) Philanthropic institutions.
- (99) Photocopy duplicating shops.
- (100) Photographic studios.
- (101) Photography supplies, equipment, and photofinishing.
- (102) Pool and billiard supplies.
- (103) Post offices.
- (104) Printing shops.
- (105) Private parks and playgrounds.
- (106) Professional offices:
 - a. Advertising agencies.
 - b. Accountants.
 - c. Architects.
 - d. Attorneys.
 - e. Chamber of commerce.
 - f. Chiropractors.
 - g. City planning.
 - h. Dentists.
 - i. Engineering consultants.
 - j. Government.
 - k. Health agencies.
 - l. Insurance agencies.
 - m. Interior decorating.
 - n. Labor organization.
 - o. Manufacturing agent.
 - p. Market research.
 - q. Mortgage brokers.
 - r. Music instructors.
 - s. Optometrists.
 - t. Osteopaths.
 - u. Personnel management counselors.
 - v. Physicians and surgeons.
 - w. Podiatrists.
 - x. Public relations.
 - y. Real estate brokers.
 - z. Social service organizations.

aa. Stock and bond brokers.

(107) Publishers.

(108) Radio or television studios.

(109) Railway stations.

(110) Required off-street parking.

(111) Restaurants without drive-in or drive-through service.

(112) Retail stores.

(113) Schools, public, parochial, or business.

(114) Shoe repair shops.

(115) Shoe stores.

(116) Social service organizations.

(117) Sporting goods stores.

(118) Storm window and storm door sales.

(119) Studios: art, music, ceramics, drama, speech, dance, and similar skills.

(120) Tailoring and alterations.

(121) Tanning salons.

(122) Taxicab dispatching.

(123) Taxidermy services.

(124) Tire sales and service.

(125) Tobacco stores.

(126) Transit transfer centers.

(127) Travel agencies.

(128) Union halls.

(129) Upholstery shops.

(130) Utility offices.

(131) Vending machine sales and service.

(132) Water softener sales and service.

(133) One temporary building for the construction industry which is incidental to erection of the buildings permitted by this section.

(134) Customary agricultural operations (truck farming); provided, however, that no storage of manure will be permitted within 1,000 feet of any property line.

(b) *Conditional uses.* The following uses may be conditionally approved by the board of zoning appeals for property already zoned C-1 general commercial district:

(1) Bingo hall.

(2) Branding establishment; provided, however, that it is at least 750 feet away from any residentially zoned or legal nonconforming residential property, public and private elementary, middle or high school, parks and churches as measured by a line between the nearest lot line of the branding establishment.

(3) Scarifying establishment; provided, however, that it is at least 750 feet away from any residentially zoned or legal nonconforming residential property, public and private elementary, middle or high school, parks and churches as

measured by a line between the nearest lot line of the scarifying establishment.

- (4) Tattoo establishment; provided, however, that it is at least 750 feet away from any residentially zoned or legal nonconforming residential property, public and private elementary, middle or high school, parks and churches as measured by a line between the nearest lot line of the tattoo parlor.

(Code 1985, § 159.066; Ord. No. 2930, 9-2-1986; Ord. No. 3256, 3-20-1989; Ord. No. 3270, 5-1-1989; Ord. No. 3466, 3-4-1991; Ord. No. 3686, 5-3-1993; Ord. No. 3698, 6-21-1993; Ord. No. 4020, 2-20-1996; Ord. No. 4078, 8-5-1996; Ord. No. 4098, 10-7-1996; Ord. No. 4303, 8-17-1998; Ord. No. 4568, 2-20-2001)

Sec. 137-302. - Height, area, and developmental regulations.

In the commercial C-1 district, the height of buildings, the minimum dimensions of yards and setbacks, and the minimum lot area per commercial building shall be as follows:

- (1) *Height.* No building hereafter erected or structurally altered shall exceed three stories or 48 feet in height.
- (2) *Front building setback.*
 - a. There shall be a front building setback of at least 25 feet for all new principal buildings. Nonconforming buildings shall adhere to the applicable sections regulating nonconformances.
 - b. On through lots the required front building setback shall be provided on both streets. No accessory buildings shall project beyond the front building setback line on either street.
- (3) *Side building setback.*
 - a. A side building setback shall not be less than five feet in width as measured from the fascia board to the side lot line.
 - b. On corner lots the usual front building setback and side building setback regulations shall apply; however, the exterior side building setback shall not be less than 50 percent of the front building setback required for lots facing the street upon which the side yard abuts. This regulation shall not be so interpreted as to reduce the buildable width of a corner lot of record at the front building setback required for lots facing the street upon which the side yard abuts. This regulation shall not be so interpreted as to reduce the buildable width of a corner lot of record at the time of the passage of this section to less than 25 feet, nor to prohibit the erection of an accessory building where this regulation cannot reasonably be complied with.
- (4) *Rear building setback.* There shall be a rear building setback of not less than ten percent of the depth of the lot for a one-story building. The depth shall be increased to 15 percent of the depth of the lot for any building greater than or equal to two stories; however, the rear building setback need not exceed 30 feet in depth.
- (5) *Accessory buildings.*
 - a. Accessory buildings not over 15 feet high may be located in the rear half yard area, provided the accessory buildings come not nearer than 30 inches to any rear lot line or side lot line. Additionally, accessory buildings shall not be greater than 720 square feet in floor area.
 - b. No accessory building shall be used in whole or part for living or residential purposes.
 - c. No accessory building or accessory building area shall be used for commercial storage purposes.
- (6) *Minimum lot area and maximum intensity of use.*
 - a. Every lot upon which a building is erected or altered shall have a front lot width dimension and area as follows:
 1. Sewer and water available: 60 feet frontage at front lot line; 6,600 square feet.

2. Sewer or water unavailable: 70 feet frontage at front lot line; 10,000 square feet.
3. Sewer and water unavailable: 100 feet frontage at front lot line; 15,000 square feet.
- b. Any lot which has been recorded in a subdivision plat or deed with the office of the county recorder prior to November 21, 1966, and which is 4,000 square feet or more in area, may be used as a building site.
- c. No building with its accessory building shall be erected or increased in ground area so that more than 75 percent of the area of the lot will be occupied.

(7) *Off-street parking.*

a. *Ratio requirements.*

1. Ballrooms, two per 1,000 square feet of gross floor area.
2. Bowling alley, five per alley.
3. Carry-out restaurants, ten per 1,000 square feet of gross floor area.
4. Churches and synagogues, one per four seats or 80 inches of seating length in the main sanctuary or auditorium.
5. Colleges and universities, one per five students, based upon design capacity.
6. Convents and rectories, one per 1,000 square feet of gross floor area.
7. Eating and drinking establishments, ten per 1,000 square feet of gross floor area.
8. Libraries, two per 1,000 square feet of gross floor area.
9. Hotels/motels: one parking space per room, one parking space per employee based on the maximum employment level per shift, one parking space per 150 square feet in conference or convention rooms, and ten parking spaces per 1,000 square feet of eating and drinking space.
10. Bed and breakfast: one parking space per room, and two parking spaces for the resident/owners.
11. Assembly halls, one per every three persons based upon the maximum design capacity.
12. All other uses, four per 1,000 square feet of gross floor area.

b. *Construction parameters.* The following shall apply to all parking lots:

1. All parking spaces required to service the principal building shall be located on the same lot as the principal building, or on a separate lot which is within 300 feet of the main entrance to the principal building.
2. When a principal building undergoes an increase in the gross floor area, seating capacity, or number of units, the required off-street parking availability shall be increased to equal or exceed the off-street parking requirements.
3. All parking lots shall be surfaced with an all-weather paving material capable of carrying a wheel load of 4,000 pounds without damaging the pavement. The lot shall be properly maintained at all times.
4. All lots shall be lighted if used after sunset. Lights shall be located, shielded, and directed upon the parking lot in such a manner as to not shine or reflect onto adjacent property or into the public right-of-way. Lighting shall not exceed three footcandles as measured at that portion of the lot line which abuts residentially-zoned property.
5. A minimum five-foot parking lot setback shall be provided between the property line and edge of the parking lot pavement. A minimum ten-foot parking lot setback shall be provided between any public road right-of-way or private access easement and the edge of parking lot pavement. A minimum ten-foot

parking lot setback shall be provided between internal vehicular collector drives and the edge of parking lot pavement. Slag, gravel or any type of pavement shall be prohibited within the setback area. The setback area shall be landscaped with vegetative ground cover or grass and/or decorative trees or shrubs.

6. Public address systems shall not be permitted in any parking lot.
 7. Parking spaces shall be a minimum of 180 square feet in area with a minimum width of 8½ feet. Small car parking spaces may be constructed, but shall be no smaller than 130 square feet in area with a minimum width of 8½ feet. A maximum of 25 percent of the total off-street parking spaces may be used for small cars, and each parking space shall be marked by an above-grade sign as a small car parking space.
 8. Parking lots shall be properly graded and drained so that stormwater drainage is collected and disposed of on site.
- (8) *Vision clearance.* No structure, fence, hedge, or other plantings shall be permitted within a ten-foot radius of the corner of the lot where the corner lot adjoins the intersecting street right-of-way. There shall be a complete vision clearance for a distance of not less than ten feet above the ground on all corner lots.
- (9) *Fences.*
- a. *Interior lots.*
 1. No fence over seven feet in height shall be erected between the rear lot line and the front building setback line; along the front setback line between the side wall of the building and the side lot line; or along the rear lot line between the two side lot lines.
 2. No fence over four feet in height shall be erected between the front building setback line and the front lot line or along the front lot line between the two side lot lines; the fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
 - b. *Corner lots.*
 1. A seven-foot-high fence may be erected only along the exterior side building setback line and the rear building setback line and along the exterior side building setback line, if extended, between the rear building setback line and the rear lot line. A seven-foot-high fence may be erected along the interior side lot line between the front building setback line and the rear lot line, and may be erected along the rear lot line between the interior side lot line and the intersection of the rear lot line and the exterior side building setback line, if extended. Four-foot-high fences may be erected in the exterior side yard area between the front setback line and the rear lot line; such fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
 2. No fence over four feet in height shall be erected between the front building setback line and the front lot line, or along the front lot line between the interior side lot line and the exterior side building setback line; the fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
- (10) *Trees.* Only hardwood trees shall be planted between the curb and sidewalk in the tree lawn. No trees shall be planted in tree lawns of less than five feet in width. The spacing of trees in tree lawns shall be not less than 40 feet apart.
- (11) *Signs.* All signs shall conform with requirements of chapter 129.
- (12) *Screening.* An opaque seven-foot fence shall be mandatory along any commercial C-1 property line which is contiguous to any residentially zoned property. The fence shall be designed to provide security and also to contain paper products and debris within the property.
- (13) *School separation.* No game arcade and/or pool hall or billiard hall shall be permitted to be placed within 750 feet of any school as measured by a line between the nearest lot line of the school lot and the nearest lot line of the

game arcade and/or pool hall or billiard hall.

(14) *Design review; development plan restrictions.* This section shall apply only to new commercial development, new commercial development (separate structures) on existing sites, or total commercial redevelopment or replacement. This section shall not apply to building additions or expansions to existing buildings. All construction shall meet the requirements of chapter 105, design requirements as referenced herein, except that the plan commission shall specifically consider the context of the proposal relative to the nonconforming status of adjacent structures. The plan commission may consider the nonconforming status of adjacent structures in approving waivers in accordance with section 105-39. In accordance with section 105-4, the applicable design requirements are identified as follows:

- a. Section 105-76, architectural materials, further limited as to only apply to those portions of the building visible from the public right-of-way and private collector roads serving multiple properties or businesses. At a minimum, two-thirds of each face of the visible portions of the building must use appropriate architectural materials. The remaining third may consist of other materials as may be determined by the owner/developer of the building. Appropriate architectural materials shall be expanded to include glass, exterior insulation and finish systems (EIFS), decorative concrete block and similar masonry units, painted/stained lap wood siding, and other high-quality materials as may be deemed appropriate by the plan commission. Metal siding and standard concrete block exterior finishes shall be considered inappropriate architectural materials. The color of all exterior architectural finishes shall meet the requirements of section 105-77 as supplemented below.
- b. Section 105-77, architectural color and textures, further limited as to only apply to those portions of the building visible from the public right-of-way and private collector roads serving multiple properties or businesses. Appropriate colors and textures may be expanded to include bold and contrasting colors subject to the review and approval of the plan commission in accordance with the established intent of the ordinance as documented by section 105-2.
- c. Section 105-108, mechanical equipment.
- d. Section 105-109, vending machines and newsracks, this requirement shall not apply to newsracks located in conjunction with restaurants which meet the required building setbacks of the district. Newsracks located adjacent to other commercial buildings that are designed in concert with the building may also be deemed appropriate by the plan commission.
- e. Section 105-116, dumpster/utility service areas.
- f. The public hearing requirements identified by section 105-31 shall not apply.

(Code 1985, § 159.067; Ord. No. 2930, 9-2-1986; Ord. No. 3263, 4-17-1989; Ord. No. 3297, 8-7-1989; Ord. No. 3363, 3-19-1990; Ord. No. 3466, 3-4-1991; Ord. No. 3698, 6-21-1993; Ord. No. 3703, 6-21-1993; Ord. No. 4020, 2-20-1996; Ord. No. 4565, 2-12-2001; Ord. No. 4576, 4-2-2001; Ord. No. 4584, 5-7-2001)

Sec. 137-303. - Controlled uses.

- (a) In order to prevent the development of a blighted area, no building or premises may be used and no building may be erected, moved, structurally altered, or enlarged for any controlled use, if such building or premises is located within 1,000 feet of any two controlled uses, as such use is defined in section 137-4.
- (b) No building or premises may be used and no building may be erected, moved, structurally altered, or enlarged for any adult business use within, or within 500 feet of, any of the following use districts:
 - (1) In the City of Mishawaka:
 - a. Residential R-1 district;

- b. Residential R-2 district;
- c. Residential R-3 district;
- d. Residential R-4 district;
- e. Commercial C-2 district;
- f. Planned unit development S-2 district; or

(2) In the City of South Bend:

- a. A residence district;
- b. A-1 residence district;
- c. A-2 planned residential development district;
- d. A-3 high priority residential office and professional district;
- e. B residence district;
- f. B-1 residence district;
- g. C-1 commercial, limited use district;
- h. C-2 planned shopping center district.

(3) In St. Joseph County:

- a. C-2 planned shopping center district;
- b. R single-family residence;
- c. R-1 mobile home park;
- d. R-2 multifamily.

(Code 1985, § 159.068; Ord. No. 3160, 5-6-1988; Ord. No. 3703, 6-21-1993)

Secs. 137-304—137-324. - Reserved.

Subdivision III. - Commercial C-2 District

Sec. 137-325. - Intent.

The commercial C-2 shopping center district is established to promote the grouping of contiguous buildings, stores, offices and other uses on a lot in a manner which constitutes an organized, architecturally harmonious, efficient, and convenient shopping center, and to provide a means for permitting the establishment of such centers as part of the development of the city. The commercial C-2 district is created in order to secure in such a facility, traffic safety through provision for proper traffic routing and automobile parking, control of traffic on public streets through provision for adequate off-street parking and off-street loading, and protection of the surrounding neighborhood and promotion of the general welfare of the city. Commercial developments which contain any combination of three or more contiguous uses from section 137-326 shall constitute a shopping center and shall be zoned commercial C-2 district.

(Code 1985, § 159.075; Ord. No. 2915, 8-4-1986; Ord. No. 3698, 6-21-1993)

Sec. 137-326. - Uses.

- (a) *Permitted uses.* Only the following uses are permitted:

- (1) Antique shops.
- (2) Appliance sales and service.
- (3) Art galleries.
- (4) Art supply stores.
- (5) Automobile leasing offices.
- (6) Bakery shops.
- (7) Banks, savings and loans, credit unions, and loan offices.
- (8) Barbershops and beauty shops.
- (9) Bicycle sales and service.
- (10) Book and stationery stores.
- (11) Candy stores.
- (12) Ceramic tile sales.
- (13) Clothing alteration shops.
- (14) Coin-operated laundries.
- (15) Colleges and universities.
- (16) Confectionery stores.
- (17) Custom tailoring shops.
- (18) Delicatessens.
- (19) Department stores.
- (20) Drug stores.
- (21) Dry cleaning, pick up and delivery.
- (22) Florist shops.
- (23) Furniture stores.
- (24) Game arcade and pool hall or billiard hall.
- (25) Grocery stores and food supermarkets.
- (26) Gymnasiums.
- (27) Hardware stores.
- (28) Hobby shops.
- (29) Indoor golf.
- (30) Jewelry stores.
- (31) Libraries.
- (32) Liquor stores.
- (33) Locksmiths.
- (34) Marine accessory shops.
- (35) Medical clinics.
- (36) Museums.
- (37) Music stores.
- (38) Office supply and equipment stores.

- (39) Optical shops.
- (40) Paint, wallpaper and decorating stores.
- (41) Parking garages.
- (42) Photocopy duplicating shops.
- (43) Photographic studios.
- (44) Photography supplies, equipment and photofinishing.
- (45) Professional offices:
 - a. Advertising agencies.
 - b. Accountants.
 - c. Architects.
 - d. Attorneys.
 - e. Chamber of commerce.
 - f. Chiropractors.
 - g. City planning.
 - h. Dentists.
 - i. Engineering consultants.
 - j. Government.
 - k. Health agencies.
 - l. Insurance agencies.
 - m. Interior decorating.
 - n. Labor organization.
 - o. Manufacturing agent.
 - p. Market research.
 - q. Mortgage brokers.
 - r. Music instructors.
 - s. Optometrists.
 - t. Osteopaths.
 - u. Personnel management counselors.
 - v. Physicians and surgeons.
 - w. Podiatrists.
 - x. Public relations.
 - y. Real estate brokers.
 - z. Social service organizations.
 - aa. Stock and bond brokers.
- (46) Restaurants, without drive-in or drive-through service.
- (47) Retail stores.
- (48) Sporting goods stores.
- (49) Tanning salons.

(50) Theatres, enclosed.

(51) Tire sales and service.

(52) Tobacco stores.

(53) Travel agencies.

(54) Customary agricultural operations (truck farming); provided, however, that no storage of manure will be permitted within 1,000 feet of any property line.

(55) One temporary building for the construction industry which is incidental to erection of buildings permitted by this section.

(b) *Conditional uses.* The following uses may be conditionally approved by the board of zoning appeals for property already zoned C-2 shopping center commercial district: Bingo hall.

(Code 1985, § 159.076; Ord. No. 2915, 8-4-1986; Ord. No. 3466, 3-4-1991; Ord. No. 3698, 6-21-1993; Ord. No. 4078, 8-5-1996; Ord. No. 4568, 2-20-2001)

Sec. 137-327. - Height, area, and development regulations.

In the commercial C-2 district, the height of buildings, the minimum dimensions of yards and setbacks, and the minimum lot area per shopping center shall be as follows:

(1) *Height.* No building hereafter erected or structurally altered shall exceed two stories or 35 feet in height.

(2) *Setbacks.* There shall be a 50-foot building setback from all property lines.

(3) *Minimum lot area and maximum intensity of use.*

a. Every parcel of land in which a new shopping center is erected shall have a minimum of 200 feet in width as measured at the front lot line and an area of not less than two acres.

b. No center shall be erected or structurally altered in ground floor area so that more than 25 percent of the area of the lot will be occupied.

(4) *Off-street parking.*

a. *Ratio requirements.*

1. Colleges and universities, one per five students, based upon design capacity.

2. Libraries, two per 1,000 square feet of gross floor area.

3. Restaurants, ten per 1,000 square feet of gross floor area.

4. Theaters, enclosed, one per three seats.

5. All other uses, five per 1,000 square feet of gross floor area.

b. *Construction parameters.* The following shall apply to all parking lots:

1. All parking spaces required to service the principal building shall be located on the same lot as the principal building, or on a separate lot which is within 300 feet of the main entrance to the principal building.

2. When a principal building undergoes an increase in the gross floor area, seating capacity, or number of units, the required off-street parking availability shall be increased to equal or exceed the off-street parking requirements.

3. All parking lots shall be surfaced with an all-weather paving material capable of carrying a wheel load of 4,000 pounds without damaging the pavement. The lot shall be properly maintained at all times.

4. All lots shall be lighted if used after sunset. Lights shall be located, shielded, and directed upon the parking lot as to not shine or reflect onto adjacent property or into the public right-of-way. Lighting shall not exceed three feet measured at that portion of the lot line which abuts residentially-zoned property.
 5. A minimum 25-foot parking lot setback shall be provided between the property line and/or public road right-of-way and edge of the parking lot pavement. Where adjacent to public road right-of-way, excepting limited-access highways, this area shall be bermed/mounded a minimum of three-feet above the elevation of the adjacent roadway pavement measured at the centerline. A minimum ten-foot parking lot setback shall be provided between internal vehicular collector drives and the edge of parking lot pavement. Slag, gravel or any type of pavement shall be prohibited within the setback area. The setback area shall be landscaped with vegetative ground cover or grass and/or decorative trees or shrubs.
 6. Public address systems shall not be permitted in any parking lot.
 7. Parking spaces shall be a minimum of 180 square feet in area with a minimum width of 8½ feet. Small car parking spaces may be constructed, but shall be no smaller than 130 square feet in area with a minimum width of 8½ feet. A maximum of 25 percent of the total off-street parking spaces may be used for small cars, and each parking space shall be marked by an above-grade sign as a small car parking space.
 8. Parking lots shall be properly graded and drained so that stormwater drainage is collected and disposed of on site.
- (5) *Off-street loading.* At least one off-street loading or unloading berth shall be provided in the ratio of one berth per 25,000 square feet of gross floor area, including basement storage space. Each berth shall be at least ten feet by 45 feet with a 14-foot vertical clearance. The required berth shall be suitably graded, drained, and paved with a durable, dust-free hard surface.
- (6) *Vision clearance.* No structure, fence, hedge, or other plantings shall be permitted within a ten-foot radius of the corner of the lot where the corner lot adjoins the intersecting street right-of-way. There shall be a complete vision clearance for a distance of not less than ten feet above the ground on all corner lots.
- (7) *Fences and landscape screening.*
- a. A seven-foot fence shall be mandatory along any shopping center property line which is contiguous to any residentially-zoned property. The fence shall be designed to provide security, and also to contain paper products and debris within the shopping center property.
 - b. Along any shopping center property line which is contiguous to any residentially-zoned property, the area between the property line and the required parking lot setback shall be sodded, planted, and landscaped with at least six-foot-high bushes, shrubs, or trees in order to form a permanent opaque, landscaped screen.
- (8) *Trees.* Only hardwood trees shall be planted between the curb and sidewalk in the tree lawn. No trees shall be planted in tree lawns of less than five feet in width. The spacing of trees in tree lawns shall be not less than 40 feet apart.
- (9) *Signs.* All signs shall conform with requirements of chapter 129.
- (10) *Design review; development plan restrictions.* This section shall apply only to new commercial development, new commercial development (separate structures) on existing sites, or total commercial redevelopment or replacement. This section shall not apply to building additions or expansions to existing buildings. All construction shall meet the requirements of chapter 105, design requirements as referenced herein, except that the plan commission shall specifically consider the context of the proposal relative to the nonconforming status of

adjacent structures. The plan commission may consider the nonconforming status of adjacent structures in approving waivers in accordance with section 105-39. In accordance with section 105-4, the applicable design requirements are identified as follows:

- a. Section 105-76, architectural materials, further limited as to only apply to those portions of the building visible from the public right-of-way and private collector roads serving multiple properties or businesses. At a minimum, two-thirds of each face of the visible portions of the building must use appropriate architectural materials. The remaining third may consist of other materials as may be determined by the owner/developer of the building. Appropriate architectural materials shall be expanded to include glass, exterior insulation and finish systems (EIFS), decorative concrete block and similar masonry units, painted/stained lap wood siding, and other high-quality materials as may be deemed appropriate by the plan commission. Metal siding and standard concrete block exterior finishes shall be considered inappropriate architectural materials. The color of all exterior architectural finishes shall meet the requirements of section 105-77 as supplemented below.
- b. Section 105-77, architectural color and textures, further limited as to only apply to those portions of the building visible from the public right-of-way and private collector roads serving multiple properties or businesses. Appropriate colors and textures may be expanded to include bold and contrasting colors subject to the review and approval of the plan commission in accordance with the established intent of the ordinance as documented by section 105-2.
- c. Section 105-108, mechanical equipment.
- d. Section 105-109, vending machines and newsracks, this requirement shall not apply to newsracks located in conjunction with restaurants which meet the required building setbacks of the district. Newsracks located adjacent to other commercial buildings that are designed in concert with the building may also be deemed appropriate by the plan commission.
- e. Section 105-116, dumpster/utility service areas.
- f. The public hearing requirements identified by section 105-31 shall not apply.

(Code 1985, § 159.077; Ord. No. 2915, 8-4-1986; Ord. No. 2989, 12-15-1986; Ord. No. 3066, 7-20-1987; Ord. No. 3263, 4-17-1989; Ord. No. 3297, 8-7-1989; Ord. No. 3363, 3-19-1990; Ord. No. 3698, 6-21-1993; Ord. No. 4576, 4-2-2001; Ord. No. 4584, 5-7-2001)

Secs. 137-328—137-357. - Reserved.

Subdivision IV. - Commercial C-3 District

Sec. 137-358. - Intent.

The commercial C-3 district is designed for the city center, which is usually comprised of retail, service, cultural, high-density residential, and government uses. The city center is the focal point of the community and comprises a relatively small, geographically-centered, and wholly contiguous core area. Typically, the city center services the entire community by providing a diversity of complementary and compatible land uses. Outside storage, display, or sales shall not be permitted outside a completely enclosed, substantially constructed, and weathertight building.

(Code 1985, § 159.085; Ord. No. 2916, 8-4-1986)

Sec. 137-359. - Uses.

- (a) Only the following uses are permitted:

- (1) Any use permitted in the commercial C-2 district.
- (2) Any use permitted in the commercial C-5 district.
- (3) Apartment buildings.
- (4) Ballrooms.
- (5) Banks, savings and loans, credit unions, loan offices.
- (6) Bed and breakfasts.
- (7) Bus stations.
- (8) Business services.
- (9) Boardinghouses or roominghouses.
- (10) Churches, synagogues, and similar places of worship; rescue missions or temporary revival tents are not permitted.
- (11) Class A cabaret.
- (12) Clinics for humans.
- (13) Clubs and lodges.
- (14) Colleges and universities.
- (15) Convalescent homes, nursing homes, homes for the aged.
- (16) Convents and rectories.
- (17) Eating and drinking establishments, without drive-in or drive-through services.
- (18) Furniture stores.
- (19) Game arcade and pool hall or billiard hall.
- (20) Governmental buildings.
- (21) Health clubs.
- (22) Health facility.
- (23) Hospitals.
- (24) Hotels.
- (25) Libraries.
- (26) Medical clinics.
- (27) Medical laboratories.
- (28) Mortuaries and funeral homes.
- (29) Newspaper offices.
- (30) Nursing facility.
- (31) Office buildings.
- (32) Office supply and equipment stores.
- (33) Parking garages.
- (34) Parking lots.
- (35) Post offices.
- (36) Private parks and playgrounds.
- (37) Railway stations.

(38) Tanning salons.

(39) Transit transfer centers.

(40) Union halls.

(41) Utility offices.

(42) One temporary building for the construction industry which is incidental to erection of buildings permitted by this section.

(b) Any use permitted in the residential R-1, residential R-2, and residential R-3 zoning districts shall be a permitted use in the commercial C-3 district. Such residential use shall conform to the height, area, and developmental regulations of the residential zoning district that permits that use. If more than one residential zoning district permits that residential use, then the use shall conform to the regulations of the most restrictive residential district in which it is a permitted use. In the case of a conflict between such residential district regulations and those of section 137-358, the residential requirements and regulations shall control, except in the case of apartment restrictions, in which case section 137-360(2) shall control.

(c) Apartments shall be permitted in conjunction with a commercial establishment, but shall be prohibited below a commercial establishment.

(d) Conditional uses. The following uses may be conditionally approved by the board of zoning appeals for property already zoned C-3 city center commercial district: Bingo hall.

(Code 1985, § 159.086; Ord. No. 2916, 8-4-1986; Ord. No. 3270, 5-1-1989; Ord. No. 3466, 3-4-1991; Ord. No. 3686, 5-3-1993; Ord. No. 3698, 6-21-1993; Ord. No. 3703, 6-21-1993; Ord. No. 4078, 8-5-1996)

Sec. 137-360. - Height, area, and development regulations.

In the commercial C-3 district, the height of buildings, the minimum dimensions of yards and setbacks, and the minimum lot area per commercial building shall be as follows:

(1) *Height.* No building hereafter erected or structurally altered shall exceed 120 feet or ten stories in height.

(2) *Accessory buildings.*

a. Accessory buildings not over 15 feet high may be located in the rear half yard area, provided the accessory buildings come no nearer than 30 inches to any rear lot line or side lot line. Additionally, accessory buildings shall not be greater than 720 square feet in floor area.

b. No accessory building shall be used in whole or part for living or residential purposes.

c. No accessory building or accessory building area shall be used for commercial storage purposes.

(3) *Off-street parking.* Parking areas, if provided, shall be properly graded drained, paved with a durable, dust-free surface, and shall be suitably lighted, if the facility operates after sunset.

(4) *Vision clearance.* No structure, fence, hedge, or other plantings shall be permitted within a ten-foot radius of the corner lot where the corner lot adjoins the intersecting street right-of-way. There shall be a complete vision clearance for a distance of not less than ten feet above the ground on all corner lots. However, on corner lots that adjoin an intersecting street right-of-way which has a signalized traffic control system, no vision clearance shall be required.

(5) *Fences.*

a. *Interior lots.*

1. No fence over seven feet in height shall be erected between the rear lot line and the front building setback

line; along the front setback line between the side wall of the building and the side lot line; or along the rear lot line between the two side lot lines.

2. No fence over four feet in height shall be erected between the front building setback line and the front lot line or along the front lot line between the two side lot lines; the fence shall have a minimum of 75 percent of its surface open to permit visibility through it.

b. *Corner lots.*

1. A seven-foot-high fence may be erected only along the exterior side building setback line and the rear building setback line and along the exterior side building setback line, if extended, between the rear building setback line and the rear lot line. A seven-foot-high fence may be erected along the interior side lot line between the front building setback line and the rear lot line, and may be erected along the rear lot line between the interior side lot line and the intersection of the rear lot line and the exterior side building setback line, if extended. Four-foot-high fences may be erected in the exterior side yard area between the front setback line and the rear lot line; such fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
 2. No fence over four feet in height shall be erected between the front building setback line and the front lot line, or along the front lot line between the interior side lot line and the exterior side building setback line; the fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
- (6) *Trees.* Only hardwood trees shall be planted between the curb and sidewalk in the tree lawn. No trees shall be planted in tree lawns of less than five feet in width. The spacing of trees in tree lawns shall be not less than 40 feet apart.
- (7) *Signs.* All signs shall conform with requirements of chapter 129.
- (8) *Controlled uses.* In order to promote the use of the downtown city center as a regional retail business center, any class A cabaret or restaurant which sells beer, wine and/or intoxicating liquor for consumption on the premises is exempt from location spacing restrictions.
- (9) *Design/development plan review.* Subject to all requirements identified by chapter 105, design review/development plan.

(Code 1985, § 159.087; Ord. No. 2916, 8-4-1986; Ord. No. 3263, 4-17-1989; Ord. No. 3297, 8-7-1989; Ord. No. 3363, 3-19-1990; Ord. No. 3703, 6-21-1993; Ord. No. 4470, 12-21-1999; Ord. No. 4565, 2-12-2001)

Secs. 137-361—137-378. - Reserved.

Subdivision V. - Commercial C-4 District

Sec. 137-379. - Intent; uses.

- (a) The commercial C-4 district is designed for commercial uses that are automobile or vehicular in nature and which, by their very nature, do not readily lend themselves into inclusion in the other commercial districts within the city. Outside storage and display of new and used vehicles for sale, lease, or rent; large parking areas for parking, storage, and display; queuing lanes for vehicles purchasing restaurant food; and off-premises advertising targeted toward vehicular traffic in the public right-of-way are typical characteristics of uses in the commercial C-4 district.
- (b) Only the following uses are permitted:
 - (1) Any permitted use in the commercial C-1 district.

- (2) Automobile and truck auctions.
- (3) Automobile and truck tire dealers.
- (4) Automobile body shop.
- (5) Automobile glass, seat, and upholstery shops.
- (6) Automobile sales.
- (7) Automobile service shop.
- (8) Automobile washing and polishing.
- (9) Boat and boat motor sales or service.
- (10) Carwash, automatic.
- (11) Carwash, self-service.
- (12) Commercial parking lots.
- (13) Farm implement and supply stores.
- (14) Freestanding off-premises signs.
- (15) Game arcade and pool hall or billiard hall.
- (16) Light trailer sales and service shops.
- (17) Light truck sales and service shops.
- (18) Mobile home sales and service.
- (19) Motorcycle sales and service.
- (20) Recreational vehicle sales and service.
- (21) Vehicular rental equipment shops.
- (22) Wheel and frame alignment shops.

(Code 1968, tit. 580, art. X, § 1; Code 1985, § 159.095; Ord. No. 1378, 11-21-1966; Ord. No. 2848, 12-16-1985; Ord. No. 3256, 3-20-1989; Ord. No. 3466, 3-4-1991; Ord. No. 4302, 8-17-1998)

Sec. 137-380. - Height, area, and developmental regulations.

In the commercial C-4 district, the height of buildings, the minimum dimensions of yards and setbacks, and the minimum lot area per commercial building shall be as follows:

- (1) *Height.* No building hereafter erected or structurally altered shall exceed three stories or 40 feet in height.
- (2) *Front building setback.*
 - a. All principal buildings shall have a front building setback of at least 25 feet. Nonconforming buildings shall adhere to the applicable sections regulating nonconforming structures, uses and lots.
 - b. On through lots the required front building setback shall be provided on both streets. No accessory buildings shall project beyond the front building setback line on either street.
- (3) *Side building setback.*
 - a. All principal buildings shall have a side building setback of at least five feet in width as measured from the eave, overhang or farthest protrusion to the side lot line.
 - b. On corner lots, the principal building shall meet the front and side building setback regulations set forth in subsections (1) and (3) of this section; however, the exterior side building setback shall not be less than 50 percent of the front building setback required for lots facing the street upon which the side yard abuts. This

regulation shall not be so interpreted as to reduce the buildable width of a corner lot of record at the front building setback required for lots facing the street upon which the side yard abuts. This regulation shall not be so interpreted as to reduce the buildable width of a corner lot of record at the time of the passage of this section to less than 25 feet, nor to prohibit the erection of an accessory building where this regulation cannot reasonably be complied with.

- (4) *Rear building setback.* There shall be a rear building setback of not less than ten percent of the depth of the lot for a one-story building. The depth shall be increased to 15 percent of the depth of the lot for any building greater than or equal to two stories; however, the rear building setback need not exceed 30 feet in depth.
- (5) *Accessory buildings.*
 - a. Accessory buildings not over 15 feet high may be located in the rear half yard area, provided the accessory buildings come not nearer than 30 inches to any rear lot line or side lot line. Additionally, accessory buildings shall not be greater than 720 square feet in floor area.
 - b. No accessory building shall be used in whole or part for living or residential purposes.
 - c. No accessory building or accessory building area shall be used for commercial storage purposes.
- (6) *Minimum lot area and maximum intensity of use.*
 - a. Every lot upon which a building is erected or altered shall have a front lot width dimension and area as follows:
 - 1. Sewer and water available: 60 feet frontage at front lot line; 6,600 square feet.
 - 2. Sewer or water unavailable: 70 feet frontage at front lot line; 10,000 square feet.
 - 3. Sewer and water unavailable: 100 feet frontage at front lot line; 15,000 square feet.
 - b. Any lot which has been recorded in a subdivision plat or deed with the office of the county recorder prior to November 21, 1966, and which is 4,000 square feet or more in area, may be used as a building site.
 - c. No building with an accessory building shall be erected or expanded so that more than 75 percent of the area of the lot will be occupied with an improvement.
- (7) *Vision clearance.* No structure, fence, hedge, or other plantings shall be permitted within a ten-foot radius of the corner of the lot where the corner lot adjoins the intersecting street right-of-way. There shall be a complete vision clearance for a distance of not less than ten feet above the ground on all corner lots.
- (8) *Fences.*
 - a. *Interior lots.*
 - 1. No fence over seven feet in height shall be erected between the rear lot line and the front building setback line; along the front setback line between the side wall of the building and the side lot line; or along the rear lot line between the two side lot lines.
 - 2. No fence over four feet in height shall be erected between the front building setback line and the front lot line, or along the front lot line between the two side lot lines; the fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
 - b. *Corner lot.*
 - 1. A seven-foot-high fence may be erected only along the exterior side building setback line and the rear building setback line and along the exterior side building setback line, if extended, between the rear building setback line and the rear lot line. A seven-foot-high fence may be erected along the interior side lot line between the front building setback line and the rear lot line, and may be erected along the rear lot line between the interior side lot line and the intersection of the rear lot line and the exterior side building

setback line, if extended. Four-foot-high fences may be erected in the exterior side yard area between the front setback line and the rear lot line; such fence shall have a minimum of 75 percent of its surface open to permit visibility through it.

2. No fence over four feet in height shall be erected between the front building setback line and the front lot line or along the front lot line between the interior side lot line and the exterior side building setback line; the fence shall have a minimum of 75 percent of its surface open to permit visibility through it.

c. *Prohibited fencing.* Electrified fencing, barbed wire and razor wire are prohibited.

(9) *Off-street parking requirements.*

a. *Ratio requirements.*

1. All uses listed as permitted uses in the commercial C-4 district, 5½ per 1,000 square feet of gross floor area.

b. *Construction parameters.* The following shall apply to all parking lots:

1. All parking spaces required to service the principal building shall be located on the same lot as the principal building, or on a separate lot which is within 300 feet of the main entrance to the principal building.
2. When a principal building undergoes an increase in the gross floor area, seating capacity, or number of units, the required off-street parking availability shall be increased to equal or exceed the off-street parking requirements.
3. All parking lots shall be surfaced with an all-weather paving material capable of carrying a wheel load of 4,000 pounds without damaging the pavement. The lot shall be properly maintained at all times.
4. All lots shall be lighted if used after sunset. Lights shall be located, shielded, and directed upon the parking lot in such a manner as to not shine or reflect onto adjacent property or into the public right-of-way. Lighting shall not exceed three footcandles as measured at that portion of the lot line which abuts residentially-zoned property.
5. A minimum five-foot parking lot setback shall be provided between the property line and edge of the parking lot pavement. A minimum ten-foot parking lot setback shall be provided between any public road right-of-way or private access easement and the edge of parking lot pavement. A minimum ten-foot parking lot setback shall be provided between internal vehicular collector drives and the edge of parking lot pavement. Slag, gravel or any type of pavement shall be prohibited within the setback area. The setback area shall be landscaped with vegetative ground cover or grass and/or decorative trees or shrubs.
6. Public address systems shall not be permitted in any parking lot.
7. Parking spaces shall be a minimum of 180 square feet in area with a minimum width of 8½ feet. Small car parking spaces may be constructed, but shall be no smaller than 130 square feet in area with a minimum width of 8½ feet. A maximum of 25 percent of the total off-street parking spaces may be used for small cars, and each parking space shall be marked by an above-grade sign as a small car parking space.
8. Parking lots shall be properly graded and drained so that stormwater drainage is collected and disposed of on site.

(10) *Screening.* An opaque seven-foot fence shall be mandatory along any commercial C-4 property line which is contiguous to any residentially-zoned property. The fence shall be designed to provide security, and also to contain paper products and debris within the property.

(11) *Trees.* Only hardwood trees shall be planted between the curb and sidewalk in the tree lawn. No trees shall be

planted in tree lawns of less than five feet in width. The spacing of trees in tree lawns shall be not less than 40 feet apart.

(12) *Signs.* All signs shall conform with requirements of chapter 129.

(13) *Freestanding off-premises signs.*

a. *Separation requirements.* Separation between proposed and existing off-premises signs and specified uses along the street shall be measured along the centerline of the street. For this measurement, the location of proposed and/or existing structures and uses shall be considered the center of the proposed structure or closest edge of the property measured perpendicularly to the centerline of the street. Unless otherwise specified, all other separation requirements shall be measured from the closest point of the proposed structure linearly to the specified property, use, and/or structure. For the purposes of this section, a pending completed application or valid improvement location permit shall be considered as an existing sign. The following separation distances shall be required between off-premises signs:

1. The minimum separation distance between one sign structure and another on a non-limited-access highway shall be 750 feet.
2. The minimum separation distance between one sign structure and another on a limited-access highway shall be 1,500 feet.
3. The minimum separation distance between one sign structure and another sign structure located at intersections, or on different streets from which they are intended to be viewed, shall be 300 feet.
4. The minimum separation distance between a sign structure and property either zoned or used for a church, school, park, residential district or legal nonconforming residential use shall be 100 feet measured from the center of the sign in any direction.
5. The minimum separation distance between a sign structure and property either zoned or used for a church, school, park, residential district or legal nonconforming residential use shall be 200 feet along both sides of the street from which the sign is intended to be viewed.
6. The minimum separation distance between a sign structure and the 100-year floodplain of the St. Joseph River as identified by the flood insurance rate maps shall be 300 feet.
7. Separation distances shall not be limited by jurisdictional boundaries. Required separation distances for proposed signs located within the jurisdiction of the city shall also be maintained from signs located in adjacent municipalities or jurisdictional areas.

b. *Permitting.* Applications shall not be considered complete unless all applicable information is submitted. The following information shall be submitted concurrently with any application for an improvement location permit for an off-premises sign:

1. A signed contract with property owners, or a deed identifying the applicant's property ownership where the sign is intended to be placed.
2. Most recent aerial photograph identifying all off-premises signs within a 1,000-foot radius of the proposed sign located along non-limited-access highways. The aerial photograph shall also identify property either zoned or used for a church, school, park, or residential purpose within 250 feet of the proposed sign.
3. Construction plans on the proposed sign, documenting the proposed height, area, setbacks, appearance, color and any other developmental requirements identified by this chapter.
4. A scaled plan identifying the location of the sign relative to property and right-of-way lines. Plot plan shall identify the location of hard surface paving, drives, sidewalk, easements, utilities, and buildings located within 100 feet of the proposed sign.

5. Proposed signs located within 50 feet of any required separation distance shall require a certified survey submitted by a licensed surveyor verifying that the proposed location meets all minimum setback requirements.
6. Signs proposed within the required separation distances to an adjacent municipality or jurisdiction area shall submit documentation from the municipality or area that a valid permit has not been issued or is pending for a sign within the required separation distance of the proposed sign.
- c. *Developmental requirements.* The following developmental requirements shall apply to the construction of off-premises signs:
 1. Non-limited-access highways. Only one sign shall be permitted per location based on the separation requirements identified herein. Two-tier signs shall be prohibited. The display area of the face of any sign located on a non-limited-access highway shall not exceed 300 square feet. Temporary extensions may be added to individual signs based on individual advertising requirements not to exceed 50 square feet per face (a maximum of 350 square feet with extensions). Extensions may project no higher than four feet above the height of the sign, including those of a legally nonconforming height.
 2. Non-limited-access highways, replacement of legally nonconforming signs. The replacement and/or relocation of any legally nonconforming sign shall meet all the requirements of this chapter; however, signs legally constructed with a greater display area than required by this chapter may be replaced at the existing nonconforming display area provided the following provisions are met:
 - (i) All other applicable provisions of this chapter are met.
 - (ii) The geographic areas that replacement may occur shall be limited to the following non-limited-access highways: Grape Road, north of Catalpa and south of Cleveland Road; Edison Road, beginning 500 feet west of Main Street and east of Hickory Road; McKinley Avenue, west of Fir Road and east of Hickory Road.
 - (iii) An improvement location permit must be approved within 180 days of the removal of the legally nonconforming display area sign. Documentation regarding the removal of the existing nonconforming sign shall be submitted concurrently with the permit request for its replacement.
 3. Limited-access highways. Only one sign shall be permitted per location based on the separation requirements identified herein. Two-tier signs shall be prohibited. The display area of the face of any sign located on a limited-access highway shall not exceed 14 feet in height by 48 feet in length (672 square feet). Temporary extensions may be added to individual signs based on individual advertising requirements not to exceed 200 square feet per face (a maximum of 872 square feet with extensions). Extensions may project no higher than four feet above the height of the sign, including those of a legally nonconforming height.
 4. Signs that are located back-to-back shall be considered one sign, provided the interior angle formed by each side of the sign does not exceed 45 degrees.
 5. The height of any sign shall not exceed 35 feet.
 6. Setbacks. Setback distances shall be measured from the nearest projection, appendage, board, or structure of the sign perpendicular to road right-of-way or property lines.
 - (i) The minimum setback for any sign from public road right-of-way shall be 25 feet.
 - (ii) The minimum rear-yard setback for any sign shall be 25 feet.
 - (iii) The minimum side-yard setback for any sign shall be five feet.
 7. The appearance of off-premises sign structures shall incorporate the use of architectural columns and

lattice below the face of the sign. The zoning administrator shall provide examples of signs that meet this requirement on request. Lattice shall not be required only in cases where it would block clear vision or cause other safety concerns as determined by the zoning administrator.

8. The color of off-premises sign structures shall be limited to natural earth-tone colors including, but not limited to, beige, brown, brick red, slate blue, and forest green. Bright and contrasting colors including, but not limited to, black, white, red, orange, yellow, purple and sky blue shall be prohibited.
 9. Lighting for off-premises signs shall not cause any light to be reflected toward a street or adjacent property.
 10. The use of animation, flashing lights, and beacon lights shall not be permitted as part of any off-premises sign. Any sign that resembles, or includes an element that resembles a traffic control device, sign, or light shall be prohibited. Electrical reader boards, tri-vision boards, and multiple-vision boards shall be permitted for off-premises signage.
 11. The placement of any off-premises sign shall not cause any conflict with circulation, drainage, parking, landscaping, and/or any other site attribute controlled and/or required by this chapter. Signs may not be placed in any landscape area required by this chapter.
 12. Off-premises signs shall be continually maintained for both structural integrity and appearance. Appearance includes, but shall not be limited to, issues such as rusting structures, peeling paper, and broken lattice. Empty boards and signs without advertising covering the entire face of the board shall be prohibited.
 13. Enforcement. The zoning administrator shall notify property owners by certified mail regarding any structure in violation of the chapter. Any sign that is not repaired or modified accordingly within 30 days of notification shall be removed at the property owner's expense.
- (14) *School separation.* No game arcade and/or pool hall or billiard hall shall be permitted to be placed within 750 feet of any school as measured by a line between the nearest lot line of the school lot and the nearest lot line of the game arcade and/or pool hall or billiard hall.
- (15) *Design review; development plan restrictions.* This section shall apply only to new commercial development, new commercial development (separate structures) on existing sites, or total commercial redevelopment or replacement. This section shall not apply to building additions or expansions to existing buildings. All construction shall meet the requirements of chapter 105, design requirements as referenced herein, except that the plan commission shall specifically consider the context of the proposal relative to the nonconforming status of adjacent structures. The plan commission may consider the nonconforming status of adjacent structures in approving waivers in accordance with section 105-39. In accordance with section 105-4, the applicable design requirements are identified as follows:
- a. Section 105-76, architectural materials, further limited as to only apply to those portions of the building visible from the public right-of-way and private collector roads serving multiple properties or businesses. At a minimum, two-thirds of each face of the visible portions of the building must use appropriate architectural materials. The remaining third may consist of other materials as may be determined by the owner/developer of the building. Appropriate architectural materials shall be expanded to include glass, exterior insulation and finish systems (EIFS), decorative concrete block and similar masonry units, painted/stained lap wood siding, and other high-quality materials as may be deemed appropriate by the plan commission. Metal siding and standard concrete block exterior finishes shall be considered inappropriate architectural materials. The color of all exterior architectural finishes shall meet the requirements of section 105-77 as supplemented below.

- b. Section 105-77, architectural color and textures, further limited as to only apply to those portions of the building the public right-of-way and private collector roads serving multiple properties or businesses. Appropriate colors may be expanded to include bold and contrasting colors subject to the review and approval of the plan commission in accordance with the established intent of the ordinance as documented by section 105-2.
- c. Section 105-108, mechanical equipment.
- d. Section 105-109, vending machines and newsracks. This requirement shall not apply to newsracks located in conjunction with restaurants which meet the required building setbacks of the district. Newsracks located adjacent to other commercial buildings that are designed in concert with the building may also be deemed appropriate by the plan commission.
- e. Section 105-116, dumpster/utility service areas.
- f. The public hearing requirements identified by section 105-31 shall not apply.

(Code 1985, § 159.096; Ord. No. 2978, 12-8-1986; Ord. No. 3263, 4-17-1989; Ord. No. 3297, 8-7-1989; Ord. No. 3363, 3-19-1990; Ord. No. 3466, 3-4-1991; Ord. No. 3698, 6-21-1993; Ord. No. 3703, 6-21-1993; Ord. No. 4020, 2-20-1996; Ord. No. 4302, 8-17-1998; Ord. No. 4565, 2-12-2001; Ord. No. 4568, 2-20-2001; Ord. No. 4576, 4-2-2001; Ord. No. 4584, 5-7-2001)

Secs. 137-381—137-403. - Reserved.

Subdivision VI. - Commercial C-5 District

Sec. 137-404. - Intent.

The commercial C-5 district is a very limited retail and service category intended for small commercial lots and small commercial buildings of up to 8,000 square feet in total area in residential neighborhood crossroad areas, for the purpose of supplying day-to-day retail and service needs of the residents, such as food, drugs, and personal services. Outside storage, display, or sales shall not be permitted outside a completely enclosed, substantially constructed, and weathertight building.

(Code 1985, § 159.100; Ord. No. 2917, 8-4-1986; Ord. No. 3698, 6-21-1993)

Sec. 137-405. - Uses.

- (a) Only the following uses are permitted:
 - (1) Adult day care center.
 - (2) Antique shops.
 - (3) Apartments.
 - (4) Art galleries.
 - (5) Art supply stores.
 - (6) Bakery shops or confectionery shops.
 - (7) Bait shops.
 - (8) Banks, savings and loans, credit unions, loan offices.
 - (9) Barbershops or beauty shops.
 - (10) Beverage shops.
 - (11) Book or stationery stores.

- (12) Camera shops.
- (13) Candy stores.
- (14) Churches, synagogues, and similar places of worship.
- (15) Clothing stores.
- (16) Coin-operated laundries.
- (17) Community centers, private and public.
- (18) Community welfare or health centers.
- (19) Computer sales.
- (20) Convents or monasteries.
- (21) Custom sewing and millinery shops.
- (22) Day nurseries and day care centers.
- (23) Drug stores and pharmacies.
- (24) Dry cleaning, pick up and delivery.
- (25) Duplexes.
- (26) Duplication shops.
- (27) Eating and drinking establishments, without drive-in or drive-through service.
- (28) Food stores.
- (29) Florist shops.
- (30) Game arcade and pool hall or billiard hall.
- (31) Handicraft shops: ceramic, sculpture, or similar art work.
- (32) Hardware stores.
- (33) Hobby shops.
- (34) Laundries, pick up and delivery.
- (35) Libraries.
- (36) Locksmiths.
- (37) Medical clinics.
- (38) Multiple-family dwellings.
- (39) Museums.
- (40) Offices.
- (41) Optical shops.
- (42) Paint, wallpaper, and decorating stores.
- (43) Photography studios.
- (44) Post offices.
- (45) Private parks and playgrounds.
- (46) Rectories.
- (47) Required off-street parking.
- (48) Schools, public, parochial, or business.
- (49) Shoe repair shops.

(50) Single-family dwellings.

(51) Studios for art, music, ceramics, drama, speech, dance, and similar skills.

(52) Tailoring and alteration shops.

(53) Tanning salons.

(54) Tobacco stores.

(55) Townhouses.

(56) Travel agencies.

(57) One temporary building for the construction industry which is incidental to erection of buildings permitted by this section.

(b) Any use permitted in the residential R-1, residential R-2, and residential R-3 zoning districts shall be a permitted use in the commercial C-5 district. Such residential use shall conform to the height, area, and developmental regulations of the residential zoning district that permits the use. If more than one residential zoning district permits the residential use, then the use shall conform to the regulations of the most restrictive residential district in which it is a permitted use. In the case of a conflict between the residential regulations and those of section 137-404, the residential requirements and regulations shall control, except in the case of apartment restrictions, in which case subsection (c) of this section and section 137-406(1)–(5) shall control.

(c) Apartment dwellings shall be prohibited below a retail establishment. One apartment or dwelling unit may be permitted above or upon ground level in connection with a business or retail establishment. Occupancy of garages for residential or commercial purposes shall be prohibited.

(Code 1985, § 159.101; Ord. No. 2917, 8-4-1986; Ord. No. 3270, 5-1-1989; Ord. No. 3466, 3-4-1991; Ord. No. 3602, 6-15-1992; Ord. No. 3698, 6-21-1993; Ord. No. 4020, 2-20-1996)

Sec. 137-406. - Height, area, and developmental regulations.

In the commercial C-5 district, the height of buildings, the minimum dimensions of yards and setbacks, and the minimum lot area per commercial building shall be as follows:

(1) *Height.* No building hereafter erected or structurally altered shall exceed 35 feet or 2½ stories.

(2) *Front building setback.*

a. There shall be a front building setback of at least 25 feet for all new principal buildings. Nonconforming buildings shall adhere to the applicable sections regulating nonconformances.

b. On through lots the required front building setback shall be provided on both streets. No accessory buildings shall project beyond the front building setback line on either street.

(3) *Side building setback.*

a. A side building setback shall not be less than five feet in width as measured from the fascia board to the side lot line.

b. On corner lots the usual front building setback and side building setback regulations shall apply. However, the exterior side building setback shall not be less than 50 percent of the front building setback required for lots facing the street upon which the side yard abuts. This regulation shall not be so interpreted as to reduce the buildable width of a corner lot of record at the front building setback required for lots facing the street upon

which the side yard abuts. This regulation shall not be so interpreted as to reduce the buildable width of a corner lot of record at the time of the passage of this section to less than 25 feet, nor to prohibit the erection of an accessory building where this regulation cannot reasonably be complied with.

- (4) *Rear building setback.* There shall be a rear building setback of not less than 25 feet in depth. In the case of a through lot, no rear building setback is required, but each street frontage shall be subject to the front building setback requirements of this section.
- (5) *Accessory buildings.*
 - a. Accessory buildings not over 15 feet high may be located in the rear half yard area, provided the accessory buildings come not nearer than 30 inches to any rear lot line or side lot line. Additionally, accessory buildings shall not be greater than 720 square feet in floor area.
 - b. No accessory building shall be used in whole or part for living or residential purposes.
 - c. No accessory building or accessory building area shall be used for commercial storage purposes.
- (6) *Minimum lot area and maximum intensity of use.*
 - a. Every lot upon which a building is erected or altered shall have a front lot width dimension and area as follows:
 1. Sewer and water available: 60 feet frontage at front lot line; 6,600 square feet.
 2. Sewer or water unavailable: 70 feet frontage at front lot line; 10,000 square feet.
 3. Sewer and water unavailable: 100 feet frontage at front lot line; 15,000 square feet.
 - b. Any lot which has been recorded in a subdivision plat or deed with the office of the county recorder prior to November 21, 1966, and which is 4,000 square feet or more in area, may be used as a building site.
 - c. No building with its accessory buildings shall be erected or increased in ground area so that more than 60 percent of the area of the lot will be occupied.
- (7) *Off-street parking.*
 - a. *Ratio requirements.*
 1. Single-family or duplex dwellings, two per residential unit.
 2. Apartments, townhouses, or multiple-family dwellings, 1½ per residential unit.
 3. Churches or synagogues, one per four seats or 80 inches of seating length in the main sanctuary or auditorium.
 4. Community center, private or public, two per 1,000 square feet of gross floor area.
 5. Community welfare or health centers, two per 1,000 square feet of gross floor area.
 6. Libraries, art galleries, or museums, two per 1,000 square feet of gross floor area.
 7. Elementary schools, two per classroom, based upon design capacity.
 8. High schools, one per five students, based upon design capacity.
 9. All other uses, four per 1,000 square feet of gross floor area.
 - b. *Construction parameters.* The following shall apply to all parking lots, excluding duplex and two-family dwelling, and detached single-family dwelling driveways:
 1. All parking spaces required to service the principal building shall be located on the same lot as the principal building, or on a separate lot which is within 300 feet of the main entrance to the principal building.
 2. When a principal building undergoes an increase in the gross floor area, seating capacity, or number of

units, the required off-street parking availability shall be increased to equal or exceed the off-street parking requirements.

3. All parking lots shall be surfaced with an all-weather paving material capable of carrying a wheel load of 4,000 pounds without damaging the pavement. The lot shall be properly maintained at all times.
 4. All lots shall be lighted if used after sunset. Lights shall be located, shielded, and directed upon the parking lot in such a manner as to not shine or reflect onto adjacent property or into the public right-of-way. Lighting shall not exceed three footcandles as measured at that portion of the lot line which abuts residentially-zoned property.
 5. A minimum five-foot parking lot setback shall be provided between the property line and edge of the parking lot pavement. A minimum ten-foot parking lot setback shall be provided between any public road right-of-way or private access easement and the edge of parking lot pavement. A minimum ten-foot parking lot setback shall be provided between internal vehicular collector drives and the edge of parking lot pavement. Slag, gravel or any type of pavement shall be prohibited within the setback area. The setback area shall be landscaped with vegetative ground cover or grass and/or decorative trees or shrubs.
 6. Public address systems shall not be permitted in any parking lot.
 7. Parking spaces shall be a minimum of 180 square feet in area with a minimum width of 8½ feet. Small car parking spaces may be constructed, but shall be no smaller than 130 square feet in area with a minimum width of 8½ feet. A maximum of 25 percent of the total off-street parking spaces may be used for small cars, and each parking space shall be marked by an above-grade sign as a small car parking space.
 8. Parking lots shall be properly graded and drained so that stormwater drainage is collected and disposed of on site.
- (8) *Vision clearance.* No structure, fence, hedge, or other plantings shall be permitted within a ten-foot radius of the corner lot the lot where the corner lot adjoins the intersecting street right-of-way. There shall be a complete vision clearance for a distance of not less than ten feet above the ground on all corner lots.
- (9) *Fences.*
- a. *Interior lots.*
 1. No fence over seven feet in height shall be erected between the rear lot line and the front building setback line; along the front setback line between the side wall of the building and the side lot line; or along the rear lot line between the two side lot lines.
 2. No fence over four feet in height shall be erected between the front building setback line and the front lot line, or along the front lot line between the two side lot lines; the fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
 - b. *Corner lots.*
 1. A seven-foot-high fence may be erected only along the exterior side building setback line and the rear building setback line and along the exterior side building setback line, if extended, between the rear building setback line and the rear lot line. A seven-foot-high fence may be erected along the interior side lot line between the front building setback line and the rear lot line, and may be erected along the rear lot line between the interior side lot line and the intersection of the rear lot line and the exterior side building setback line, if extended. Four-foot-high fences may be erected in the exterior side yard area between the front setback line and the rear lot line; such fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
 2. No fence over four feet in height shall be erected between the front building setback line and the front lot

line, or along the front lot line between the interior side lot line and the exterior side building setback line; the fence shall have a minimum of 75 percent of its surface open to permit visibility through it.

- (10) *Trees.* Only hardwood trees shall be planted between the curb and sidewalk in the tree lawn. No trees shall be planted in tree lawns of less than five feet in width. The spacing of trees in tree lawns shall be not less than 40 feet apart.
- (11) *Signs.* All signs shall conform with requirements of chapter 129.
- (12) *School separation.* No game arcade and/or pool hall or billiard hall shall be permitted to be placed within 750 feet of any school as measured by a line between the nearest lot line of the school lot and the nearest lot line of the game arcade and/or pool hall or billiard hall.
- (13) *Design review; development plan restrictions.* This section shall apply only to new commercial development, new commercial development (separate structures) on existing sites, or total commercial redevelopment or replacement. This section shall not apply to building additions or expansions to existing buildings. All construction shall meet the requirements of chapter 105, design requirements as referenced herein, except that the plan commission shall specifically consider the context of the proposal relative to the nonconforming status of adjacent structures. The plan commission may consider the nonconforming status of adjacent structures in approving waivers in accordance with section 105-39. In accordance with section 105-4, the applicable design requirements are identified as follows:
 - a. Section 105-76, architectural materials, further limited as to only apply to those portions of the building visible from the public right-of-way and private collector roads serving multiple properties or businesses. At a minimum, two-thirds of each face of the visible portions of the building must use appropriate architectural materials. The remaining third may consist of other materials as may be determined by the owner/developer of the building. Appropriate architectural materials shall be expanded to include glass, exterior insulation and finish systems (EIFS), decorative concrete block and similar masonry units, painted/stained lap wood siding, and other high-quality materials as may be deemed appropriate by the plan commission. Metal siding and standard concrete block exterior finishes shall be considered inappropriate architectural materials. The color of all exterior architectural finishes shall meet the requirements of section 105-77 as supplemented below.
 - b. Section 105-77, architectural color and textures, further limited as to only apply to those portions of the building visible from the public right-of-way and private collector roads serving multiple properties or businesses. Appropriate colors and textures may be expanded to include bold and contrasting colors subject to the review and approval of the plan commission in accordance with the established intent of the ordinance as documented by section 105-2.
 - c. Section 105-108, mechanical equipment.
 - d. Section 105-109, vending machines and newsracks. This requirement shall not apply to newsracks located in conjunction with restaurants which meet the required building setbacks of the district. Newsracks located adjacent to other commercial buildings that are designed in concert with the building may also be deemed appropriate by the plan commission.
 - e. Section 105-116, dumpster/utility service areas.
 - f. The public hearing requirements identified by section 105-31 shall not apply.

(Code 1985, § 159.102; Ord. No. 2917, 8-4-1986; Ord. No. 3263, 4-17-1989; Ord. No. 3297, 8-7-1989; Ord. No. 3363, 3-19-1990; Ord. No. 3466, 3-4-1991; Ord. No. 3698, 6-21-1993; Ord. No. 3703, 6-21-1993; Ord. No. 4565, 2-12-2001; Ord. No. 4576, 4-2-2001; Ord. No. 4584, 5-7-2001)

Subdivision VII. - Commercial C-6 District

Sec. 137-426. - Intent.

The commercial C-6 district is designed to provide linear areas where office uses and certain public and semi-public uses may be developed. This district serves as a linear transition buffer between low-density residential areas and commercial areas. Because high average daily traffic counts on major thoroughfares can decrease low-density residential desirability, the district can also act as a linear transition buffer between major thoroughfares and low-density residential areas. No principal building shall be greater than 8,000 square feet. Sales of commodities or outside storage are not permitted in this district.

(Code 1985, § 159.103; Ord. No. 2977, 12-8-1986)

Sec. 137-427. - Uses.

Only the following uses are permitted:

- (1) Banks, savings and loans, credit unions, loan offices.
- (2) Bed and breakfasts.
- (3) Churches, synagogues and similar places of worship.
- (4) Clinics for humans.
- (5) Convents and rectories.
- (6) Medical or dental laboratories.
- (7) Mortuaries and funeral homes.
- (8) Offices.
- (9) Public libraries.
- (10) Single-unit dwellings.
- (11) Two-unit dwellings or duplex dwellings.

(Code 1985, § 159.104; Ord. No. 2977, 12-8-1986)

Sec. 137-428. - Height, area, and developmental regulations.

In the commercial C-6 district, the height of buildings, the minimum dimension of yards and setbacks, and the minimum lot area per commercial building shall be as follows:

- (1) *Height.* No building hereafter erected or structurally altered shall exceed 35 feet or 2½ stories.
- (2) *Front building setback.*
 - a. There shall be a front building setback of at least 25 feet for all new principal buildings. Nonconforming buildings shall adhere to the applicable sections regulating nonconformances.
 - b. On through lots the required front building setback shall be provided on both streets. No accessory buildings shall project beyond the front building setback line on either street.
- (3) *Side building setback.* A side building setback shall not be less than five feet in width as measured from the facade board to the side lot line. On corner lots the usual front building setback and side building setback regulations

shall apply; however, the exterior side building setback shall not be less than 50 percent of the front building setback required for lots facing the street upon which the side yard abuts. This regulation shall not be so interpreted as to reduce the buildable width of a corner lot of record at the front building setback required for lots facing the street upon which the side yard abuts. This regulation shall not be so interpreted as to reduce the buildable width of a corner lot of record at the time of the passage of this section to less than 25 feet, nor to prohibit the erection of an accessory building where this regulation cannot reasonably be complied with.

- (4) *Rear building setback.* There shall be a rear building setback of not less than 25 feet in depth. In the case of a through lot, no rear building setback is required, but each street frontage shall be subject to the front building setback requirements of this section.
- (5) *Accessory buildings.*
 - a. Accessory buildings not over 15 feet high may be located in the rear half yard area, provided the accessory buildings come not nearer than 30 inches to any rear lot line or side lot line. Additionally, accessory buildings shall not be greater than 720 square feet in floor area.
 - b. No accessory building shall be used in whole or part for living or residential purposes.
 - c. No accessory building or accessory building area shall be used for commercial storage purposes.
- (6) *Minimum lot area and maximum intensity of use.*
 - a. Every lot upon which a building is erected or altered shall have a front lot width dimension and area as follows:
 1. Sewer and water available: 60 feet frontage at front lot line; 6,600 square feet.
 2. Sewer or water unavailable: 70 feet frontage at front lot line; 10,000 square feet.
 3. Sewer and water unavailable: 100 feet frontage at front lot line; 15,000 square feet.
 - b. Any lot which has been recorded in a subdivision plat or deed with the office of the county recorder prior to November 21, 1966, and which is 4,000 square feet or more in area, may be used as a building site.
 - c. No building with its accessory buildings shall be erected or increased in ground area so that more than 60 percent of the area of the lot will be occupied.
- (7) *Off-street parking.*
 - a. *Ratio requirements.*
 1. Single-family, two-family, or duplex dwellings, two per residential unit.
 2. Churches or synagogues, one per four seats or 80 inches of seating length in the main sanctuary or auditorium.
 3. Public libraries, two per 1,000 square feet of gross floor area.
 4. All other uses, four per 1,000 square feet of gross floor area.
 - b. *Construction parameters.* The following shall apply to all parking lots, excluding two-unit dwellings or duplex dwellings, and single-family dwelling driveways:
 1. All parking spaces required to service the principal building shall be located on the same lot as the principal building, or on a separate lot which is within 300 feet of the main entrance to the principal building.
 2. When a principal building undergoes an increase in the gross floor area, seating capacity, or number of units, the required off-street parking availability shall be increased to equal or exceed the off-street parking requirements.

3. All parking lots shall be surfaced with an all-weather paving material capable of carrying a wheel load of 4,000 damaging the pavement. The lot shall be properly maintained at all times.
 4. All lots shall be lighted if used after sunset. Lights shall be located, shielded, and directed upon the parking lot in such a manner as to not shine or reflect onto adjacent property or into the public right-of-way. Lighting shall not exceed three footcandles as measured at that portion of the lot line which abuts residentially-zoned property.
 5. A minimum five-foot parking lot setback shall be provided between the property line and edge of the parking lot pavement. A minimum ten-foot parking lot setback shall be provided between any public road right-of-way or private access easement and the edge of parking lot pavement. A minimum ten-foot parking lot setback shall be provided between internal vehicular collector drives and the edge of parking lot pavement. Slag, gravel or any type of pavement shall be prohibited within the setback area. The setback area shall be landscaped with vegetative ground cover or grass and/or decorative trees or shrubs.
 6. Public address systems shall not be permitted in any parking lot.
 7. Parking spaces shall be a minimum of 180 square feet in area with a minimum width of 8½ feet. Small car parking spaces may be constructed, but shall be no smaller than 130 square feet in area with a minimum width of 8½ feet. A maximum of 25 percent of the total off-street parking spaces may be used for small cars, and each parking space shall be marked by an above-grade sign as a small car parking space.
 8. Parking lots shall be properly graded and drained so that stormwater drainage is collected and disposed of on site.
 9. Parking lots shall be located behind the rear wall of the principal building.
- (8) *Vision clearance.* No structure, fence, hedge, or other plantings shall be permitted within a ten-foot radius of the corner of the lot where the corner lot adjoins the intersecting street right-of-way. There shall be a complete vision clearance for a distance of not less than ten feet above the ground on all corner lots.
- (9) *Fences.*
- a. *Interior lots.*
 1. No fence over seven feet in height shall be erected between the rear lot line and the front building setback line; along the front setback line between the side wall of the building and the side lot line; or along the rear lot line between the two side lot lines.
 2. No fence over four feet in height shall be erected between the front building setback line and the front lot line, or along the front lot line between the two side lot lines; the fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
 - b. *Corner lots.*
 1. A seven-foot-high fence may be erected only along the exterior side building setback line and the rear building setback line and along the exterior side building setback line, if extended, between the rear building setback line and the rear lot line. A seven-foot-high fence may be erected along the interior side lot line between the front building setback line and the rear lot line, and may be erected along the rear lot line between the interior side lot line and the intersection of the rear lot line and the exterior side building setback line, if extended. Four-foot-high fences may be erected in the exterior side yard area between the front setback line and the rear lot line; such fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
 2. No fence over four feet in height shall be erected between the front building setback line and the front lot line, or along the front lot line between the interior side lot line and the exterior side building setback line;

the fence shall have a minimum of 75 percent of its surface open to permit visibility through it.

- (10) *Trees.* Only hardwood trees shall be planted between the curb and sidewalk in the tree lawn. No trees shall be planted in tree lawns of less than five feet in width. The spacing of trees in tree lawns shall be not less than 40 feet apart.
- (11) *Signs.* All signs shall conform with requirements of chapter 129.
- (12) *Design review; development plan restrictions.* This section shall apply only to new commercial development, new commercial development (separate structures) on existing sites, or total commercial redevelopment or replacement. This section shall not apply to building additions or expansions to existing buildings. All construction shall meet the requirements of chapter 105, design requirements as referenced herein, except that the plan commission shall specifically consider the context of the proposal relative to the nonconforming status of adjacent structures. The plan commission may consider the nonconforming status of adjacent structures in approving waivers in accordance with section 105-39. In accordance with section 105-4, the applicable design requirements are identified as follows:
- a. Section 105-76, architectural materials, further limited as to only apply to those portions of the building visible from the public right-of-way and private collector roads serving multiple properties or businesses. At a minimum, two-thirds of each face of the visible portions of the building must use appropriate architectural materials. The remaining third may consist of other materials as may be determined by the owner/developer of the building. Appropriate architectural materials shall be expanded to include glass, exterior insulation and finish systems (EIFS), decorative concrete block and similar masonry units, painted/stained lap wood siding, and other high-quality materials as may be deemed appropriate by the plan commission. Metal siding and standard concrete block exterior finishes shall be considered inappropriate architectural materials. The color of all exterior architectural finishes shall meet the requirements of section 105-77 as supplemented below.
 - b. Section 105-77, architectural color and textures, further limited as to only apply to those portions of the building visible from the public right-of-way and private collector roads serving multiple properties or businesses. Appropriate colors and textures may be expanded to include bold and contrasting colors subject to the review and approval of the plan commission in accordance with the established intent of the ordinance as documented by section 105-2.
 - c. Section 105-108, mechanical equipment.
 - d. Section 105-109, vending machines and newsracks. This requirement shall not apply to newsracks located in conjunction with restaurants which meet the required building setbacks of the district. Newsracks located adjacent to other commercial buildings that are designed in concert with the building may also be deemed appropriate by the plan commission.
 - e. Section 105-116, dumpster/utility service areas.
 - f. The public hearing requirements identified by section 105-31 shall not apply.

(Code 1985, § 159.105; Ord. No. 2977, 12-8-1986; Ord. No. 3263, 4-17-1989; Ord. No. 3297, 8-7-1989; Ord. No. 3363, 3-19-1990; Ord. No. 3698, 6-21-1993; Ord. No. 3703, 6-21-1993; Ord. No. 4565, 2-12-2001; Ord. No. 4576, 4-2-2001; Ord. No. 4584, 5-7-2001)

Secs. 137-429—137-454. - Reserved.

Subdivision VIII. - Commercial C-7 District

Sec. 137-455. - Intent.

The commercial C-7 district is designed for commercial restaurant uses that are automobile or vehicular in nature and which, by their very nature, do not readily lend themselves into inclusion in the other commercial districts, due to the potential for traffic congestion in queueing lanes, higher noise and pollution levels from running and standing automobiles, and potential for increased off-site litter. Outside storage, display, or sales shall not be permitted outside a completely enclosed, substantially constructed and weathertight building.

(Code 1985, § 159.115; Ord. No. 3256, 3-20-1989)

Sec. 137-456. - Uses.

Only the following uses are permitted:

- (1) Any use permitted in the commercial C-1 district.
- (2) Drive-thru restaurants.
- (3) Drive-in restaurants.
- (4) Freestanding off-premises signs.
- (5) Game arcade and pool hall or billiard hall.

(Code 1985, § 159.116; Ord. No. 3256, 3-20-1989; Ord. No. 3466, 3-4-1991; Ord. No. 4568, 2-20-2001)

Sec. 137-457. - Height, area, and development regulations.

In the commercial C-7 district, the height of buildings, the minimum dimensions of yards and setbacks, and the minimum lot area per commercial building shall be as follows:

- (1) *Height.* No building hereafter erected or structurally altered shall exceed three stories or 40 feet in height.
- (2) *Front building setback.*
 - a. There shall be a front building setback of at least 25 feet for all new principal buildings. Nonconforming buildings shall adhere to the applicable sections regulating nonconformances.
 - b. On through lots the required front building setback shall be provided on both streets. No accessory buildings shall project beyond the front building setback line on either street.
- (3) *Side building setback.*
 - a. A side building setback shall not be less than five feet in width as measured from the fascia board to the side lot line.
 - b. On corner lots the usual front building setback and side building setback regulations shall apply; however, the exterior side building setback shall not be less than 50 percent of the front building setback required for lots facing the street upon which the side yard abuts. This regulation shall not be so interpreted as to reduce the buildable width of a corner lot of record at the front building setback required for lots facing the street upon which the side yard abuts. This regulation shall not be so interpreted as to reduce the buildable width of a corner lot of record at the time of the passage of this section to less than 25 feet, nor to prohibit the erection of an accessory building where this regulation cannot reasonably be complied with.
- (4) *Rear building setback.* There shall be a rear building setback of not less than ten percent of the depth of the lot for a one-story building. The depth shall be increased to 15 percent of the depth of the lot for any building greater than or equal to two stories; however, the rear building setback need not exceed 30 feet in depth.

(5) *Accessory buildings.*

- a. Accessory buildings not over 15 feet high may be located in the rear half yard area, provided the accessory buildings come not nearer than 30 inches to any rear lot line or side lot line. Additionally, accessory buildings shall not be greater than 720 square feet in floor area.
- b. No accessory building shall be used in whole or part for living or residential purposes.
- c. No accessory building or accessory building area shall be used for commercial storage purposes.

(6) *Minimum lot area and maximum intensity of use.*

- a. Every lot upon which a building is erected or altered shall have a front lot width dimension and area as follows:
 1. Sewer and water available: 60 feet frontage at front lot line; 6,600 square feet.
 2. Sewer or water unavailable: 70 feet frontage at front lot line; 10,000 square feet.
 3. Sewer and water unavailable: 100 feet frontage at front lot line; 15,000 square feet.
- b. Any lot which has been recorded in a subdivision plat or deed with the office of the county recorder prior to November 21, 1966, and which is 4,000 square feet or more in area, may be used as a building site.
- c. No building with its accessory building shall be erected or increased in ground area so that more than 75 percent of the area of the lot will be occupied.

(7) *Off-street parking.*

a. *Ratio requirements.*

1. Drive-thru restaurants, 15 per 1,000 square feet of gross floor area.
2. Drive-in restaurants, 15 per 1,000 square feet of gross floor area.
3. All other uses, four per 1,000 square feet of gross floor area.

b. *Construction parameters.* The following shall apply to all parking lots:

1. All parking spaces required to service the principal building shall be located on the same lot as the principal building, or on a separate lot which is within 300 feet of the main entrance to the principal building.
2. When a principal building undergoes an increase in the gross floor area, seating capacity, or number of units, the required off-street parking availability shall be increased to equal or exceed the off-street parking requirements.
3. All parking lots shall be surfaced with an all-weather paving material capable of carrying a wheel load of 4,000 pounds without damaging the pavement. The lot shall be properly maintained at all times.
4. All lots shall be lighted if used after sunset. Lights shall be located, shielded, and directed upon the parking lot in such a manner as to not shine or reflect onto adjacent property or into the public right-of-way. Lighting shall not exceed three footcandles as measured at that portion of the lot line which abuts residentially-zoned property.
5. A minimum five-foot parking lot setback shall be provided between the property line and edge of the parking lot pavement. A minimum ten-foot parking lot setback shall be provided between any public road right-of-way or private access easement and the edge of parking lot pavement. A minimum ten-foot parking lot setback shall be provided between internal vehicular collector drives and the edge of parking lot pavement. Slag, gravel or any type of pavement shall be prohibited within the setback area. The setback area shall be landscaped with vegetative ground cover or grass and/or decorative trees or shrubs.

6. Public address systems shall not be permitted in any parking lot.
 7. Parking spaces shall be a minimum of 180 square feet in area with a minimum width of 8½ feet. Small car parking spaces may be constructed, but shall be no smaller than 130 square feet in area with a minimum width of 8½ feet. A maximum of 25 percent of the total off-street parking spaces may be used for small cars, and each parking space shall be marked by an above-grade sign as a small car parking space.
 8. Parking lots shall be properly graded and drained so that stormwater drainage is collected and disposed of on site.
- (8) *Vision clearance.* No structure, fence, hedge, or other planting shall be permitted within a ten-foot radius of the corner of the lot where the corner lot adjoins the intersecting street right-of-way. There shall be a complete vision clearance for a distance of not less than ten feet above the ground on all corner lots.
- (9) *Fences.*
- a. *Interior lots.*
 1. No fence over seven feet in height shall be erected between the rear lot line and the front building setback line; along the front setback line between the side wall of the building and the side lot line; or along the rear lot line between the two side lot lines.
 2. No fence over four feet in height shall be erected between the front building setback line and the front lot line, or along the front lot line between the two side lot lines; the fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
 - b. *Corner lot.*
 1. A seven-foot-high fence may be erected only along the exterior side building setback line and the rear building setback line and along the exterior side building setback line, if extended, between the rear building setback line and the rear lot line. A seven-foot-high fence may be erected along the interior side lot line between the front building setback line and the rear lot line, and may be erected along the rear lot line between the interior side lot line and the intersection of the rear lot line and the exterior side building setback line, if extended. Four-foot-high fences may be erected in the exterior side yard area between the front setback line and the rear lot line; such fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
 2. No fence over four feet in height shall be erected between the front building setback line and the front lot line or along the front lot line between the interior side lot line and the exterior side building setback line; the fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
- (10) *Screening.* An opaque seven-foot fence shall be mandatory along any commercial C-7 property line which is contiguous to any residentially zoned property. The fence shall be designed to provide security, and also to contain paper products and debris within the property.
- (11) *Signs.* All signs shall conform with requirements of chapter 129.
- (12) *School separation.* No game arcade and/or pool hall or billiard hall shall be permitted to be placed within 750 feet of any school as measured by a line between the nearest lot line of the school lot and the nearest lot line of the game arcade and/or pool hall or billiard hall.
- (13) *Freestanding off-premises signs.*
- a. *Separation requirements.* Separation between proposed and existing off-premises signs and specified uses along the street shall be measured along the centerline of the street. For this measurement, the location of proposed and/or existing structures and uses shall be considered the center of the proposed structure or closest edge of the property measured perpendicularly to the centerline of the street. Unless otherwise

specified, all other separation requirements shall be measured from the closest point of the proposed structure linearly to the specified property, use, and/or structure. For the purposes of this section, a pending completed application or valid improvement location permit shall be considered as an existing sign. The following separation distances shall be required between off-premises signs:

1. The minimum separation distance between one sign structure and another on a non-limited-access highway shall be 750 feet.
 2. The minimum separation distance between one sign structure and another on a limited-access highway shall be 1,500 feet.
 3. The minimum separation distance between one sign structure and another sign structure located at intersections, or on different streets from which they are intended to be viewed, shall be 300 feet.
 4. The minimum separation distance between a sign structure and property either zoned or used for a church, school, park, residential district or legal nonconforming residential use shall be 100 feet measured from the center of the sign in any direction.
 5. The minimum separation distance between a sign structure and property either zoned or used for a church, school, park, residential district or legal nonconforming residential use shall be 200 feet along both sides of the street from which the sign is intended to be viewed.
 6. The minimum separation distance between a sign structure and the 100-year floodplain of the St. Joseph River as identified by the flood insurance rate maps shall be 300 feet.
 7. Separation distances shall not be limited by jurisdictional boundaries. Required separation distances for proposed signs located within the jurisdiction of the city shall also be maintained from signs located in adjacent municipalities or jurisdictional areas.
- b. *Permitting.* Applications shall not be considered complete unless all applicable information is submitted. The following information shall be submitted concurrently with any application for an improvement location permit for an off-premises sign:
1. A signed contract with property owners, or a deed identifying the applicant's property ownership where the sign is intended to be placed.
 2. Most recent aerial photograph identifying all off-premises signs within a 1,000-foot radius of the proposed sign located along non-limited-access highways. The aerial photograph shall also identify property either zoned or used for a church, school, park, or residential purpose within 250 feet of the proposed sign.
 3. Construction plans on the proposed sign, documenting the proposed height, area, setbacks, appearance, color and any other developmental requirements identified by this chapter.
 4. A scaled plan identifying the location of the sign relative to property and right-of-way lines. Plot plan shall identify the location of hard surface paving, drives, sidewalk, easements, utilities, and buildings located within 100 feet of the proposed sign.
 5. Proposed signs located within 50 feet of any required separation distance shall require a certified survey submitted by a licensed surveyor verifying that the proposed location meets all minimum setback requirements.
 6. Signs proposed within the required separation distances to an adjacent municipality or jurisdiction area shall submit documentation from the municipality or area that a valid permit has not been issued or is pending for a sign within the required separation distance of the proposed sign.
- c. *Developmental requirements.* The following developmental requirements shall apply to the construction of off-premises signs:

1. Non-limited-access highways. Only one sign shall be permitted per location based on the separation requirements identified herein. Two-tier signs shall be prohibited. The display area of the face of any sign located on a non-limited-access highway shall not exceed 300 square feet. Temporary extensions may be added to individual signs based on individual advertising requirements not to exceed 50 square feet per face (a maximum of 350 square feet with extensions). Extensions may project no higher than four feet above the height of the sign, including those of a legally nonconforming height.
2. Non-limited-access highways, replacement of legally nonconforming signs. The replacement and/or relocation of any legally nonconforming sign shall meet all the requirements of this chapter; however, signs legally constructed with a greater display area than required by this chapter may be replaced at the existing nonconforming display area provided the following provisions are met:
 - (i) All other applicable provisions of this chapter are met.
 - (ii) The geographic areas that replacement may occur shall be limited to the following non-limited-access highways: Grape Road, north of Catalpa and south of Cleveland Road; Edison Road, beginning 500 feet west of Main Street and east of Hickory Road; McKinley Avenue, west of Fir Road and east of Hickory Road.
 - (iii) An improvement location permit must be approved within 180 days of the removal of the legally nonconforming display area sign. Documentation regarding the removal of the existing nonconforming sign shall be submitted concurrently with the permit request for its replacement.
3. Limited-access highways. Only one sign shall be permitted per location based on the separation requirements identified herein. Two-tier signs shall be prohibited. The display area of the face of any sign located on a limited-access highway shall not exceed 14 feet in height by 48 feet in length (672 square feet). Temporary extensions may be added to individual signs based on individual advertising requirements not to exceed 200 square feet per face (a maximum of 872 square feet with extensions). Extensions may project no higher than four feet above the height of the sign, including those of a legally nonconforming height.
4. Signs that are located back-to-back shall be considered one sign, provided the interior angle formed by each side of the sign does not exceed 45 degrees.
5. The height of any sign shall not exceed 35 feet.
6. Setbacks. Setback distances shall be measured from the nearest projection, appendage, board, or structure of the sign perpendicularly to road right-of-way or property lines.
 - (i) The minimum setback for any sign from public road right-of-way shall be 25 feet.
 - (ii) The minimum rear-yard setback for any sign shall be 25 feet.
 - (iii) The minimum side-yard setback for any sign shall be five feet.
7. The appearance of off-premises sign structures shall incorporate the use of architectural columns and lattice below the face of the sign. The zoning administrator shall provide examples of signs that meet this requirement on request. Lattice shall not be required only in cases where it would block clear vision or cause other safety concerns as determined by the zoning administrator.
8. The color of off-premises sign structures shall be limited to natural earth-tone colors including, but not limited to, beige, brown, brick red, slate blue, and forest green. Bright and contrasting colors including, but not limited to, black, white, red, orange, yellow, purple and sky blue shall be prohibited.
9. Lighting for off-premises signs shall not cause any light to be reflected toward a street or adjacent property.

10. The use of animation, flashing lights, and beacon lights shall not be permitted as part of any off-premises sign. Any sign that resembles, or includes an element that resembles a traffic control device, sign, or light shall be prohibited. Electrical reader boards, tri-vision boards, and multiple-vision boards shall be permitted for off-premises signage.
 11. The placement of any off-premises sign shall not cause any conflict with circulation, drainage, parking, landscaping, and/or any other site attribute controlled and/or required by this chapter. Signs may not be placed in any landscape area required by this chapter.
 12. Off-premises signs shall be continually maintained for both structural integrity and appearance. Appearance includes, but shall not be limited to, issues such as rusting structures, peeling paper, and broken lattice. Empty boards and signs without advertising covering the entire face of the board shall be prohibited.
 13. Enforcement. The zoning administrator shall notify property owners by certified mail regarding any structure in violation of the chapter. Any sign that is not repaired or modified accordingly within 30 days of notification shall be removed at the property owner's expense.
- (14) *Design review; development plan restrictions.* This section shall apply only to new commercial development, new commercial development (separate structures) on existing sites, or total commercial redevelopment or replacement. This section shall not apply to building additions or expansions to existing buildings. All construction shall meet the requirements of chapter 105, design requirements as referenced herein, except that the plan commission shall specifically consider the context of the proposal relative to the nonconforming status of adjacent structures. The plan commission may consider the nonconforming status of adjacent structures in approving waivers in accordance with section 105-39. In accordance with section 105-4, the applicable design requirements are identified as follows:
- a. Section 105-76, architectural materials, further limited as to only apply to those portions of the building visible from the public right-of-way and private collector roads serving multiple properties or businesses. At a minimum, two-thirds of each face of the visible portions of the building must use appropriate architectural materials. The remaining third may consist of other materials as may be determined by the owner/developer of the building. Appropriate architectural materials shall be expanded to include glass, exterior insulation and finish systems (EIFS), decorative concrete block and similar masonry units, painted/stained lap wood siding, and other high-quality materials as may be deemed appropriate by the plan commission. Metal siding and standard concrete block exterior finishes shall be considered inappropriate architectural materials. The color of all exterior architectural finishes shall meet the requirements of section 105-77 as supplemented below.
 - b. Section 105-77, architectural color and textures, further limited as to only apply to those portions of the building visible from the public right-of-way and private collector roads serving multiple properties or businesses. Appropriate colors and textures may be expanded to include bold and contrasting colors subject to the review and approval of the plan commission in accordance with the established intent of the ordinance as documented by section 105-2.
 - c. Section 105-108, mechanical equipment.
 - d. Section 105-109, vending machines and newsracks. This requirement shall not apply to newsracks located in conjunction with restaurants which meet the required building setbacks of the district. Newsracks located adjacent to other commercial buildings that are designed in concert with the building may also be deemed appropriate by the plan commission.
 - e. Section 105-116, dumpster/utility service areas.

f. The public hearing requirements identified by section 105-31 shall not apply.

(Code 1985, § 159.117; Ord. No. 3256, 3-20-1989; Ord. No. 3263, 4-17-1989; Ord. No. 3297, 8-7-1989; Ord. No. 3363, 3-19-1990; Ord. No. 3466, 3-4-1991; Ord. No. 3698, 6-21-1993; Ord. No. 3703, 6-21-1993; Ord. No. 4565, 2-12-2001; Ord. No. 4568, 2-20-2001; Ord. No. 4576, 4-2-2001; Ord. No. 4584, 5-7-2001)

Secs. 137-458—137-482. - Reserved.

Subdivision IX. - Commercial C-8 District

Sec. 137-483. - Intent.

The commercial C-8 district is designed to permit mixed use, high intensity, and/or high rise regional commercial complexes on tracts of land in developing areas near the intersection of major transportation arterials. Typically, this type of development would be located near the perimeters of the municipal corporation on land that is undeveloped or underdeveloped, and distant from existing, low-density residential neighborhoods. Outside storage, display, or sales shall not be permitted outside of a completely enclosed, substantially constructed and weathertight building.

(Code 1985, § 159.130; Ord. No. 3263, 4-17-1989)

Sec. 137-484. - Uses.

Only the following uses shall be permitted:

- (1) Antique shops.
- (2) Apartment buildings.
- (3) Art galleries.
- (4) Art supply stores.
- (5) Bakery shops.
- (6) Ballrooms.
- (7) Banks, savings and loans, credit unions, and loan offices.
- (8) Barbershops and beauty shops.
- (9) Bed and breakfasts.
- (10) Beverage stores.
- (11) Book and stationery stores.
- (12) Candy stores.
- (13) Carry-out restaurants.
- (14) Cafeterias.
- (15) Catering services.
- (16) Churches, synagogues, and similar places of worship.
- (17) Clothing and apparel stores.
- (18) Clubs and lodges.
- (19) Colleges and universities.

- (20) Community centers, private or public.
- (21) Community welfare or health centers.
- (22) Computer sales.
- (23) Confectionery stores.
- (24) Convents and rectories.
- (25) Dairy stores.
- (26) Dance schools.
- (27) Day nurseries or day care centers.
- (28) Delicatessens.
- (29) Department stores.
- (30) Design studios.
- (31) Detective agencies.
- (32) Drug stores.
- (33) Dry cleaning, pick-up and delivery.
- (34) Eating and drinking establishments without drive-in or drive-through services.
- (35) Florist shops.
- (36) Funeral homes and mortuaries.
- (37) Gift shops.
- (38) Governmental buildings.
- (39) Gymnasiums and gymnastic schools.
- (40) Handicraft shops.
- (41) Health clubs.
- (42) Health facility.
- (43) Hospitals.
- (44) Hotels.
- (45) Ice cream shops.
- (46) Jewelry stores.
- (47) Libraries.
- (48) Medical clinics.
- (49) Medical laboratories.
- (50) Motels.
- (51) Motor bus terminals.
- (52) Museums.
- (53) Music stores.
- (54) Newspaper offices.
- (55) Nursing facility.
- (56) Office buildings.
- (57) Office supply and equipment sales.

- (58) Offices.
- (59) Optical shops.
- (60) Paint, wallpaper and decorating stores.
- (61) Parking garages.
- (62) Parking lots.
- (63) Parks and playgrounds (private).
- (64) Personal service establishments.
- (65) Philanthropic institutions.
- (66) Photocopy duplicating shops.
- (67) Photographic studios.
- (68) Photography supplies, equipment and photo-finishing.
- (69) Post offices.
- (70) Printing shops.
- (71) Professional offices:
 - a. Advertising agencies.
 - b. Accountants.
 - c. Architects.
 - d. Attorneys.
 - e. Chamber of commerce.
 - f. Chiropractors.
 - g. City planning.
 - h. Dentists.
 - i. Engineering consultants.
 - j. Government.
 - k. Health agencies.
 - l. Insurance agencies.
 - m. Interior decorating.
 - n. Labor organizations.
 - o. Manufacturing agents.
 - p. Market research.
 - q. Mortgage brokers.
 - r. Music instructors.
 - s. Optometrists.
 - t. Osteopaths.
 - u. Personnel management counselors.
 - v. Physicians and surgeons.
 - w. Podiatrists.
 - x. Public relations.

- y. Real estate brokers.
- z. Social service organizations.
- aa. Stock and bond brokers.
- (72) Publishers.
- (73) Radio or television studios.
- (74) Required off-street parking.
- (75) Restaurants without drive-in or drive-through service.
- (76) Retail stores.
- (77) Schools, public, parochial or business.
- (78) Shoe repair shops.
- (79) Shoe stores.
- (80) Social service organizations.
- (81) Sporting goods stores.
- (82) Studios: art, music, ceramics, drama, speech, dance and similar skills.
- (83) Tailoring and alterations.
- (84) Tanning salons.
- (85) Tobacco stores.
- (86) Transit transfer centers.
- (87) Travel agencies.
- (88) Union halls.
- (89) Utility offices.
- (90) One temporary building for the construction industry which is incidental to erection of the buildings permitted by this section.
- (91) Customary agricultural operations (truck farming); provided, however, that no storage of manure will be permitted within 1,000 feet of any property line.

(Code 1985, § 159.131; Ord. No. 3263, 4-17-1989; Ord. No. 3686, 5-3-1993; Ord. No. 3698, 6-21-1993)

Sec. 137-485. - Height, area, and developmental regulations.

In the commercial C-8 district, the height of buildings, the minimum dimensions of yards and setbacks, and the minimum lot area per building shall be as follows:

- (1) *Height.* No building hereafter erected or structurally altered shall exceed 120 feet or ten stories in height.
- (2) *Front building setback.*
 - a. There shall be a front building setback of at least 25 feet for all new principal buildings. Nonconforming buildings shall adhere to the applicable sections regulating nonconformances.
 - b. On through lots the required front building setback shall be provided on both streets. No accessory buildings shall project beyond the front building setback line on either street.
- (3) *Side building setback.*
 - a. *Interior lots.*

1. A side building setback shall not be less than five feet in width as measured from the fascia board or parapet.
2. For buildings greater than 35 feet or 2½ stories in height, the minimum width of each side building setback shall be increased by a total of five feet for each additional one story in height.

b. *Corner lots.*

1. On corner lots the front building setback and interior side building setback regulations shall apply; however, the exterior side building setback shall not be less than 50 percent of the required front building setback.
2. Accessory structures shall not be permitted within the established exterior side building setback areas.

(4) *Rear building setback.*

- a. For buildings up to 2½ stories or 35 feet in height there shall be a rear building setback on every lot, and that setback shall have a minimum depth of not less than 25 feet.
- b. For buildings greater than 35 feet or 2½ stories in height, the minimum rear building setback shall be increased by five feet for each additional one story in height; provided that the rear building setback need not exceed 50 feet in depth.
- c. In the case of a through lot, no rear building setback is required, but each street frontage shall be subject to the front building setback requirements of this section.

(5) *Accessory buildings.*

- a. Accessory buildings not over 15 feet high may be located in the rear half yard area, provided the accessory buildings come not nearer than 30 inches to any rear lot line or side lot line. Additionally, accessory buildings shall not be greater than 720 square feet in floor area.
- b. No accessory building shall be used in whole or part for living or residential purposes.
- c. No accessory building or accessory building area shall be used for commercial storage purposes.

(6) *Minimum lot area and maximum intensity of use.*

- a. Every lot upon which a building is erected or altered shall have a front lot width dimension and area as follows:
 1. Sewer and water available: 60 feet frontage at front lot line; 6,600 square feet.
 2. Sewer or water unavailable: 70 feet frontage at front lot line; 10,000 square feet.
 3. Sewer and water unavailable: 100 feet frontage at front lot line; 15,000 square feet.
- b. No building, with its accessory buildings, shall be erected or increased in ground area so that more than 75 percent of the area of the lot will be occupied.

(7) *Off-street parking.*

a. *Ratio requirements.*

1. Ballrooms, two per 1,000 square feet of gross floor area.
2. Carry-out restaurants, ten per 1,000 square feet of gross floor area.
3. Churches and synagogues, one per four seats or 80 inches of seating length in the main sanctuary or auditorium.
4. Colleges and universities, one per five students, based upon design capacity.
5. Convents and rectories, one per 1,000 square feet of gross floor area.
6. Eating and drinking establishments, ten per 1,000 square feet of gross floor area.
7. Libraries, two per 1,000 square feet of gross floor area.

8. All other uses, four per 1,000 square feet of gross floor area.
- b. *Construction parameters.* The following shall apply to all parking lots:
1. All parking spaces required to service the principal building shall be located on the same lot as the principal building, or on a separate lot which is within 300 feet of the main entrance to the principal building.
 2. When a principal building undergoes an increase in the gross floor area, seating capacity, or number of units, the required off-street parking availability shall be increased to equal or exceed the off-street parking requirements.
 3. All parking lots shall be surfaced with an all-weather paving material capable of carrying a wheel load of 4,000 pounds without damaging the pavement. The lot shall be properly maintained at all times.
 4. All lots shall be lighted if used after sunset. Lights shall be located, shielded, and directed upon the parking lot in such a manner as to not shine or reflect onto adjacent property or into the public right-of-way. Lighting shall not exceed three footcandles as measured at that portion of the lot line which abuts residentially-zoned property.
 5. A minimum five-foot parking lot setback shall be provided between the property line and edge of the parking lot pavement. A minimum ten-foot parking lot setback shall be provided between any public road right-of-way or private access easement and the edge of parking lot pavement. A minimum ten-foot parking lot setback shall be provided between internal vehicular collector drives and the edge of parking lot pavement. Slag, gravel or any type of pavement shall be prohibited within the setback area. The setback area shall be landscaped with vegetative ground cover or grass and/or decorative trees or shrubs.
 6. Public address systems shall not be permitted in any parking lot.
 7. Parking spaces shall be a minimum of 180 square feet in area with a minimum width of 8½ feet. Small car parking spaces may be constructed, but shall be no smaller than 130 square feet in area with a minimum width of 8½ feet. A maximum of 25 percent of the total off-street parking spaces may be used for small cars, and each parking space shall be marked by an above-grade sign as a small car parking space.
 8. Parking lots shall be properly graded and drained so that stormwater drainage is collected and disposed of on site.
- (8) *Vision clearance.* No structure, fence, hedge, or other plantings shall be permitted within a ten-foot radius of the corner of the lot where the corner lot adjoins the intersecting street right-of-way. There shall be a complete vision clearance for a distance of not less than ten feet above the ground on all corner lots.
- (9) *Fences.*
- a. *Interior lots.*
1. No fence over seven feet in height shall be erected between the rear lot line and the front building setback line; along the front setback line between the side wall of the building and the side lot line; or along the rear lot line between the two side lot lines.
 2. No fence over four feet in height shall be erected between the front building setback line and the front lot line, or along the front lot line between the two side lot lines; the fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
- b. *Corner lot.*
1. A seven-foot-high fence may be erected only along the exterior side building setback line and the rear building setback line and along the exterior side building setback line, if extended, between the rear

building setback line and the rear lot line. A seven-foot-high fence may be erected along the interior side lot line between the front building setback line and the rear lot line, and may be erected along the rear lot line between the interior side lot line and the intersection of the rear lot line, and may be exterior side building setback line, if extended. Four-foot-high fences may be erected in the exterior side yard area between the front setback line and the rear lot line; such fence shall have a minimum of 75 percent of its surface open to permit visibility through it.

2. No fence over four feet in height shall be erected between the front building setback line and the front lot line or along the front lot line between the interior side lot line and the exterior side building setback line; such fence shall have a minimum of 75 percent of its surface open to permit visibility through it.

(10) *Signs.* All signs shall conform with requirements of chapter 129.

(11) *Design review; development plan restrictions.* This section shall apply only to new commercial development, new commercial development (separate structures) on existing sites, or total commercial redevelopment or replacement. This section shall not apply to building additions or expansions to existing buildings. All construction shall meet the requirements of chapter 105, design requirements as referenced herein, except that the plan commission shall specifically consider the context of the proposal relative to the nonconforming status of adjacent structures. The plan commission may consider the nonconforming status of adjacent structures in approving waivers in accordance with section 105-39. In accordance with section 105-4, the applicable design requirements are identified as follows:

- a. Section 105-76, architectural materials, further limited as to only apply to those portions of the building visible from the public right-of-way and private collector roads serving multiple properties or businesses. At a minimum, two-thirds of each face of the visible portions of the building must use appropriate architectural materials. The remaining third may consist of other materials as may be determined by the owner/developer of the building. Appropriate architectural materials shall be expanded to include glass, exterior insulation and finish systems (EIFS), decorative concrete block and similar masonry units, painted/stained lap wood siding, and other high-quality materials as may be deemed appropriate by the plan commission. Metal siding and standard concrete block exterior finishes shall be considered inappropriate architectural materials. The color of all exterior architectural finishes shall meet the requirements of section 105-77 as supplemented below.
- b. Section 105-77, architectural color and textures, further limited as to only apply to those portions of the building visible from the public right-of-way and private collector roads serving multiple properties or businesses. Appropriate colors and textures may be expanded to include bold and contrasting colors subject to the review and approval of the plan commission in accordance with the established intent of the ordinance as documented by section 105-2.
- c. Section 105-108, mechanical equipment.
- d. Section 105-109, vending machines and newsracks. This requirement shall not apply to newsracks located in conjunction with restaurants which meet the required building setbacks of the district. Newsracks located adjacent to other commercial buildings that are designed in concert with the building may also be deemed appropriate by the plan commission.
- e. Section 105-116, dumpster/utility service areas.
- f. The public hearing requirements identified by section 105-31 shall not apply.

(Code 1985, § 159.132; Ord. No. 3263, 4-17-1989; Ord. No. 3297, 8-7-1989; Ord. No. 3363, 3-19-1990; Ord. No. 3698, 6-21-1993; Ord. No. 3703, 6-21-1993; Ord. No. 4565, 2-12-2001; Ord. No. 4576, 4-2-2001; Ord. No. 4584, 5-7-2001)

Subdivision X. - Commercial C-9 District

Sec. 137-509. - Intent; uses.

- (a) The commercial C-9 district is designed for automobile and vehicle sales uses. These uses shall be limited to outside storage and display of new and used vehicles for sale, lease, or rent and large parking areas for parking, storage, and display.
- (b) Only the following uses are permitted:
 - (1) Any permitted use in the commercial C-1 district.
 - (2) Automobile and truck auctions.
 - (3) Automobile sales.
 - (4) Automobile washing, polishing and detailing; provided, however, the automobiles are being offered for sale or lease on the premises.
 - (5) Commercial parking lots.
 - (6) Farm implement and supply stores.
 - (7) Freestanding off-premises signs.
 - (8) Light trailer sales.
 - (9) Light truck sales.
 - (10) Mobile home sales.
 - (11) Motorcycle sales.
 - (12) Recreational vehicle sales.
 - (13) Vehicular rental equipment shops.
 - (14) Watercraft and watercraft motor sales.

(Code 1985, § 159.135; Ord. No. 4302, 8-17-1998)

Sec. 137-510. - Height, area, and developmental regulations.

In the commercial C-9 district, the height of buildings, the minimum dimensions of yards and setbacks, and the minimum lot area per commercial building shall be as follows:

- (1) *Height.* No building hereafter erected or structurally altered shall exceed three stories or 40 feet in height.
- (2) *Front building setback.*
 - a. All principal buildings shall have a front building setback of at least 25 feet. Nonconforming buildings shall adhere to the applicable sections regulating nonconforming structures, uses and lots.
 - b. On through lots the required front building setback shall be provided on both streets. No accessory buildings shall project beyond the front building setback line on either street.
- (3) *Side building setback.*
 - a. All principal buildings shall have a side building setback of at least five feet in width as measured from the eave, overhang or farthest protrusion to the side lot line.

- b. On corner lots, the principal building shall meet the front and side building setback regulations set forth in subsection (3) of this section; however, the exterior side building setback shall not be less than 50 percent of the front building setback required for lots facing the street upon which the side yard abuts. This regulation shall not be so interpreted as to reduce the buildable width of a corner lot of record at the front building setback required for lots facing the street upon which the side yard abuts. This regulation shall not be so interpreted as to reduce the buildable width of a corner lot of record at the passage of this section to less than 25 feet, nor to prohibit the erection of an accessory building where this requirement cannot reasonably be complied with.
- (4) *Rear building setback.* There shall be a rear building setback of not less than ten percent of the depth of the lot for a one-story building. The depth shall be increased to 15 percent of the depth of the lot for any building greater than or equal to two stories; however, the rear building setback need not exceed 30 feet in depth.
- (5) *Accessory buildings.*
- a. Accessory buildings not over 15 feet high may be located in the rear half yard area, provided the accessory buildings come not nearer than 30 inches to any rear lot line or side lot line. Additionally, accessory buildings shall not be greater than 720 square feet in floor area.
 - b. No accessory building shall be used in whole or part for living or residential purposes.
 - c. No accessory building or accessory building area shall be used for commercial storage of goods for sale in the business purposes.
- (6) *Minimum lot area and maximum intensity of use.*
- a. Every lot upon which a building is erected or altered shall have a front lot width dimension and area as follows:
 - 1. Sewer and water available: 60 feet frontage at front lot line; 6,600 square feet.
 - 2. Sewer or water unavailable: 70 feet frontage at front lot line; 10,000 square feet.
 - 3. Sewer and water unavailable: 100 feet frontage at front lot line; 15,000 square feet.
 - b. Any lot which has been recorded in a subdivision plat or deed with the office of the county recorder prior to November 21, 1966, and which is 4,000 square feet or more in area, may be used as a building site.
 - c. No building with an accessory building shall be erected or expanded so that more than 75 percent of the area of the lot will be occupied with an improvement.
- (7) *Vision clearance.* No structure, fence, hedge, or other plantings shall be permitted within a ten-foot radius of the corner of the lot where the corner lot adjoins the intersecting street right-of-way. There shall be a complete vision clearance for a distance of not less than ten feet above the ground on all corner lots.
- (8) *Fences.*
- a. *Interior lots.*
 - 1. No fence over seven feet in height shall be erected between the rear lot line and the front building setback line; along the front setback line between the side wall of the building and the side lot line; or along the rear lot line between the two side lot lines.
 - 2. No fence over four feet in height shall be erected between the front building setback line and the front lot line, or along the front lot line between the two side lot lines; the fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
 - b. *Corner lot.*
 - 1. A seven-foot-high fence may be erected only along the exterior side building setback line and the rear building setback line and along the exterior side building setback line, if extended, between the rear

building setback line and the rear lot line. A seven-foot-high fence may be erected along the interior side lot line between the front building setback line and the rear lot line, and may be erected along the rear lot line between the interior side lot line and the intersection of the rear lot line and the exterior side building setback line, if extended. Four-foot-high fences may be erected in the exterior side yard area between the front setback line and the rear lot line; such fence shall have a minimum of 75 percent of its surface open to permit visibility through it.

2. No fence over four feet in height shall be erected between the front building setback line and the front lot line or along the front lot line between the interior side lot line and the exterior side building setback line; the fence shall have a minimum of 75 percent of its surface open to permit visibility through it.

c. *Prohibited fencing.* Electrified fencing, barbed wire and razor wire are prohibited.

(9) *Off-street parking requirements.*

a. *Ratio requirements.* All uses listed as permitted uses in the commercial C-9 district, 5½ per 1,000 square feet of gross floor area.

b. *Construction parameters.* The following shall apply to all parking lots:

1. All parking spaces required to service the principal building shall be located on the same lot as the principal building, or on a separate lot which is within 300 feet of the main entrance to the principal building.
2. When a principal building undergoes an increase in the gross floor area, seating capacity, or number of units, the required off-street parking availability shall be increased to equal or exceed the off-street parking requirements.
3. All parking lots shall be surfaced with an all-weather paving material capable of carrying a wheel load of 4,000 pounds without damaging the pavement. The lot shall be properly maintained at all times.
4. All lots shall be lighted if used after sunset. Lights shall be located, shielded, and directed upon the parking lot in such a manner as to not shine or reflect onto adjacent property or into the public right-of-way. Lighting shall not exceed three footcandles as measured at that portion of the lot line which abuts residentially-zoned property.
5. A minimum five-foot parking lot setback shall be provided between the property line and edge of the parking lot pavement. A minimum ten-foot parking lot setback shall be provided between any public road right-of-way or private access easement and the edge of parking lot pavement. A minimum ten-foot parking lot setback shall be provided between internal vehicular collector drives and the edge of parking lot pavement. Slag, gravel or any type of pavement shall be prohibited within the setback area. The setback area shall be landscaped with vegetative ground cover or grass and/or decorative trees or shrubs.
6. Public address systems shall not be permitted in any parking lot.
7. Parking spaces shall be a minimum of 180 square feet in area with minimum width of 8½ feet. Small car parking spaces may be constructed, but shall be no smaller than 130 square feet in area with a minimum width of 8½ feet. A maximum of 25 percent of the total off-street parking spaces may be used for small cars, and each parking space shall be marked by an above-grade sign as a small car parking space.
8. Parking lots shall be properly graded and drained so that stormwater drainage is collected and disposed of on site.

(10) *Screening.* An opaque seven-foot fence shall be mandatory along any commercial C-9 property line which is contiguous to any residentially-zoned property. The fence shall be designed to provide security, and also to contain paper products and debris within the property.

(11) *Trees.* Only hardwood trees shall be planted between the curb and sidewalk in the tree lawn. No trees shall be planted in tree lawns of less than five feet in width. The spacing of trees in tree lawns shall be not less than 40 feet apart.

(12) *Signs.* All signs shall conform with requirements of chapter 129.

(13) *Freestanding off-premises signs.*

a. *Separation requirements.* Separation between proposed and existing off-premises signs and specified uses along the street shall be measured along the centerline of the street. For this measurement, the location of proposed and/or existing structures and uses shall be considered the center of the proposed structure or closest edge of the property measured perpendicularly to the centerline of the street. Unless otherwise specified, all other separation requirements shall be measured from the closest point of the proposed structure linearly to the specified property, use, and/or structure. For the purposes of this section, a pending completed application or valid improvement location permit shall be considered as an existing sign. The following separation distances shall be required between off-premises signs:

1. The minimum separation distance between one sign structure and another on a non-limited-access highway shall be 750 feet.
2. The minimum separation distance between one sign structure and another on a limited-access highway shall be 1,500 feet.
3. The minimum separation distance between one sign structure and another sign structure located at intersections, or on different streets from which they are intended to be viewed, shall be 300 feet.
4. The minimum separation distance between a sign structure and property either zoned or used for a church, school, park, residential district or legal nonconforming residential use shall be 100 feet measured from the center of the sign in any direction.
5. The minimum separation distance between a sign structure and property either zoned or used for a church, school, park, residential district or legal nonconforming residential use shall be 200 feet along both sides of the street from which the sign is intended to be viewed.
6. The minimum separation distance between a sign structure and the 100-year floodplain of the St. Joseph River as identified by the flood insurance rate maps shall be 300 feet.
7. Separation distances shall not be limited by jurisdictional boundaries. Required separation distances for proposed signs located within the jurisdiction of the city shall also be maintained from signs located in adjacent municipalities or jurisdictional areas.

b. *Permitting.* Applications shall not be considered complete unless all applicable information is submitted. The following information shall be submitted concurrently with any application for an improvement location permit for an off-premises sign:

1. A signed contract with property owners, or a deed identifying the applicant's property ownership where the sign is intended to be placed.
2. Most recent aerial photograph identifying all off-premises signs within a 1,000-foot radius of the proposed sign located along non-limited-access highways. The aerial photograph shall also identify property either zoned or used for a church, school, park, or residential purpose within 250 feet of the proposed sign.
3. Construction plans on the proposed sign, documenting the proposed height, area, setbacks, appearance, color and any other developmental requirements identified by this chapter.
4. A scaled plan identifying the location of the sign relative to property and right-of-way lines. Plot plan shall identify the location of hard surface paving, drives, sidewalk, easements, utilities, and buildings located within 100 feet of the proposed sign.

5. Proposed signs located within 50 feet of any required separation distance shall require a certified survey submitted by a licensed surveyor verifying that the proposed location meets all minimum setback requirements.
6. Signs proposed within the required separation distances to an adjacent municipality or jurisdiction area shall submit documentation from the municipality or area that a valid permit has not been issued or is pending for a sign within the required separation distance of the proposed sign.
- c. *Developmental requirements.* The following developmental requirements shall apply to the construction of off-premises signs:
 1. Non-limited-access highways. Only one sign shall be permitted per location based on the separation requirements identified herein. Two-tier signs shall be prohibited. The display area of the face of any sign located on a non-limited-access highway shall not exceed 300 square feet. Temporary extensions may be added to individual signs based on individual advertising requirements not to exceed 50 square feet per face (a maximum of 350 square feet with extensions). Extensions may project no higher than four feet above the height of the sign, including those of a legally nonconforming height.
 2. Non-limited-access highways, replacement of legally nonconforming signs. The replacement and/or relocation of any legally nonconforming sign shall meet all the requirements of this chapter; however, signs legally constructed with a greater display area than required by this chapter may be replaced at the existing nonconforming display area provided the following provisions are met:
 - (i) All other applicable provisions of this chapter are met.
 - (ii) The geographic areas that replacement may occur shall be limited to the following non-limited-access highways: Grape Road, north of Catalpa and south of Cleveland Road; Edison Road, beginning 500 feet west of Main Street and east of Hickory Road; McKinley Avenue, west of Fir Road and east of Hickory Road.
 - (iii) An improvement location permit must be approved within 180 days of the removal of the legally nonconforming display area sign. Documentation regarding the removal of the existing nonconforming sign shall be submitted concurrently with the permit request for its replacement.
 3. Limited-access highways. Only one sign shall be permitted per location based on the separation requirements identified herein. Two-tier signs shall be prohibited. The display area of the face of any sign located on a limited-access highway shall not exceed 14 feet in height by 48 feet in length (672 square feet). Temporary extensions may be added to individual signs based on individual advertising requirements not to exceed 200 square feet per face (a maximum of 872 square feet with extensions). Extensions may project no higher than four feet above the height of the sign, including those of a legally nonconforming height.
 4. Signs that are located back-to-back shall be considered one sign, provided the interior angle formed by each side of the sign does not exceed 45 degrees.
 5. The height of any sign shall not exceed 35 feet.
 6. Setbacks. Setback distances shall be measured from the nearest projection, appendage, board, or structure of the sign perpendicularly to road right-of-way or property lines.
 - (i) The minimum setback for any sign from public road right-of-way shall be 25 feet.
 - (ii) The minimum rear-yard setback for any sign shall be 25 feet.
 - (iii) The minimum side-yard setback for any sign shall be five feet.
 7. The appearance of off-premises sign structures shall incorporate the use of architectural columns and

lattice below the face of the sign. The zoning administrator shall provide examples of signs that meet this requirement on request. Lattice shall not be required only in cases where it would block clear vision or cause other safety concerns as determined by the zoning administrator.

8. The color of off-premises sign structures shall be limited to natural earth-tone colors including, but not limited to, beige, brown, brick red, slate blue, and forest green. Bright and contrasting colors including, but not limited to, black, white, red, orange, yellow, purple and sky blue shall be prohibited.
 9. Lighting for off-premises signs shall not cause any light to be reflected toward a street or adjacent property.
 10. The use of animation, flashing lights, and beacon lights shall not be permitted as part of any off-premises sign. Any sign that resembles, or includes an element that resembles a traffic control device, sign, or light shall be prohibited. Electrical reader boards, tri-vision boards, and multiple-vision boards shall be permitted for off-premises signage.
 11. The placement of any off-premises sign shall not cause any conflict with circulation, drainage, parking, landscaping, and/or any other site attribute controlled and/or required by this chapter. Signs may not be placed in any landscape area required by this chapter.
 12. Off-premises signs shall be continually maintained for both structural integrity and appearance. Appearance includes, but shall not be limited to, issues such as rusting structures, peeling paper, and broken lattice. Empty boards and signs without advertising covering the entire face of the board shall be prohibited.
 13. Enforcement. The zoning administrator shall notify property owners by certified mail regarding any structure in violation of the chapter. Any sign that is not repaired or modified accordingly within 30 days of notification shall be removed at the property owner's expense.
- (14) *School separation.* No game arcade and/or pool hall or billiard hall shall be permitted to be placed within 750 feet of any school as measured by a line between the nearest lot line of the school lot and the nearest lot line of the game arcade and/or pool hall or billiard hall.
- (15) *Design review; development plan restrictions.* This section shall apply only to new commercial development, new commercial development (separate structures) on existing sites, or total commercial redevelopment or replacement. This section shall not apply to building additions or expansions to existing buildings. All construction shall meet the requirements of chapter 105, design requirements as referenced herein, except that the plan commission shall specifically consider the context of the proposal relative to the nonconforming status of adjacent structures. The plan commission may consider the nonconforming status of adjacent structures in approving waivers in accordance with section 105-39. In accordance with section 105-4, the applicable design requirements are identified as follows:
- a. Section 105-76, architectural materials, further limited as to only apply to those portions of the building visible from the public right-of-way and private collector roads serving multiple properties or businesses. At a minimum, two-thirds of each face of the visible portions of the building must use appropriate architectural materials. The remaining third may consist of other materials as may be determined by the owner/developer of the building. Appropriate architectural materials shall be expanded to include glass, exterior insulation and finish systems (EIFS), decorative concrete block and similar masonry units, painted/stained lap wood siding, and other high-quality materials as may be deemed appropriate by the plan commission. Metal siding and standard concrete block exterior finishes shall be considered inappropriate architectural materials. The color of all exterior architectural finishes shall meet the requirements of section 105-77 as supplemented below.

- b. Section 105-77, architectural color and textures, further limited as to only apply to those portions of the building the public right-of-way and private collector roads serving multiple properties or businesses. Appropriate colors may be expanded to include bold and contrasting colors subject to the review and approval of the plan commission in accordance with the established intent of the ordinance as documented by section 105-2.
- c. Section 105-108, mechanical equipment.
- d. Section 105-109, vending machines and newsracks. This requirement shall not apply to newsracks located in conjunction with restaurants which meet the required building setbacks of the district. Newsracks located adjacent to other commercial buildings that are designed in concert with the building may also be deemed appropriate by the plan commission.
- e. Section 105-116, dumpster/utility service areas.
- f. The public hearing requirements identified by section 105-31 shall not apply.

(Code 1985, § 159.136; Ord. No. 4302, 8-17-1998; Ord. No. 4565, 2-12-2001; Ord. No. 4568, 2-20-2001; Ord. No. 4576, 4-2-2001; Ord. No. 4584, 5-7-2001)

Secs. 137-511—137-528. - Reserved.

Subdivision XI. - Commercial C-10 District

Sec. 137-529. - Intent; permitted and accessory uses.

- (a) The commercial C-10 district is designed for the storage and sale of gasoline and other motor fuels; the sale of motor vehicle lubricants, accessories or supplies; the lubrication of motor vehicles; and the repair, washing and detailing of motor vehicles.
- (b) Only the following uses are permitted:
 - (1) Any permitted use in the commercial C-1 district.
 - (2) Filling stations.
 - (3) Freestanding off-premises signs.
- (c) The following accessory uses shall be permitted on the same lot as the permitted use:
 - (1) Automobile detailing.
 - (2) Automobile maintenance facility (quick service).
 - (3) Automobile service shop.
 - (4) Car wash (automatic or self-service).
 - (5) Light trailer service.
 - (6) Light truck service.
 - (7) Mobile home service.
 - (8) Motorcycle service.
 - (9) Recreational vehicle service.

(Code 1985, § 159.140; Ord. No. 4302, 8-17-1998)

Sec. 137-530. - Height, area, and developmental regulations.

In the commercial C-10 district, the height of buildings, the minimum dimensions of yards and setbacks, and the minimum lot area per commercial building shall be as follows:

- (1) *Height.* No building hereafter erected or structurally altered shall exceed three stories or 35 feet in height.
- (2) *Front building setback.*
 - a. All principal buildings shall have a front building setback of at least 25 feet. Nonconforming buildings shall adhere to the applicable sections regulating nonconforming structures, uses and lots.
 - b. On through lots the required front building setback shall be provided on both streets. No accessory buildings shall project beyond the front building setback line on either street.
- (3) *Side building setback.*
 - a. All principal buildings shall have a side building setback of at least five feet in width as measured from the eave, overhang or farthest protrusion to the side lot line.
 - b. On corner lots, the principal building shall meet the front and side building setback regulations set forth in subsections (2) and (3) of this section; however, the exterior side building setback shall not be less than 50 percent of the front building setback required for lots facing the street upon which the side yard abuts. This regulation shall not be so interpreted as to reduce the buildable width of a corner lot of record at the front building setback required for lots facing the street upon which the side yard abuts. This regulation shall not be so interpreted as to reduce the buildable width of a corner lot record at the time of the passage of this section to less than 25 feet, nor to prohibit the erection of an accessory building where this regulation cannot reasonably be complied with.
- (4) *Rear building setback.* There shall be a rear building setback of not less than ten percent of the depth of the lot for a one-story building. The depth shall be increased to 15 percent of the depth of the lot for any building greater than or equal to two stories; however, the rear building setback need not exceed 30 feet in depth.
- (5) *Accessory buildings.*
 - a. Accessory buildings not over 15 feet high may be located in the rear half yard area, provided the accessory buildings come not nearer than 30 inches to any rear lot line or side lot line. Additionally, accessory buildings shall not be greater than 720 square feet in floor area.
 - b. No accessory building shall be used in whole or part for living or residential purposes.
 - c. No accessory building or accessory building area shall be used for commercial storage of goods for sale in the business.
 - d. Canopy structures may be built over the vehicle filling area; provided, however, the outer edge of the canopy structure is at least 20 feet from the exterior lot line and the structure is not taller than 35 feet in height.
- (6) *Minimum lot area and maximum intensity of use.*
 - a. Every lot upon which a building is erected or altered shall have a front lot width dimension and area as follows:
 1. Sewer and water available: 60 feet frontage at front lot line; 6,600 square feet.
 2. Sewer or water unavailable: 70 feet frontage at front lot line; 10,000 square feet.
 3. Sewer and water unavailable: 100 feet frontage at front lot line; 15,000 square feet.
 - b. Any lot which has been recorded in a subdivision plat or deed with the office of the county recorder prior to November 21, 1966, and which is 4,000 square feet or more in area, may be used as a building site.
 - c. No building with an accessory building shall be erected or expanded so that more than 75 percent of the area

of the lot will be occupied with an improvement.

(7) *Vision clearance.* No structure, fence, hedge, or other plantings shall be permitted within a ten-foot radius of the corner of the lot where the corner lot adjoins the intersecting street right-of-way. There shall be a complete vision clearance for a distance of not less than ten feet above the ground on all corner lots.

(8) *Fences.*

a. *Interior lots.*

1. No fence over seven feet in height shall be erected between the rear lot line and the front building setback line; along the front setback line between the side wall of the building and the side lot line; or along the rear lot line between the two side lot lines.
2. No fence over four feet in height shall be erected between the front building setback line and the front lot line, or along the front lot line between the two side lot lines; the fence shall have a minimum of 75 percent of its surface open to permit visibility through it.

b. *Corner lot.*

1. A seven-foot-high fence may be erected only along the exterior side building setback line and the rear building setback line and along the exterior side building setback line, if extended, between the rear building setback line and the rear lot line. A seven-foot-high fence may be erected along the interior side lot line between the front building setback line and the rear lot line, and may be erected along the rear lot line between the interior side lot line and the intersection of the rear lot line and the exterior side building setback line, if extended. Four-foot-high fences may be erected in the exterior side yard area between the front setback line and the rear lot line; such fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
2. No fence over four feet in height shall be erected between the front building setback line and the front lot line or along the front lot line between the interior side lot line and the exterior side building setback line; the fence shall have a minimum of 75 percent of its surface open to permit visibility through it.

c. *Prohibited fencing.* Electrified fencing, barbed wire and razor wire are prohibited.

(9) *Off-street parking requirements.*

a. *Ratio requirements.* All uses listed as permitted uses in the commercial C-10 district, 5½ per 1,000 square feet of gross floor area.

b. *Construction parameters.* The following shall apply to all parking lots:

1. All parking spaces required to service the principal building shall be located on the same lot as the principal building, or on a separate lot which is within 300 feet of the main entrance to the principal building.
2. When a principal building undergoes an increase in the gross floor area, seating capacity, or number of units, the required off-street parking availability shall be increased to equal or exceed the off-street parking requirements.
3. All parking lots shall be surfaced with an all-weather paving material capable of carrying a wheel load of 4,000 pounds without damaging the pavement. The lot shall be properly maintained at all times.
4. All lots shall be lighted if used after sunset. Lights shall be located, shielded, and directed upon the parking lot in such a manner as to not shine or reflect onto adjacent property or into the public right-of-way. Lighting shall not exceed three footcandles as measured at that portion of the lot line which abuts residentially-zoned property.

5. A minimum five-foot parking lot setback shall be provided between the property line and edge of the parking minimum ten-foot parking lot setback shall be provided between any public road right-of-way or private access the edge of parking lot pavement. A minimum ten-foot parking lot setback shall be provided between internal collector drives and the edge of parking lot pavement. Slag, gravel or any type of pavement shall be prohibited setback area. The setback area shall be landscaped with vegetative ground cover or grass and/or decorative
 6. Public address systems shall not be permitted in any parking lot.
 7. Parking spaces shall be a minimum of 180 square feet in area with a minimum width of 8½ feet. Small car parking spaces may be constructed, but shall be no smaller than 130 square feet in area with a minimum width of 8½ feet. A maximum of 25 percent of the total off-street parking spaces may be used for small cars, and each parking space shall be marked by an above-grade sign as a small car parking space.
 8. Parking lots shall be properly graded and drained so that stormwater drainage is collected and disposed of on site.
- (10) *Screening.* An opaque seven-foot fence shall be mandatory along any commercial C-10 property line which is contiguous to any residentially-zoned property. The fence shall be designed to provide security, and also to contain paper products and debris within the property.
- (11) *Trees.* Only hardwood trees shall be planted between the curb and sidewalk in the tree lawn. No trees shall be planted in tree lawns of less than five feet in width. The spacing of trees in tree lawns shall be not less than 40 feet apart.
- (12) *Signs.* All signs shall conform with requirements of chapter 129.
- (13) *Freestanding off-premises signs.*
- a. *Separation requirements.* Separation between proposed and existing off-premises signs and specified uses along the street shall be measured along the centerline of the street. For this measurement, the location of proposed and/or existing structures and uses shall be considered the center of the proposed structure or closest edge of the property measured perpendicularly to the centerline of the street. Unless otherwise specified, all other separation requirements shall be measured from the closest point of the proposed structure linearly to the specified property, use, and/or structure. For the purposes of this section, a pending completed application or valid improvement location permit shall be considered as an existing sign. The following separation distances shall be required between off-premises signs:
 1. The minimum separation distance between one sign structure and another on a non-limited-access highway shall be 750 feet.
 2. The minimum separation distance between one sign structure and another on a limited-access highway shall be 1,500 feet.
 3. The minimum separation distance between one sign structure and another sign structure located at intersections, or on different streets from which they are intended to be viewed, shall be 300 feet.
 4. The minimum separation distance between a sign structure and property either zoned or used for a church, school, park, residential district or legal nonconforming residential use shall be 100 feet measured from the center of the sign in any direction.
 5. The minimum separation distance between a sign structure and property either zoned or used for a church, school, park, residential district or legal nonconforming residential use shall be 200 feet along both sides of the street from which the sign is intended to be viewed.
 6. The minimum separation distance between a sign structure and the 100-year floodplain of the St. Joseph River as identified by the flood insurance rate maps shall be 300 feet.

7. Separation distances shall not be limited by jurisdictional boundaries. Required separation distances for projects within the jurisdiction of the city shall also be maintained from signs located in adjacent municipalities or jurisdictions.
- b. *Permitting.* Applications shall not be considered complete unless all applicable information is submitted. The following information shall be submitted concurrently with any application for an improvement location permit for an off-premises sign:
 1. A signed contract with property owners, or a deed identifying the applicant's property ownership where the sign is intended to be placed.
 2. Most recent aerial photograph identifying all off-premises signs within a 1,000-foot radius of the proposed sign located along non-limited-access highways. The aerial photograph shall also identify property either zoned or used for a church, school, park, or residential purpose within 250 feet of the proposed sign.
 3. Construction plans on the proposed sign, documenting the proposed height, area, setbacks, appearance, color and any other developmental requirements identified by this chapter.
 4. A scaled plan identifying the location of the sign relative to property and right-of-way lines. Plot plan shall identify the location of hard surface paving, drives, sidewalk, easements, utilities, and buildings located within 100 feet of the proposed sign.
 5. Proposed signs located within 50 feet of any required separation distance shall require a certified survey submitted by a licensed surveyor verifying that the proposed location meets all minimum setback requirements.
 6. Signs proposed within the required separation distances to an adjacent municipality or jurisdiction area shall submit documentation from the municipality or area that a valid permit has not been issued or is pending for a sign within the required separation distance of the proposed sign.
- c. *Developmental requirements.* The following developmental requirements shall apply to the construction of off-premises signs:
 1. Non-limited-access highways. Only one sign shall be permitted per location based on the separation requirements identified herein. Two-tier signs shall be prohibited. The display area of the face of any sign located on a non-limited-access highway shall not exceed 300 square feet. Temporary extensions may be added to individual signs based on individual advertising requirements not to exceed 50 square feet per face (a maximum of 350 square feet with extensions). Extensions may project no higher than four feet above the height of the sign, including those of a legally nonconforming height.
 2. Non-limited-access highways, replacement of legally nonconforming signs. The replacement and/or relocation of any legally nonconforming sign shall meet all the requirements of this chapter; however, signs legally constructed with a greater display area than required by this chapter may be replaced at the existing nonconforming display area provided the following provisions are met:
 - (i) All other applicable provisions of this chapter are met.
 - (ii) The geographic areas that replacement may occur shall be limited to the following non-limited-access highways: Grape Road, north of Catalpa and south of Cleveland Road; Edison Road, beginning 500 feet west of Main Street and East of Hickory Road; McKinley Avenue, west of Fir Road and east of Hickory Road.
 - (iii) An improvement location permit must be approved within 180 days of the removal of the legally nonconforming display area sign. Documentation regarding the removal of the existing nonconforming sign shall be submitted concurrently with the permit request for its replacement.
 3. Limited-access highways. Only one sign shall be permitted per location based on the separation

requirements identified herein. Two-tier signs shall be prohibited. The display area of the face of any sign located on a limited-access highway shall not exceed 14 feet in height by 48 feet in length (672 square feet). Temporary extensions may be added to individual signs based on individual advertising requirements not to exceed 200 square feet per face (a maximum of 872 square feet with extensions). Extensions may project no higher than four feet above the height of the sign, including those of a legally nonconforming height.

4. Signs that are located back-to-back shall be considered one sign, provided the interior angle formed by each side of the sign does not exceed 45 degrees.
 5. The height of any sign shall not exceed 35 feet.
 6. Setbacks. Setback distances shall be measured from the nearest projection, appendage, board, or structure of the sign perpendicularly to road right-of-way or property lines.
 - (i) The minimum setback for any sign from public road right-of-way shall be 25 feet.
 - (ii) The minimum rear-yard setback for any sign shall be 25 feet.
 - (iii) The minimum side-yard setback for any sign shall be five feet.
 7. The appearance of off-premises sign structures shall incorporate the use of architectural columns and lattice below the face of the sign. The zoning administrator shall provide examples of signs that meet this requirement on request. Lattice shall not be required only in cases where it would block clear vision or cause other safety concerns as determined by the zoning administrator.
 8. The color of off-premises sign structures shall be limited to natural earth-tone colors including, but not limited to, beige, brown, brick red, slate blue, and forest green. Bright and contrasting colors including, but not limited to, black, white, red, orange, yellow, purple and sky blue shall be prohibited.
 9. Lighting for off-premises signs shall not cause any light to be reflected toward a street or adjacent property.
 10. The use of animation, flashing lights, and beacon lights shall not be permitted as part of any off-premises sign. Any sign that resembles, or includes an element that resembles, a traffic control device, sign, or light shall be prohibited. Electrical reader boards, tri-vision boards, and multiple-vision boards shall be permitted for off-premises signage.
 11. The placement of any off-premises sign shall not cause any conflict with circulation, drainage, parking, landscaping, and/or any other site attribute controlled and/or required by this chapter. Signs may not be placed in any landscape area required by this chapter.
 12. Off-premises signs shall be continually maintained for both structural integrity and appearance. Appearance includes, but shall not be limited to, issues such as rusting structures, peeling paper, and broken lattice. Empty boards and signs without advertising covering the entire face of the board shall be prohibited.
 13. Enforcement. The zoning administrator shall notify property owners by certified mail regarding any structure in violation of the chapter. Any sign that is not repaired or modified accordingly within 30 days of notification shall be removed at the property owner's expense.
- (14) *School separation.* No game arcade and/or pool hall or billiard hall shall be permitted to be placed within 750 feet of any school as measured by a line between the nearest lot line of the school lot and the nearest lot line of the game arcade and/or pool hall or billiard hall.
- (15) *Filling station separation.* No filling station shall be permitted within 300 feet of the St. Joseph River as measured by a line between the nearest lot line and the St. Joseph River.

(16) *Design review; development plan restrictions.* This section shall apply only to new commercial development, new commercial development (separate structures) on existing sites, or total commercial redevelopment or replacement. This section shall not apply to building additions or expansions to existing buildings. All construction shall meet the requirements of chapter 105, design requirements as referenced herein, except that the plan commission shall specifically consider the context of the proposal relative to the nonconforming status of adjacent structures. The plan commission may consider the nonconforming status of adjacent structures in approving waivers in accordance with section 105-39. In accordance with section 105-4, the applicable design requirements are identified as follows:

- a. Section 105-76, architectural materials, further limited as to only apply to those portions of the building visible from the public right-of-way and private collector roads serving multiple properties or businesses. At a minimum, two-thirds of each face of the visible portions of the building must use appropriate architectural materials. The remaining third may consist of other materials as may be determined by the owner/developer of the building. Appropriate architectural materials shall be expanded to include glass, exterior insulation and finish systems (EIFS), decorative concrete block and similar masonry units, painted/stained lap wood siding, and other high-quality materials as may be deemed appropriate by the plan commission. Metal siding and standard concrete block exterior finishes shall be considered inappropriate architectural materials. The color of all exterior architectural finishes shall meet the requirements of section 105-77 as supplemented below.
- b. Section 105-77, architectural color and textures, further limited as to only apply to those portions of the building visible from the public right-of-way and private collector roads serving multiple properties or businesses. Appropriate colors and textures may be expanded to include bold and contrasting colors subject to the review and approval of the plan commission in accordance with the established intent of the ordinance as documented by section 105-2.
- c. Section 105-108, mechanical equipment.
- d. Section 105-109, vending machines and newsracks. This requirement shall not apply to newsracks located in conjunction with restaurants which meet the required building setbacks of the district. Newsracks located adjacent to other commercial buildings that are designed in concert with the building may also be deemed appropriate by the plan commission.
- e. Section 105-116, dumpster/utility service areas.
- f. The public hearing requirements identified by section 105-31 shall not apply.

(Code 1985, § 159.141; Ord. No. 4302, 8-17-1998; Ord. No. 4565, 2-12-2001; Ord. No. 4568, 2-20-2001; Ord. No. 4576, 4-2-2001; Ord. No. 4584, 5-7-2001)

Secs. 137-531—137-553. - Reserved.

DIVISION 4. - INDUSTRIAL DISTRICTS

Subdivision I. - In General

Secs. 137-554—137-584. - Reserved.

Subdivision II. - Industrial I-1 District

Sec. 137-585. - Intent.

This district is designed to provide suitable locations for the development of wholesale distribution, warehousing, industrial research, light assembly, and light manufacturing establishments which shall meet the provisions of chapter 30, article V, pertaining to noise control; shall not emit point-source pollution; if hazardous wastes are generated, that waste shall be disposed of in a manner as prescribed by the state department of environmental management and/or the Environmental Protection Agency; and which shall operate entirely within completely enclosed, substantially constructed and weathertight buildings. The I-1 district is created in order to secure proper traffic routing, truck loading and unloading, and automobile parking; control of traffic on public streets through provision for adequate off-street parking and off-street truck loading; protection of the surrounding neighborhood values; and the promotion of the general welfare of the residents of the city.

(Code 1985, § 159.145; Ord. No. 2931, 9-2-1986)

Sec. 137-586. - Uses.

(a) *Permitted uses.* The following uses are permitted:

- (1) Advertising sign fabrication.
- (2) Aluminum casters.
- (3) Aluminum extruders.
- (4) Apparel manufacturing and wholesale distribution.
- (5) Appliance wholesale distributing.
- (6) Automobile parts wholesale distributing.
- (7) Awning manufacturing.
- (8) Baked goods production and distributing.
- (9) Beer, wine, and liquor wholesale distributing.
- (10) Beverage bottling plants and wholesale distribution.
- (11) Box and paper product manufacturing.
- (12) Cabinet manufacturing and wholesale distributing.
- (13) Churches, synagogues, and similar places of worship.
- (14) Cleaning services.
- (15) Commercial greenhouses.
- (16) Consumable merchandise wholesale distributing.
- (17) Contractors with no outside storage:
 - a. Concrete (no batching plants).
 - b. Crane.
 - c. Excavating.
 - d. General.
 - e. Housemovers.
 - f. Landscaping.
 - g. Masonry.

- h. Paving (no batching plants).
 - i. Sewer.
 - j. Steel erection.
 - k. Wrecking.
- (18) Dairy goods production and distributing.
 - (19) Dry cleaning central processing.
 - (20) Electric machinery servicing, manufacturing and wholesale distributing.
 - (21) Electrical equipment wholesale distributing.
 - (22) Electronic equipment manufacturing and wholesale distributing.
 - (23) Fiberglass molding and winding.
 - (24) Food wholesale distribution.
 - (25) Freestanding, off-premises signs and billboards.
 - (26) Furniture manufacturing and wholesale distributing.
 - (27) Furniture repair and refinishing.
 - (28) Game arcade and pool hall or billiard hall.
 - (29) Glass wholesale distributing.
 - (30) Greenhouses.
 - (31) Hardware goods wholesale distribution.
 - (32) Heating, ventilation or air conditioning supply sales.
 - (33) Ice manufacturing and wholesale distributing.
 - (34) Industrial design.
 - (35) Industrial painting.
 - (36) Industrial research.
 - (37) Laundry central processing.
 - (38) Light assembling.
 - (39) Light fabricating.
 - (40) Light manufacturing.
 - (41) Lumber sales.
 - (42) Machine shops.
 - (43) Material handling equipment wholesale distributing.
 - (44) Meat and seafood wholesale distributing.
 - (45) Metal plating.
 - (46) Newspaper periodical and book printing.
 - (47) Office buildings.
 - (48) Paper wholesale distribution.
 - (49) Parking lots and garages.
 - (50) Parts manufacturing and assembling.
 - (51) Pharmaceutical products manufacturing.

- (52) Plastic product molding.
- (53) Plastic product wholesale distributing.
- (54) Plumbing supply sales.
- (55) Product packaging.
- (56) Rubber product molding.
- (57) Self-service storage facility, mini-storage.
- (58) Sheet metal fabricating.
- (59) Sporting goods manufacturing and wholesale distributing.
- (60) Steel product fabrication.
- (61) Steel stamping.
- (62) Tool and die makers.
- (63) Tool manufacturing and wholesale distributing.
- (64) Van conversion.
- (65) Vending machine wholesale distributing.
- (66) Warehousing.
- (67) Welding shops.
- (68) Wholesale distributing.
- (69) Wood products manufacturing and wholesale distributing.
- (70) Customary agricultural operations (truck farming); provided, however, that no storage of manure will be permitted within 1,000 feet of any property line.
- (71) One temporary building for the construction industry which is incidental to erection of buildings permitted by this section.

(b) *Conditional uses.* Subject to the provisions of section 137-587(14), the following uses may be conditionally approved by the board of zoning appeals for property already zoned I-1 light industrial district: Indoor shooting gallery.

(Code 1985, § 159.146; Ord. No. 2931, 9-2-1986; Ord. No. 3466, 3-4-1991; Ord. No. 4170, 5-19-1997; Ord. No. 4401, 6-21-1999)

Sec. 137-587. - Height, area, and development regulations.

In the industrial I-1 district, the height of buildings, the minimum dimensions of yards and setbacks, and the minimum lot area per industrial building shall be as follows:

- (1) *Height.* No building hereafter erected or structurally altered shall exceed 60 feet or five stories high.
- (2) *Front building setback.*
 - a. There shall be a front building setback of at least 25 feet for all new principal buildings. Nonconforming buildings shall adhere to the applicable sections regulating nonconformances.
 - b. On through lots the required front building setback shall be provided on both streets. No accessory buildings shall project beyond the front building setback line on either street.
- (3) *Side building setback.*
 - a. A side building setback shall not be less than five feet in width as measured from the facade board to the side lot line.
 - b. On corner lots the usual front building setback and side building setback regulations shall apply; however, the

exterior side building setback shall not be less than 50 percent of the front building setback required for lots facing the street upon which the side yard abuts. This regulation shall not be so interpreted as to reduce the buildable width of a corner lot of record at the time of the passage of this section to less than 25 feet, nor to prohibit the erection of an accessory building where this regulation cannot reasonably be complied with. A ten-foot side yard is required if the industrial property is contiguous to any residentially-zoned property.

(4) *Rear building setback.*

- a. There shall be a rear building setback of not less than ten percent of the depth of the lot for a one-story building.
- b. The depth shall be increased to 15 percent of depth of the lot for any building greater than or equal to two stories; however, the rear building setback need not exceed 30 feet in depth.

(5) *Minimum lot area and maximum intensity of use.*

- a. Every lot upon which a building is erected or altered shall have a front lot width dimension and area as follows:
 1. Sewer and water available: 60 feet frontage at front lot line; 6,600 square feet.
 2. Sewer or water unavailable: 70 feet frontage at front lot line; 10,000 square feet.
 3. Sewer and water unavailable: 100 feet frontage at front lot line; 15,000 square feet.
- b. Any lot which has been recorded in a subdivision plat or deed with the office of the county recorder prior to November 21, 1966, and which is 4,000 square feet or more in area, may be used as a building site.
- c. No building with an accessory building shall be erected or increased in ground area so that more than 75 percent of the area of the lot will be occupied.

(6) *Off-street parking.*

- a. *Ratio requirements.* All permitted uses as listed in section 137-586, one per each employee, based upon the maximum employment level per shift.
- b. *Construction parameters.* The following shall apply to all parking lots:
 1. All parking spaces required to service the principal building shall be located on the same lot as the principal building, or on a separate lot which is within 300 feet of the main entrance to the principal building.
 2. When a principal building undergoes an increase in the gross floor area, seating capacity, or number of units, the required off-street parking availability shall be increased to equal or exceed the off-street parking requirements.
 3. All parking lots shall be surfaced with an all-weather paving material capable of carrying a wheel load of 4,000 pounds without damaging the pavement. The lot shall be properly maintained at all times.
 4. All lots shall be lighted if used after sunset. Lights shall be located, shielded, and directed upon the parking lot in such a manner as to not shine or reflect onto adjacent property or into the public right-of-way. Lighting shall not exceed three footcandles as measured at that portion of the lot line which abuts residentially-zoned property.
 5. A minimum five-foot parking lot setback shall be provided between the property line and edge of the parking lot pavement. A minimum ten-foot parking lot setback shall be provided between any public road right-of-way or private access easement and the edge of parking lot pavement. A minimum ten-foot

parking lot setback shall be provided between internal vehicular collector drives and the edge of parking lot pavement. Slag, gravel or any type of pavement shall be prohibited within the setback area. The setback area shall be landscaped with vegetative ground cover or grass and/or decorative trees or shrubs.

6. Public address systems shall not be permitted in any parking lot.
 7. Parking spaces shall be a minimum of 180 square feet in area with a minimum width of 8½ feet. Small car parking spaces may be constructed, but shall be no smaller than 130 square feet in area with a minimum width of 8½ feet. A maximum of 25 percent of the total off-street parking spaces may be used for small cars, and each parking space shall be marked by an above-grade sign as a small car parking space.
 8. Parking lots shall be properly graded and drained so that stormwater drainage is collected and disposed of on site.
- (7) *Off-street loading.* At least one off-street loading and unloading berth shall be provided in the ratio of one berth per building. Loading, unloading, or truck queuing shall be prohibited on the public right-of-way.
- (8) *Vision clearance.* No structure, fence, hedge, or other plantings shall be permitted within a ten-foot radius of the corner of the lot where the corner lot adjoins the intersecting street right-of-way. There shall be a complete vision clearance for a distance of not less than ten feet above the ground on all corner lots.
- (9) *Fences and landscape screening.*
- a. A seven-foot-high opaque fence shall be mandatory along any developed industrial property line that is contiguous to any residentially zoned property. Fencing shall meet the minimum front yard setback requirements of the district in which it is located. In addition.
 - b. Along any developed industrial property line which is contiguous to any residentially zoned property, a ten-foot wide area along the property line shall be sodded, planted, and landscaped with at least seven-foot high shrubs or trees in order to form a permanent, opaque, landscaped screen.
- (10) *Trees.* Only hardwood trees shall be planted between the curb and sidewalk in the tree lawn. No trees shall be planted in tree lawns of less than five feet in width. The spacing of trees in tree lawns shall be not less than 40 feet apart.
- (11) *Signs.* All signs shall conform with requirements of chapter 129.
- (12) *Freestanding off-premises signs.*
- a. *Separation requirements.* Separation between proposed and existing off-premises signs and specified uses along the street shall be measured along the centerline of the street. For this measurement, the location of proposed and/or existing structures and uses shall be considered the center of the proposed structure or closest edge of the property measured perpendicularly to the centerline of the street. Unless otherwise specified, all other separation requirements shall be measured from the closest point of the proposed structure linearly to the specified property, use, and/or structure. For the purposes of this section, a pending completed application or valid improvement location permit shall be considered as an existing sign. The following separation distances shall be required between off-premises signs:
 1. The minimum separation distance between one sign structure and another on a non-limited-access highway shall be 750 feet.
 2. The minimum separation distance between one sign structure and another on a limited-access highway shall be 1,500 feet.
 3. The minimum separation distance between one sign structure and another sign structure located at intersections, or on different streets from which they are intended to be viewed, shall be 300 feet.

4. The minimum separation distance between a sign structure and property either zoned or used for a church, residential district or legal nonconforming residential use shall be 100 feet measured from the center of the : direction.
 5. The minimum separation distance between a sign structure and property either zoned or used for a church, school, park, residential district or legal nonconforming residential use shall be 200 feet along both sides of the street from which the sign is intended to be viewed.
 6. The minimum separation distance between a sign structure and the 100-year floodplain of the St. Joseph River as identified by the flood insurance rate maps shall be 300 feet.
 7. Separation distances shall not be limited by jurisdictional boundaries. Required separation distances for proposed signs located within the jurisdiction of the city shall also be maintained from signs located in adjacent municipalities or jurisdictional areas.
- b. *Permitting.* Applications shall not be considered complete unless all applicable information is submitted. The following information shall be submitted concurrently with any application for an improvement location permit for an off-premises sign:
1. A signed contract with property owners, or a deed identifying the applicant's property ownership where the sign is intended to be placed.
 2. Most recent aerial photograph identifying all off-premises signs within a 1,000-foot radius of the proposed sign located along non-limited-access highways. The aerial photograph shall also identify property either zoned or used for a church, school, park, or residential purpose within 250 feet of the proposed sign.
 3. Construction plans on the proposed sign, documenting the proposed height, area, setbacks, appearance, color and any other developmental requirements identified by this chapter.
 4. A scaled plan identifying the location of the sign relative to property and right-of-way lines. Plot plan shall identify the location of hard surface paving, drives, sidewalk, easements, utilities, and buildings located within 100 feet of the proposed sign.
 5. Proposed signs located within 50 feet of any required separation distance shall require a certified survey submitted by a licensed surveyor verifying that the proposed location meets all minimum setback requirements.
 6. Signs proposed within the required separation distances to an adjacent municipality or jurisdiction area shall submit documentation from the municipality or area that a valid permit has not been issued or is pending for a sign within the required separation distance of the proposed sign.
- c. *Developmental requirements.* The following developmental requirements shall apply to the construction of off-premises signs:
1. Non-limited-access highways. Only one sign shall be permitted per location based on the separation requirements identified herein. Two-tier signs shall be prohibited. The display area of the face of any sign located on a non-limited-access highway shall not exceed 300 square feet. Temporary extensions may be added to individual signs based on individual advertising requirements not to exceed 50 square feet per face (a maximum of 350 square feet with extensions). Extensions may project no higher than four feet above the height of the sign, including those of a legally nonconforming height.
 2. Non-limited-access highways, replacement of legally nonconforming signs. The replacement and/or relocation of any legally nonconforming sign shall meet all the requirements of this chapter; however, signs legally constructed with a greater display area than required by this chapter may be replaced at the existing nonconforming display area provided the following provisions are met:

- (i) All other applicable provisions of this chapter are met.
 - (ii) The geographic areas that replacement may occur shall be limited to the following non-limited-access highways: Grape Road, north of Catalpa and south of Cleveland Road; Edison Road, beginning 500 feet west of Main Street and East of Hickory Road; McKinley Avenue, west of Fir Road and east of Hickory Road.
 - (iii) An improvement location permit must be approved within 180 days of the removal of the legally nonconforming display area sign. Documentation regarding the removal of the existing nonconforming sign shall be submitted concurrently with the permit request for its replacement.
3. Limited-access highways. Only one sign shall be permitted per location based on the separation requirements identified herein. Two-tier signs shall be prohibited. The display area of the face of any sign located on a limited-access highway shall not exceed 14 feet in height by 48 feet in length (672 square feet). Temporary extensions may be added to individual signs based on individual advertising requirements not to exceed 200 square feet per face (a maximum of 872 square feet with extensions). Extensions may project no higher than four feet above the height of the sign, including those of a legally nonconforming height.
 4. Signs that are located back-to-back shall be considered one sign, provided the interior angle formed by each side of the sign does not exceed 45 degrees.
 5. The height of any sign shall not exceed 35 feet.
 6. Setbacks. Setback distances shall be measured from the nearest projection, appendage, board, or structure of the sign perpendicularly to road right-of-way or property lines.
 - (i) The minimum setback for any sign from public road right-of-way shall be 25 feet.
 - (ii) The minimum rear-yard setback for any sign shall be 25 feet.
 - (iii) The minimum side-yard setback for any sign shall be five feet.
 7. The appearance of off-premises sign structures shall incorporate the use of architectural columns and lattice below the face of the sign. The zoning administrator shall provide examples of signs that meet this requirement on request. Lattice shall not be required only in cases where it would block clear vision or cause other safety concerns as determined by the zoning administrator.
 8. The color of off-premises sign structures shall be limited to natural earth-tone colors including, but not limited to, beige, brown, brick red, slate blue, and forest green. Bright and contrasting colors including, but not limited to, black, white, red, orange, yellow, purple and sky blue shall be prohibited.
 9. Lighting for off-premises signs shall not cause any light to be reflected toward a street or adjacent property.
 10. The use of animation, flashing lights, and beacon lights shall not be permitted as part of any off-premises sign. Any sign that resembles, or includes an element that resembles, a traffic control device, sign, or light shall be prohibited. Electrical reader boards, tri-vision boards, and multiple-vision boards shall be permitted for off-premises signage.
 11. The placement of any off-premises sign shall not cause any conflict with circulation, drainage, parking, landscaping, and/or any other site attribute controlled and/or required by this chapter. Signs may not be placed in any landscape area required by this chapter.
 12. Off-premises signs shall be continually maintained for both structural integrity and appearance. Appearance includes, but shall not be limited to, issues such as rusting structures, peeling paper, and broken lattice. Empty boards and signs without advertising covering the entire face of the board shall be

prohibited.

13. Enforcement. The zoning administrator shall notify property owners by certified mail regarding any structure in violation of the chapter. Any sign that is not repaired or modified accordingly within 30 days of notification shall be removed at the property owner's expense.

- (13) *School separation.* No game arcade and/or pool hall or billiard hall shall be permitted to be placed within 750 feet of any school as measured by a line between the nearest lot line of the school lot and the nearest lot line of the game arcade and/or pool hall or billiard hall.
- (14) *Indoor shooting gallery separation.* No indoor shooting gallery shall be permitted to be placed within 750 feet of any school, park, church, and/or hospital, as measured by a line between the nearest lot line of the school, park, church, and/or hospital and the nearest lot line of the indoor shooting gallery.
- (15) *Self-service storage facility, mini storage separation.* No self-service storage facility, mini storage use shall be permitted to be placed within 250 feet of any school, park, church, hospital, and/or residentially-zoned property, as measured by a straight line drawn between the nearest lot line of the school, park, church, hospital, and/or residentially-zoned property and the nearest lot line of the self-service storage facility, mini storage use.
- (16) *Business related activities.* All business related activities and operations must be conducted within enclosed buildings. All raw materials, finished products, or other incidental materials associated with a given property use shall be stored within enclosed buildings. Outside storage of raw materials, finished products, or other incidental materials are prohibited.

(Code 1985, § 159.147; Ord. No. 2931, 9-2-1986; Ord. No. 3263, 4-17-1989; Ord. No. 3297, 8-7-1989; Ord. No. 3363, 3-19-1990; Ord. No. 3466, 3-4-1991; Ord. No. 3698, 6-21-1993; Ord. No. 3703, 6-21-1993; Ord. No. 4170, 5-19-1997; Ord. No. 4401, 6-21-1999; Ord. No. 4568, 2-20-2001; Ord. No. 4576, 4-2-2001)

Secs. 137-588—137-607. - Reserved.

Subdivision III. - Industrial I-2 District

Sec. 137-608. - Intent.

- (a) This district is designed to provide suitable locations for development of major industrial operations for heavy manufacturing, heavy assembling, processing, and outside storage. These facilities shall meet the provisions of chapter 30, article V, and if hazardous wastes are generated, that waste shall be disposed of in a manner prescribed by the state department of environmental management and/or the Environmental Protection Agency.
- (b) The industrial I-2 district is created in order to secure proper traffic safety through provision for proper traffic routing, truck loading and unloading, and automobile parking; control of traffic on public streets through provision for adequate off-street parking and off-street truck loading; protection of the surrounding neighborhood values; and the promotion of the general welfare of the residents of the city.
- (c) All permitted and conditional uses as listed below shall be approved by the state department of environmental management, the Environmental Protection Agency, and any other local, state, or federal agency as applicable prior to obtaining a conditional use permit from the board of zoning appeals or an improvement location permit from the city planner.

(Code 1985, § 159.160; Ord. No. 2945, 10-6-1986; Ord. No. 3256, 3-20-1989)

(a) *Permitted uses.* Only the following uses are permitted:

- (1) Any permitted use in the industrial I-1 district.
- (2) Appliance manufacturing.
- (3) Automobile manufacturing.
- (4) Boat manufacturing.
- (5) Brick, ceramic tile, terra cotta or porcelain manufacturing.
- (6) Building material storage yard.
- (7) Cast concrete manufacturing.
- (8) Cold rolled metal processing.
- (9) Contractor storage yards.
- (10) Dye manufacturing.
- (11) Electrical equipment manufacturing.
- (12) Farm machinery manufacturing.
- (13) Flooring manufacturing.
- (14) Food processing.
- (15) Foundries.
- (16) Game arcade and pool hall or billiard hall.
- (17) Glass manufacturing.
- (18) Grain storage.
- (19) Heavy assembling.
- (20) Heavy manufacturing.
- (21) Heavy truck or heavy trailer sales or service.
- (22) Ink manufacturing.
- (23) Lumber company storage yards.
- (24) Lumber saw mills or planing mills.
- (25) Metal stamping.
- (26) Machinery manufacturing.
- (27) Manufactured home construction.
- (28) Mobile building or mobile home manufacturing.
- (29) Movers of household goods.
- (30) Paint manufacturing.
- (31) Pigment manufacturing.
- (32) Pipe manufacturing.
- (33) Plastic product manufacturing.
- (34) Recreational vehicle manufacturing.
- (35) Rubber manufacturing.
- (36) Self-service storage facility, mini storage.

- (37) Soap and detergent manufacturing.
- (38) Stone products manufacturing.
- (39) Transportation equipment manufacturing.
- (40) Truck manufacturing.
- (41) Well drilling contractors.
- (42) Wire manufacturing.

(b) *Conditional uses.* The following uses may be conditionally approved by the board of zoning appeals for property already zoned industrial I-2 district:

- (1) Acid and alkaline manufacturing and storage.
- (2) Animal by-products processing.
- (3) Areawide trash incineration plants.
- (4) Asphalt batching plants.
- (5) Asphaltic products manufacturing and storage.
- (6) Automobile used parts storage yards.
- (7) Chemical bulk storage and wholesale distributing.
- (8) Chemical manufacturing.
- (9) Coke manufacturing.
- (10) Communication broadcasting towers.
- (11) Concrete batching plants.
- (12) Creosote manufacturing and treatment.
- (13) Crematories.
- (14) Explosives and blasting agents manufacturing and storage.
- (15) Fireworks manufacturing and storage.
- (16) Gas bulk storage and wholesale distributing.
- (17) Hatcheries.
- (18) Heavy truck and heavy trailer storage.
- (19) Indoor shooting gallery (but subject to the provisions of section 137-610(14)).
- (20) Leather tanning.
- (21) Lime, cement and plaster processing.
- (22) Livestock yards.
- (23) Medical waste disposal.
- (24) Metals smelting.
- (25) Microwave towers.
- (26) Mining and extraction operations. Mining and extraction operations shall be operated on a lot of no less than ten acres in area, provided that:
 - a. The operations and uses shall not be conducted within 50 feet of any property line unless a greater distance is specified by the board of zoning appeals, where such is deemed necessary for the protection of adjacent property. Beginning at the required setback, the banks of all excavation areas shall not be excavated to a

slope greater than 45 degrees from the horizontal; however, when the adjacent property is being mined for sand or gravel, the setback requirements may be waived along any common property line.

- b. A continuous fence, comprised of seven feet of woven wire fabric shall be erected and maintained along the property line around the entire site. In addition, an evergreen planting screen shall be required around the entire site within the required setback. Such screen planting shall be comprised of pine seedlings which are staggered six feet on center in two rows which are six feet apart; provided, however, when the adjacent property is used for mining and extraction operations, the fence and screen planting requirements may be waived along any common property line.
- c. Prior to approval of the conditional use every applicant shall execute an acceptable indemnity agreement in favor of the city in a form approved by the board of zoning appeals, which indemnifying agreement shall be for the purpose of assuring the restoration, rehabilitation and reclamation of mined out areas within a reasonable time and to the satisfaction of the board of zoning appeals and to further assure that the following minimum requirements will be met:
- d. A uniform rolling contour shall be established throughout all excavation areas.
- e. The banks of all excavation areas shall be restored to a two-foot horizontal and one-foot vertical ratio and the slopes seeded, landscaped and maintained until a permanent type ground cover is established to prevent erosion.
- f. Soil, suitable for growing vegetation, shall be replaced over the slopes of a uniform depth of not less than two inches.
- g. If excavations are made to a water-producing depth, such depth shall not be less than six feet below the low water mark and the areas which are not permanently submerged shall be so graded as to eliminate the collection of stagnant water.
- h. In addition to the foregoing, the board of zoning appeals may impose such other conditions, requirements or limitations concerning the nature, extent of the use and operation of such excavation operations as the board of zoning appeals may deem necessary for the protection of adjacent properties and the public interests.

(27) Nuclear waste disposal.

(28) Paper and pulp manufacturing.

(29) Petrochemical processing.

(30) Petroleum bulk storage and wholesale distributing.

(31) Petroleum processing.

(32) Power generation plants.

(33) Primary metals processing.

(34) Railroad yards and piggyback operations.

(35) Salvage material storage yards.

(36) Sanitary landfills. No sanitary landfill shall be approved as a conditional use which does not meet the following minimum standards in addition to whatever additional requirements may be required by the board of zoning appeals:

- a. No such conditional use shall be operated on a site of less than 40 acres.
- b. No portion of such site within 50 feet from adjacent property lines shall be utilized for such conditional use; provided, that where a residential district or principal residential use shares contiguous boundaries with the site of the conditional use at the time such conditional use is approved by the board of zoning appeals, no

portion of such site within 100 feet of the boundary lines of such residential district or the property lines of such principal residential use shall be utilized for such conditional use.

- c. No sanitary landfill shall be approved as a conditional use until the applicant therefor and the owner of the proposed site therefor shall execute an agreement in favor of the city by the terms of which such applicant and owner shall agree to maintain the site while being utilized for the conditional use, and to restore and reclaim the site within a time period specified in such agreement following termination of such use, according to the following minimum specifications:
 1. A uniform contour which blends in with the topography of the surrounding area shall be established and maintained throughout the area.
 2. Impervious soil and soil suitable for growing vegetation, shall be replaced over the site to permanent uniform depths not less than that then required by applicable state standards and regulations.
 3. The site shall be seeded, landscaped, and maintained with perennial plant material until a permanent type ground cover is established to prevent erosion.

(37) Scrap metal storage yards.

(38) Semitruck and semitrailer storage.

(39) Slaughterhouses.

(40) Toxic and flammable chemical bulk storage and wholesale distributing.

(41) Truck transport terminals and dispatching.

(42) Vehicle wrecking yards.

(Code 1985, § 159.161; Ord. No. 2945, 10-6-1986; Ord. No. 3256, 3-20-1989; Ord. No. 3466, 3-4-1991; Ord. No. 4170, 5-19-1997; Ord. No. 4401, 6-21-1999)

Sec. 137-610. - Height, area, and development regulations.

In the industrial I-2 district, the height of buildings, the minimum dimensions of yards and setbacks, and the minimum lot area per industrial building shall be as follows:

(1) *Height.* No building hereafter erected or structurally altered shall exceed 60 feet or five stories high.

(2) *Front building setback.*

- a. There shall be a front building setback of at least 25 feet for all new principal buildings. Nonconforming buildings shall adhere to the applicable sections regulating nonconformances.
- b. On through lots the required front building setback shall be provided on both streets. No accessory buildings shall project beyond the front building setback line on either street.

(3) *Side building setback.*

- a. A side building setback shall not be less than five feet in width as measured from the fascia board to the side lot line.
- b. On corner lots the usual front building setback and side building setback regulations shall apply; however, the exterior side building setback shall not be less than 50 percent of the front building setback required for lots facing the street upon which the side yard abuts. This regulation shall not be so interpreted as to reduce the buildable width of a corner lot of record at the front building setback required for lots facing the street upon which side yard abuts. This regulation shall not be so interpreted as to reduce the buildable width of a corner

lot of record at the time of the passage of this section to less than 25 feet, nor to prohibit the erection of an accessory building where this regulation cannot reasonably be complied with. A ten-foot side yard is required if the industrial property is contiguous to any residentially-zoned property.

(4) *Rear building setback.*

- a. There shall be a rear setback of not less than ten percent of the depth of the lot for a one-story building.
- b. The depth shall be increased to 15 percent of the depth of the lot for any building greater than or equal to two stories; however, the rear building setback need not exceed 30 feet in depth.

(5) *Minimum lot area and maximum intensity of use.*

- a. Every lot upon which a building is erected or altered shall have a front lot width dimension and area as follows:
 1. Sewer and water available: 60 feet frontage at front lot line; 6,600 square feet.
 2. Sewer or water unavailable: 70 feet frontage at front lot line; 10,000 square feet.
 3. Sewer and water unavailable: 100 feet frontage at front lot line; 15,000 square feet.
- b. Any lot which has been recorded in a subdivision plat or deed with the office of the county recorder prior to November 21, 1966, and which is 4,000 square feet or more in area, may be used as a building site.
- c. No building with an accessory building shall be erected or increased in ground area so that more than 75 percent of the area of the lot will be occupied.

(6) *Off-street parking.*

- a. *Ratio requirements.* All permitted uses as listed in section 137-609, one per each employee, based upon the maximum employment level per shift.
- b. *Construction parameters.* The following shall apply to all parking lots:
 1. All parking spaces required to service the principal building shall be located on the same lot as the principal building, or on a separate lot which is within 300 feet of the main entrance to the principal building.
 2. When a principal building undergoes an increase in the gross floor area, seating capacity, or number of units, the required off-street parking availability shall be increased to equal or exceed the off-street parking requirements.
 3. All parking lots shall be surfaced with an all-weather paving material capable of carrying a wheel load of 4,000 pounds without damaging the pavement. The lot shall be properly maintained at all times.
 4. All lots shall be lighted if used after sunset. Lights shall be located, shielded, and directed upon the parking lot in such a manner as to not shine or reflect onto adjacent property or into the public right-of-way. Lighting shall not exceed three footcandles as measured at that portion of the lot line which abuts residentially-zoned property.
 5. A minimum five-foot parking lot setback shall be provided between the property line and edge of the parking lot pavement. A minimum ten-foot parking lot setback shall be provided between any public road right-of-way or private access easement and the edge of parking lot pavement. A minimum ten-foot parking lot setback shall be provided between internal vehicular collector drives and the edge of parking lot pavement. Slag, gravel or any type of pavement shall be prohibited within the setback area. The setback area shall be landscaped with vegetative ground cover or grass and/or decorative trees or shrubs.
 6. Public address systems shall not be permitted in any parking lot.
 7. Parking spaces shall be a minimum of 180 square feet in area with a minimum width of 8½ feet. Small car

parking spaces may be constructed, but shall be no smaller than 130 square feet in area with a minimum width of 8½ feet. A maximum of 25 percent of the total off-street parking spaces may be used for small cars, and each parking space shall be marked by an above-grade sign as a small car parking space.

8. Parking lots shall be properly graded and drained so that stormwater drainage is collected and disposed of on site.
- (7) *Off-street loading.* At least one off-street loading or unloading berth shall be provided in the ratio of one berth per building. Loading, unloading, or truck queuing shall be prohibited on the public right-of-way.
- (8) *Vision clearance.* No structure, fence, hedge, or other plantings shall be permitted within a ten-foot radius of the corner of the lot where the corner lot adjoins the intersecting street right-of-way. There shall be a complete vision clearance for a distance of not less than ten feet above the ground on all corner lots.
- (9) *Fences and landscape screening.*
 - a. A seven-foot-high opaque fence shall be mandatory along any developed industrial property line that is contiguous to any residentially zoned property. The fence shall be designed to provide security, and also to contain debris within the developed industrial property. Fencing shall meet the minimum front yard setback requirements of the district in which it is located. In addition.
 - b. Along any developed industrial property line which is contiguous to any residentially zoned property, a ten-foot wide area along the property line shall be sodded, planted, and landscaped with at least seven-foot high shrubs or trees in order to form a permanent, opaque, landscaped screen.
 - c. Outside storage of raw materials, finished products, or other incidental materials associated with a permitted use, if provided, shall be contained/completely surrounded by a seven-foot high opaque fence. In addition, outside storage shall not be visible from any public road right-of-way. If proposed outside storage areas, or modifications to existing, outside storage areas are visible from any public rights-of-way, they shall be screened by shrubs and trees sufficient to provide a permanent opaque landscaped screen.
- (10) *Trees.* Only hardwood trees shall be planted between the curb and sidewalk in the tree lawn. No trees shall be planted in tree lawns of less than five feet in width. The spacing of trees in tree lawns shall be not less than 40 feet apart.
- (11) *Signs.* All signs shall conform with requirements of chapter 129.
- (12) *Freestanding off-premises signs.*
 - a. *Separation requirements.* Separation between proposed and existing off-premises signs and specified uses along the street shall be measured along the centerline of the street. For this measurement, the location of proposed and/or existing structures and uses shall be considered the center of the proposed structure or closest edge of the property measured perpendicularly to the centerline of the street. Unless otherwise specified, all other separation requirements shall be measured from the closest point of the proposed structure linearly to the specified property, use, and/or structure. For the purposes of this section, a pending completed application or valid improvement location permit shall be considered as an existing sign. The following separation distances shall be required between off-premises signs:
 1. The minimum separation distance between one sign structure and another on a non-limited-access highway shall be 750 feet.
 2. The minimum separation distance between one sign structure and another on a limited-access highway shall be 1,500 feet.
 3. The minimum separation distance between one sign structure and another sign structure located at intersections, or on different streets from which they are intended to be viewed, shall be 300 feet.

4. The minimum separation distance between a sign structure and property either zoned or used for a church, residential district or legal nonconforming residential use shall be 100 feet measured from the center of the : direction.
 5. The minimum separation distance between a sign structure and property either zoned or used for a church, school, park, residential district or legal nonconforming residential use shall be 200 feet along both sides of the street from which the sign is intended to be viewed.
 6. The minimum separation distance between a sign structure and the 100-year floodplain of the St. Joseph River as identified by the flood insurance rate maps shall be 300 feet.
 7. Separation distances shall not be limited by jurisdictional boundaries. Required separation distances for proposed signs located within the jurisdiction of the city shall also be maintained from signs located in adjacent municipalities or jurisdictional areas.
- b. *Permitting.* Applications shall not be considered complete unless all applicable information is submitted. The following information shall be submitted concurrently with any application for an improvement location permit for an off-premises sign:
1. A signed contract with property owners, or a deed identifying the applicant's property ownership where the sign is intended to be placed.
 2. Most recent aerial photograph identifying all off-premises signs within a 1,000-foot radius of the proposed sign located along non-limited-access highways. The aerial photograph shall also identify property either zoned or used for a church, school, park, or residential purpose within 250 feet of the proposed sign.
 3. Construction plans on the proposed sign, documenting the proposed height, area, setbacks, appearance, color and any other developmental requirements identified by this chapter.
 4. A scaled plan identifying the location of the sign relative to property and right-of-way lines. Plot plan shall identify the location of hard surface paving, drives, sidewalk, easements, utilities, and buildings located within 100 feet of the proposed sign.
 5. Proposed signs located within 50 feet of any required separation distance shall require a certified survey submitted by a licensed surveyor verifying that the proposed location meets all minimum setback requirements.
 6. Signs proposed within the required separation distances to an adjacent municipality or jurisdiction area shall submit documentation from the municipality or area that a valid permit has not been issued or is pending for a sign within the required separation distance of the proposed sign.
- c. *Developmental requirements.* The following developmental requirements shall apply to the construction of off-premises signs:
1. Non-limited-access highways. Only one sign shall be permitted per location based on the separation requirements identified herein. Two-tier signs shall be prohibited. The display area of the face of any sign located on a non-limited-access highway shall not exceed 300 square feet. Temporary extensions may be added to individual signs based on individual advertising requirements not to exceed 50 square feet per face (a maximum of 350 square feet with extensions). Extensions may project no higher than four feet above the height of the sign, including those of a legally nonconforming height.
 2. Non-limited-access highways, replacement of legally nonconforming signs. The replacement and/or relocation of any legally nonconforming sign shall meet all the requirements of this chapter; however, signs legally constructed with a greater display area than required by this chapter may be replaced at the existing nonconforming display area provided the following provisions are met:

- (i) All other applicable provisions of this chapter are met.
 - (ii) The geographic areas that replacement may occur shall be limited to the following non-limited-access highways: Grape Road, north of Catalpa and south of Cleveland Road; Edison Road, beginning 500 feet west of Main Street and east of Hickory Road; McKinley Avenue, west of Fir Road and east of Hickory Road.
 - (iii) An improvement location permit must be approved within 180 days of the removal of the legally nonconforming display area sign. Documentation regarding the removal of the existing nonconforming sign shall be submitted concurrently with the permit request for its replacement.
3. Limited-access highways. Only one sign shall be permitted per location based on the separation requirements identified herein. Two-tier signs shall be prohibited. The display area of the face of any sign located on a limited-access highway shall not exceed 14 feet in height by 48 feet in length (672 square feet). Temporary extensions may be added to individual signs based on individual advertising requirements not to exceed 200 square feet per face (a maximum of 872 square feet with extensions). Extensions may project no higher than four feet above the height of the sign, including those of a legally nonconforming height.
 4. Signs that are located back-to-back shall be considered one sign, provided the interior angle formed by each side of the sign does not exceed 45 degrees.
 5. The height of any sign shall not exceed 35 feet.
 6. Setbacks. Setback distances shall be measured from the nearest projection, appendage, board, or structure of the sign perpendicularly to road right-of-way or property lines.
 - (i) The minimum setback for any sign from public road right-of-way shall be 25 feet.
 - (ii) The minimum rear-yard setback for any sign shall be 25 feet.
 - (iii) The minimum side-yard setback for any sign shall be five feet.
 7. The appearance of off-premises sign structures shall incorporate the use of architectural columns and lattice below the face of the sign. The zoning administrator shall provide examples of signs that meet this requirement on request. Lattice shall not be required only in cases where it would block clear vision or cause other safety concerns as determined by the zoning administrator.
 8. The color of off-premises sign structures shall be limited to natural earth-tone colors including, but not limited to, beige, brown, brick red, slate blue, and forest green. Bright and contrasting colors including, but not limited to, black, white, red, orange, yellow, purple and sky blue shall be prohibited.
 9. Lighting for off-premises signs shall not cause any light to be reflected toward a street or adjacent property.
 10. The use of animation, flashing lights, and beacon lights shall not be permitted as part of any off-premises sign. Any sign that resembles, or includes an element that resembles a traffic control device, sign, or light shall be prohibited. Electrical reader boards, tri-vision boards, and multiple-vision boards shall be permitted for off-premises signage.
 11. The placement of any off-premises sign shall not cause any conflict with circulation, drainage, parking, landscaping, and/or any other site attribute controlled and/or required by this chapter. Signs may not be placed in any landscape area required by this chapter.
 12. Off-premises signs shall be continually maintained for both structural integrity and appearance. Appearance includes, but shall not be limited to, issues such as rusting structures, peeling paper, and broken lattice. Empty boards and signs without advertising covering the entire face of the board shall be

prohibited.

13. Enforcement. The zoning administrator shall notify property owners by certified mail regarding any structure in violation of the chapter. Any sign that is not repaired or modified accordingly within 30 days of notification shall be removed at the property owner's expense.

(13) *School separation.* No game arcade and/or pool hall or billiard hall shall be permitted to be placed within 750 feet of any school as measured by a line between the nearest lot line of the school lot and the nearest lot line of the game arcade and/or pool hall or billiard hall.

(14) *Indoor shooting gallery separation.* No indoor shooting gallery shall be permitted to be placed within 750 feet of any school, park, church, and/or hospital, as measured by a line between the nearest lot line of the school, park, church, and/or hospital and the nearest lot line of the indoor shooting gallery.

(15) *Self-service storage facility, mini storage separation.* No self-service storage facility, mini storage use shall be permitted to be placed within 250 feet of any school, park, church, hospital, and/or residentially-zoned property, as measured by a straight line drawn between the nearest lot line of the school, park, church, hospital, and/or residentially-zoned property and the nearest lot line of the self-service storage facility, mini storage use.

(16) *Outside storage of materials associated with property use.* Outside storage of raw materials, finished products, or other incidental materials associated with a given property use are permitted.

a. The storage area location shall meet the front yard building setback requirements of the industrial 1-2 zoning district.

b. The storage area shall be fenced and landscaped in accordance with the landscaping requirements of the industrial I-2 zoning district.

(Code 1985, § 159.162; Ord. No. 2945, 10-6-1986; Ord. No. 3263, 4-17-1989; Ord. No. 3297, 8-7-1989; Ord. No. 3363, 3-19-1990; Ord. No. 3466, 3-4-1991; Ord. No. 3698, 6-21-1993; Ord. No. 3703, 6-21-1993; Ord. No. 4170, 5-19-1997; Ord. No. 4401, 6-21-1999; Ord. No. 4568, 2-20-2001; Ord. No. 4576, 4-2-2001)

Secs. 137-611—137-638. - Reserved.

DIVISION 5. - SPECIAL S-1 DISTRICT

Sec. 137-639. - Intent.

This district is designed to help preserve large tracts of land for land extensive uses which are necessary and desirable for the longterm health, use, and enjoyment of the community.

(Code 1985, § 159.175; Ord. No. 2946, 10-6-1986; Ord. No. 3256, 3-20-1989)

Sec. 137-640. - Uses.

(a) *Permitted uses.* Only the following uses are permitted:

- (1) Cemeteries.
- (2) Country clubs or golf courses.
- (3) Public parks and playgrounds.
- (4) Water pumping plants.

(b) *Conditional uses.* The following uses may be conditionally approved by the board of zoning appeals for property

already zoned special S-1 district:

- (1) Airports.
- (2) Amusement parks.
- (3) Campgrounds.
- (4) Drive-in theatres.
- (5) Electrical substations.
- (6) Fair grounds.
- (7) Open air markets.
- (8) Penal or correctional institutions.
- (9) Race tracks.
- (10) Sewage treatment plants.
- (11) Stadiums and arenas.
- (12) Zoos.

(Code 1985, § 159.176; Ord. No. 2946, 10-6-1986; Ord. No. 3256, 3-20-1989)

Sec. 137-641. - Height, area, and developmental regulations.

In the special S-1 district, the height of buildings, the minimum dimensions of yards and setbacks, and the minimum lot area per building shall be as follows:

- (1) *Height.* No building hereafter erected or structurally altered shall exceed 35 feet or 2½ stories high.
- (2) *Front building setback.*
 - a. There shall be a front building setback of at least 25 feet for all new principal buildings. Nonconforming buildings shall adhere to the applicable sections regulating nonconformances.
 - b. On through lots the required front building setback shall be provided on both streets. No accessory buildings shall project beyond the front building setback line of either street.
- (3) *Side building setback.*
 - a. A side building setback shall not be less than five feet in width as measured from the fascia board to the side lot line.
 - b. On corner lots the usual front building setback and side building setback regulations shall apply; however, the exterior side building setback shall not be less than 50 percent of the front building setback required for lots facing the street upon which the side yard abuts. This regulation shall not be so interpreted as to reduce the buildable width of a corner lot of record at the front building setback required for lots facing the street upon which the side yard abuts. This regulation shall not be so interpreted as to reduce the buildable width of a corner lot of record at the time of the passage of this section to less than 25 feet, nor to prohibit the erection of an accessory building where this regulation cannot reasonably be complied with. A ten-foot side yard is required if the property is contiguous to any residentially-zoned property.
- (4) *Rear building setback.* There shall be a rear building setback of not less than ten percent of the depth of the lot for a one-story building. The depth shall be increased to 15 percent of the depth of the lot for any building greater than or equal to two stories; however, the rear building setback need not exceed 30 feet in depth.
- (5) *Minimum lot area and maximum intensity of use.*
 - a. Every lot upon which a building is erected or altered shall have a front lot width dimension and area as

follows:

1. Sewer and water available: 60 feet frontage at front lot line; 6,600 square feet.
 2. Sewer and water unavailable: 70 feet frontage at front lot line; 10,000 square feet.
 3. Sewer and water unavailable: 100 feet frontage at front lot line; 15,000 square feet.
- b. Any lot which has been recorded in a subdivision plat or deed with the office of the county recorder prior to November 21, 1966, and which is 4,000 square feet or more in area, may be used as a building site.
- c. No building with its accessory building shall be erected or increased in ground area so that more than 45 percent of the area of the lot will be occupied.

(6) *Off-street parking.*

- a. *Ratio requirements.* One per each employee, based upon the maximum employment per shift.
- b. *Construction parameters.* The following shall apply to all parking lots:
 1. All parking spaces required to service the principal building shall be located on the same lot as the principal building, or on a separate lot which is within 300 feet of the main entrance to the principal building.
 2. When a principal building undergoes an increase in the gross floor area, seating capacity, or number of units, the required off-street parking availability shall be increased to equal or exceed the off-street parking requirements.
 3. All parking lots shall be surfaced with an all-weather paving material capable of carrying a wheel load of 4,000 pounds without damaging the pavement. The lot shall be properly maintained at all times.
 4. All lots shall be lighted if used after sunset. Lights shall be located, shielded, and directed upon the parking lot in such a manner as to not shine or reflect onto adjacent property or into the public right-of-way. Lighting shall not exceed three footcandles as measured at that portion of the lot line which abuts residentially-zoned property.
 5. A minimum five-foot parking lot setback shall be provided between the property line and edge of the parking lot pavement. A minimum ten-foot parking lot setback shall be provided between any public road right-of-way or private access easement and the edge of parking lot pavement. A minimum ten-foot parking lot setback shall be provided between internal vehicular collector drives and the edge of parking lot pavement. Slag, gravel or any type of pavement shall be prohibited within the setback area. The setback area shall be landscaped with vegetative ground cover or grass and/or decorative trees or shrubs.
 6. Public address systems shall not be permitted in any parking lot.
 7. Parking spaces shall be a minimum of 180 square feet in area with a minimum width of 8½ feet. Small car parking spaces may be constructed, but shall be no smaller than 130 square feet in area with a minimum width of 8½ feet. A maximum of 25 percent of the total off-street parking spaces may be used for small cars, and each parking space shall be marked by an above-grade sign as a small car parking space.
 8. Parking lots shall be properly graded and drained so that stormwater drainage is collected and disposed of on site.

(7) *Vision clearance.* No structure, fence, hedge, or other plantings shall be permitted within a ten-foot radius of the corner of the lot where the corner lot adjoins the intersecting street right-of-way. There shall be a complete vision clearance for a distance of not less than ten feet above the ground on all corner lots.

(8) *Fences.*

- a. *Interior lots.*

1. No fence over seven feet in height shall be erected between the rear lot line and the front building setback line between the side wall of the building and the side lot line; or along the rear lot line between the
2. No fence over four feet in height shall be erected between the front building setback line and the front lot line, or along the front lot line between the two side lot lines; such fence shall have a minimum of 75 percent of its surface open to permit visibility through it.

b. *Corner lots.*

1. A seven-foot-high fence may be erected only along the exterior side building setback line and the rear building setback line and along the exterior side building setback line, if extended, between the rear building setback line and the rear lot line. A seven-foot-high fence may be erected along the interior side lot line between the front building setback line and the rear lot line, and may be erected along the rear lot line between the interior side lot line and the intersection of the rear lot line and the exterior side building setback line, if extended. Four-foot-high fences may be erected in the exterior side yard area between the front setback line and the rear lot line; such fence shall have a minimum of 75 percent of its surface open to permit visibility through it.
2. No fence over four feet in height shall be erected between the front building setback line and the front lot line, or along the front lot line between the interior side lot line and the exterior side building setback line; such fence shall have a minimum of 75 percent of its surface open to permit visibility through it.

- (9) *Trees.* Only hardwood trees shall be planted between the curb and sidewalk in the tree lawn. No trees shall be planted in tree lawns of less than five feet in width. The spacing of trees in tree lawns shall be not less than 40 feet apart.

- (10) *Signs.* All signs shall conform with requirements of chapter 129.

(Code 1985, § 159.177; Ord. No. 2946, 10-6-1986; Ord. No. 3263, 4-17-1989; Ord. No. 3297, 8-7-1989; Ord. No. 3363, 3-19-1990; Ord. No. 3698, 6-21-1993; Ord. No. 3703, 6-21-1993; Ord. No. 4576, 4-2-2001)

Secs. 137-642—137-670. - Reserved.

DIVISION 6. - PLANNED UNIT DEVELOPMENT S-2 DISTRICT

Sec. 137-671. - Intent.

- (a) Recognizing that there is a need for flexibility in order to meet the needs of the marketplace because of changing preference; to allow a means of keeping abreast of new land planning techniques; and to guide the orderly planning of residential, commercial, or industrial areas, the planned unit development S-2 district is hereby created.
- (b) It shall be the policy of the city to promote progressive development of land and construction thereon by encouraging planned unit developments to achieve:
 - (1) A maximum choice of living environments by allowing a variety of housing and building types, and permitting an increased density per acre and a reduction in lot dimensions, yards, building setbacks, and area requirements.
 - (2) A more useful pattern of open space and recreation areas, and, if permitted as part of the project, more convenience in the location of accessory commercial uses and services.
 - (3) A development pattern which preserves and utilizes natural topography and geologic features, scenic vistas, trees and other vegetation, and prevents the disruption of natural drainage patterns.
 - (4) A more efficient use of land than is generally achieved through conventional development, resulting in substantial

savings through shorter utility lines and streets.

- (5) A development pattern in harmony with land use density, transportation facilities, and community facilities objectives of the comprehensive plan.

(Code 1985, § 159.185; Ord. No. 2947, 10-6-1986)

Sec. 137-672. - Performance criteria.

The following performance criteria shall be required of all planned unit developments and shall be addressed in the preliminary PUD petition:

- (1) All PUDs shall be equal to or greater than five acres in area.
- (2) The land use mix shall not be of such nature, or so located, so as to be detrimental upon the PUD or upon the surrounding neighborhood.
- (3) The PUD shall have direct access to collector, arterial, or thoroughfare streets.
- (4) A PUD located within a residential area shall only include residential land uses, unless the PUD exceeds 25 acres.
- (5) There shall be established a property owners association which shall adopt bylaws; the association shall hold title to all recreation, common open space, private streets, private utilities, and common areas.
- (6) All recreation, common open space, private streets, private utilities, and common areas which are part of the PUD shall be properly maintained; and adequate assessments shall be made by the property owners association to fund the perpetual maintenance of those facilities.
- (7) All utilities in the PUD shall be placed underground in recorded utility easements.
- (8) The PUD shall include a complete water system, sewer system, and paved roadway system of adequate capacity to handle the needs of the total development. If those systems are to become public property, then they shall be constructed according to the rules and regulations of the board of public works, which may be amended from time to time.
- (9) The PUD shall have adequate greenspace.
- (10) All parking and driving areas shall be properly graded, drained, and paved with a durable, dust-free surface.
- (11) There shall be stormwater drainage capacity for paved and roofed areas which shall conform to the regulations of the board of public works and safety and/or the stormwater drainage regulations.
- (12) The PUD shall be designed in such a manner as to constitute an organized, architecturally harmonious, and efficient development.
- (13) Unless the plan commission deems it necessary, the PUD shall be consistent with the comprehensive plan, which may be amended from time to time.
- (14) If the PUD is to be built in phases, all phases shall be shown.
- (15) Any land use which is specifically permitted by the PUD ordinance, but the building's location is not delineated on the final PUD site plan, shall adhere to the appropriate height, area, and developmental regulations of the most restrictive zoning district in which the use would otherwise be permitted.
- (16) The PUD ordinance, site plan, and subdivision plat shall be filed simultaneously.
- (17) Design review; development plan restrictions. This section shall apply only to new commercial development, new commercial development (separate structures) on existing sites, or total commercial redevelopment or replacement. This section shall not apply to building additions or expansions to existing buildings. All construction shall meet the requirements of chapter 105, design requirements as referenced herein, except that the plan

commission shall specifically consider the context of the proposal relative to the nonconforming status of adjacent structures. The plan commission may consider the nonconforming status of adjacent structures in approving waivers in accordance with section 105-39. In accordance with section 105-4, the applicable design requirements are identified as follows:

- a. Section 105-76, architectural materials, further limited as to only apply to those portions of the building visible from the public right-of-way and private collector roads serving multiple properties or businesses. At a minimum, two-thirds of each face of the visible portions of the building must use appropriate architectural materials. The remaining third may consist of other materials as may be determined by the owner/developer of the building. Appropriate architectural materials shall be expanded to include glass, exterior insulation and finish systems (EIFS), decorative concrete block and similar masonry units, painted/stained lap wood siding, and other high-quality materials as may be deemed appropriate by the plan commission. Metal siding and standard concrete block exterior finishes shall be considered inappropriate architectural materials. The color of all exterior architectural finishes shall meet the requirements of section 105-77 as supplemented in subsection (17)b of this section.
- b. Section 105-77, architectural color and textures, further limited as to only apply to those portions of the building visible from the public right-of-way and private collector roads serving multiple properties or businesses. Appropriate colors and textures may be expanded to include bold and contrasting colors subject to the review and approval of the plan commission in accordance with the established intent of the ordinance as documented by section 105-2.
- c. Section 105-108, mechanical equipment.
- d. Section 105-109, vending machines and newsracks. This requirement shall not apply to newsracks located in conjunction with restaurants which meet the required building setbacks of the district. Newsracks located adjacent to other commercial buildings that are designed in concert with the building may also be deemed appropriate by the plan commission.
- e. Section 105-116, dumpster/utility service areas.
- f. The public hearing requirements identified by section 105-31 shall not apply.

(Code 1985, § 159.186; Ord. No. 2947, 10-6-1986; Ord. No. 4584, 5-7-2001)

Sec. 137-673. - Procedures for approval.

The following procedures shall be adhered to in order to obtain PUD approval:

- (1) A preliminary PUD and the requisite fees shall be filed with the staff of the department of city planning.
- (2) The city plan commission shall hold a public hearing on the preliminary PUD, and within 30 days refer the preliminary PUD to the city council with a recommendation.
- (3) The city council shall hold a public hearing in order to approve, approve with modifications, or deny the preliminary PUD, and refer the approved preliminary PUD to the city plan commission for final PUD approval.
- (4) If the final PUD meets the provisions of the approved preliminary PUD, the city plan commission shall approve the final PUD without holding a public hearing.
- (5) The approved PUD shall then be recorded at the office of the county recorder by the staff of the department of city planning within ten days after final approval, and all recording fees shall be paid by the developer.

(Code 1985, § 159.187; Ord. No. 2947, 10-6-1986)

Sec. 137-674. - Preliminary PUD.

At the time of filing a PUD ordinance, a preliminary site plan shall also be filed. The preliminary PUD site plan shall include the following:

- (1) Legal description.
- (2) Property boundary lines with dimensions.
- (3) North arrow.
- (4) Scale of not less than one inch equals 100 feet.
- (5) Vicinity map showing surrounding streets.
- (6) Location, size, height, and setback, if buildings are proposed.
- (7) Floor area ratio.
- (8) Location of parking lots with setbacks from property boundaries.
- (9) Parking ratio for each differing land use.
- (10) Location and width of all streets and sidewalks.
- (11) Curb cut location and width.
- (12) Existing curb cut approaches, street intersections, and traffic hazards within 100 feet of property boundaries.
- (13) Delineation of all phases.

(Code 1985, § 159.188; Ord. No. 2947, 10-6-1986)

Sec. 137-675. - Final PUD.

At the time of filing for final PUD approval with the plan commission, the following shall also be included on the final PUD site plan:

- (1) Building facade rendering.
- (2) Landscape buffering location, height and materials.
- (3) Proposed property landscape features.
- (4) Security lights location and height.
- (5) All signs shall conform with requirements of chapter 129.
- (6) Finish topographic elevations on a uniform grid using United States Geodetic Survey (U.S.G.S.) datum.
- (7) Location and capacity calculations of storm drainage facilities.
- (8) Location and capacity calculations of water service facilities.
- (9) Location and capacity calculations of sewer facilities.
- (10) Location and capacity calculations of electric facilities.
- (11) Location of fire protection facilities.
- (12) Curb cut slope and return radii.
- (13) Legal description of all rights-of-way and easements to be accepted by the board of public works.
- (14) Sufficient additional data as may be required by the plan commission or city council subsequent to the approved preliminary site plan.

(Code 1985, § 159.189; Ord. No. 2947, 10-6-1986; Ord. No. 3363, 3-19-1990)

Sec. 137-676. - Time limits.

- (a) If after one year from the date of approval of the preliminary PUD by the city council, the developer has not obtained final PUD approval from the plan commission, the property shall automatically revert to residential R-1 district zoning. The preliminary PUD may be continued for one 12-month extension if approved by the plan commission.
- (b) If after one year from the date of approval of the final PUD by the plan commission, the developer has not obtained building permits, the property shall automatically revert to residential R-1 district zoning. The final PUD may be continued for one 12-month extension if approved by the plan commission.

(Code 1985, § 159.190; Ord. No. 2947, 10-6-1986)

Sec. 137-677. - Zoning designation binding successors in interest.

Whenever a tract of land has been designated as a planned unit development, that zoning designation shall continue in effect irrespective of subsequent changes in ownership, whether all of or a portion of the designated tract; and the uses and regulations of that zoning shall bind and be applicable to any successors in interest to those who were the owners of that tract at the time this zoning was imposed upon that real estate.

(Code 1985, § 159.191; Ord. No. 2947, 10-6-1986)

Sec. 137-678. - Effective date.

Sections 137-671 through 137-677, as amended on October 23, 1986, shall apply to PUD's for which the preliminary PUD was filed after October 23, 1986. Any real property development within a PUD for which the preliminary PUD was filed before that date shall continue to be governed in all respects by the PUD regulations in effect on the date the preliminary PUD was submitted.

(Code 1985, § 159.192; Ord. No. 2947, 10-6-1986)

Sec. 137-679. - Nonsubstantial changes to an approved planned unit development.

- (a) In order to provide a limited amount of flexibility after a PUD has received approval and been recorded, and in order to decrease time delays for the developer, the city planner may approve nonsubstantial changes to a PUD site plan.
- (b) A nonsubstantial change is a change to the developmental requirements of a specific PUD site plan which does not alter the overall site plan, does not alter the approved list of permitted uses, does not alter the list of required infrastructure to be constructed, and does not alter the plans and specifications of the required infrastructure.
- (c) Nonsubstantial changes to developmental requirements such as setbacks, number of lots, number of parking spaces, building facades, building size, etc., shall be permitted, but only to the extent of five percent or less of the original requirement. In no case shall a nonsubstantial change deviate from any other requirement of any other city ordinance, state statute, or federal code.
- (d) The developer shall submit a revised PUD site plan to the city planner with proposed nonsubstantial changes. Upon approval of the nonsubstantial changes to the PUD site plan, the staff of the department of city planning shall record the PUD at the office of the county recorder within ten days, and all recording fees shall be paid by the developer.

(Code 1985, § 159.193; Ord. No. 4020, 2-20-1996)

Secs. 137-680—137-701. - Reserved.

ARTICLE V. - SUPPLEMENTAL REGULATIONS

DIVISION 1. - GENERALLY

Secs. 137-702—137-730. - Reserved.

DIVISION 2. - SIGNS

Sec. 137-731. - On-premises signs.

- (a) All signs erected in all zones shall conform to the requirements of chapter 129.
- (b) No sign shall in any manner or design resemble any emergency warning device or traffic regulation device.
- (c) Revolving or stationary beacon lights are prohibited.

(Code 1985, § 159.215; Ord. No. 3363, 3-19-1990)

Sec. 137-732. - Commercial and industrial signs.

- (a) Signs erected in all commercial, industrial and special zones shall conform to the applicable requirements of chapter 129, on-premises sign standards, the state department of transportation, and IC 8-23-20 et seq., as may be amended from time to time.
- (b) No electrical sign exhibiting the colors, red, green, or amber shall in any manner or design resemble any emergency warning device or traffic regulation signal. Revolving or stationary beacon lights are prohibited.

(Code 1968, tit. 580, art. XV, § 2; Code 1985, § 159.216; Ord. No. 1378, 11-21-1966; Ord. No. 3703, 6-21-1993)

State Law reference— Regulation of billboards and junkyards, IC 8-23-20 et seq.

Secs. 137-733—137-762. - Reserved.

DIVISION 3. - ACCESSORY BUILDINGS

Sec. 137-763. - Regulations.

Accessory buildings, except as otherwise permitted in this chapter, shall be subject to the following regulations:

- (1) Where the accessory building is structurally attached to a principal building, it shall be subject to and must conform to all regulations of this chapter applicable to principal buildings.
- (2) Accessory buildings shall not be erected in any yard, except a rear yard.
- (3) An accessory building shall not exceed one story or 15 feet in height.

(Code 1985, § 159.230; Ord. No. 2988, 12-15-1986)

Sec. 137-764. - More than one principal building on a lot.

There shall not be more than one principal building erected on a lot.

(Code 1985, § 159.231; Ord. No. 2988, 12-15-1986)

Secs. 137-765—137-781. - Reserved.

DIVISION 4. - ACCESS; PARKING; UTILITIES

Sec. 137-782. - Structures to have access.

Every structure hereafter erected or moved shall be on a lot adjacent to a public street, or with access to an approved private street; and all structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection, and required off-street parking.

(Code 1985, § 159.240; Ord. No. 2988, 12-15-1986)

Sec. 137-783. - Parking, storage, or use of recreational vehicles.

No recreational vehicles shall be parked or stored on any lot in any residential district, except in a carport, enclosed accessory building, or in the rear yard; provided, however, that such equipment may be parked anywhere on residential premises not to exceed 24 hours during loading or unloading. No such equipment shall be used for living, sleeping, or housekeeping purposes when parked or stored on any residential lot.

(Code 1985, § 159.241; Ord. No. 2988, 12-15-1986)

Sec. 137-784. - Parking or storage of certain vehicles in residential areas.

Any vehicle, other than a recreational vehicle, having a gross weight greater than 7,000 pounds shall be prohibited in all residential districts.

(Code 1985, § 159.242; Ord. No. 2988, 12-15-1986)

Sec. 137-785. - Swimming pool safety devices.

Every person owning land on which there is situated a swimming pool containing water which is 12 inches or more in depth at any point, shall erect and maintain a fence or wall, at least four feet in height, either surrounding the property or pool area. Gates must be self-latching with latches placed four feet above the ground. Fencing or wall material must be capable of keeping children from passing through the fence or wall.

(Code 1985, § 159.243; Ord. No. 3263, 4-17-1989)

Sec. 137-786. - Permitted public utilities.

The following public utility uses shall be permitted in all districts: poles, cables, wires, conduits, vaults, pipes, mains, and valves, for electric, gas, water, sewer, steam, and communication systems. All utility buildings shall comply with the applicable zoning district regulations in which they are permitted.

(Code 1985, § 159.244; Ord. No. 2988, 12-15-1986)

Sec. 137-787. - Permitted location of antennas.

- (a) *Freestanding antennas.* Freestanding antennas shall be located to the rear of the front wall of the building or to the rear front building setback, whichever is greater, shall be no higher than 35 feet above the ground, and set back at least 30 feet from all property lines.
- (b) *Roof antennas.* Roof antennas shall be mounted on the roof of the principal building or any accessory building and the aggregate height of the building together with the roof-mounted antenna shall be no higher than the maximum height limitation contained within the zoning district in which the antenna is located.
- (c) *Amateur radio antennas.* Every antenna shall be installed to the rear of the rear wall of the principal building and shall not be closer than 30 inches to any lot line in all zoning districts. All applicable building and electrical codes shall be adhered to and the antenna shall be installed according to manufacturer's instructions. The provisions contained in subsections (a) and (b) of this section do not apply to amateur antennas when the amateur antennas are placed to the rear of the rear wall of the building; however, an amateur radio antenna may be placed within the interior side yard setback if the height of the antenna is no greater than 35 feet and is at least 30 inches from the lot line. An amateur radio antenna may also be installed on the roof of the principal building if the antenna is no more than 35 feet above the average level of the ground.

(Code 1985, § 159.245; Ord. No. 3662, 3-1-1993; Ord. No. 3725, 8-2-1993)

Sec. 137-788. - Outdoor lighting control.

All outdoor lighting fixture lamps on privately owned property shall be so located, directed or shielded in such a manner that no light shines, reflects, causes glare, allows indirect light, or allows light trespass onto adjacent property or into the publicly owned right-of-way. Exemptions to this regulation include: nighttime field sports facilities, such as little league baseball diamonds, high school football fields, high school soccer fields, and municipal street lights.

(Code 1985, § 159.246; Ord. No. 4078, 8-5-1996)

Secs. 137-789—137-814. - Reserved.

DIVISION 5. - MINIMUM LANDSCAPING AND SCREENING

Sec. 137-815. - Landscaping and screening regulations.

Landscaping and screening shall be provided for all development in all commercial districts in accordance with the following regulations:

(1) *Landscaping and screening in yards.*

- a. All required yards shall be landscaped. The landscaping of these yards shall, at a minimum, consist of a combination of living vegetation, such as trees and shrubs as specified in this section and grasses or ground cover materials, planted or transplanted and maintained, or preserved as existing natural vegetation areas.
- b. Landscaping and screening of the front yard, or in the case of a through lot, all front yards, shall consist of trees planted in accordance with one of the two following alternatives:
 - 1. If deciduous shade (overstory) trees are used:
 - (i) There shall be a minimum of one tree planted at every 40 feet on center of linear distance within all front yards.
 - (ii) These required trees may be grouped together in the required front yard; however, in no case shall

spacing between the trees exceed 40 feet.

2. If deciduous ornamental (under-story) trees are used:
 - (i) There shall be one tree planted at a minimum of every 25 feet on center of linear distance within the required front yard.
 - (ii) These required trees may be grouped together in the required front yard; however, in no case shall spacing between the trees exceed 25 feet.
 - (iii) Deciduous shade trees and deciduous ornamental trees may be grouped together in the required yards; however, in no case shall spacing between a deciduous shade tree and a deciduous ornamental tree exceed 25 feet.
- c. Screening in the front yard or in the case of a through lot, all front yards, of the project shall consist of one or a combination of the following three alternatives:
 1. An ornamental or decorative fence of not more than 48 inches in height may be used in conjunction with the required landscaping.
 2. An earthen berm may be used in conjunction with the required landscaping. The berm shall be a maximum height of 48 inches, have a side-slope of no greater than 3:1, and shall be planted and covered with live vegetation.
 3. A plant material screen composed of a compact hedge of evergreen or densely twigged deciduous shrubs may be used in conjunction with the required landscaping.
- d. For all parking areas located in the front yard, there shall be provided and maintained along the front of the parking area, a screen of a minimum height of 36 inches along a minimum of 75 percent of the linear distance of the parking area, excluding the linear width of driveways, with a decorative fence, earthen berm, or plant material screen.
- e. The ground area between such decorative fence, earthen berm, or plant material screen and the property line shall be planted and maintained in grass or other suitable ground cover.
- f. A minimum of one-half of the required trees shall also be planted between the property line and the decorative fence, earthen berm, or plant material screen.
- g. Landscaping and screening in the required side and rear yards shall be provided and maintained according to the following minimum standards:
 1. Landscaping in the required side and rear yards shall consist of trees planted in accordance with one of the three following alternatives:
 - (i) If deciduous shade (over-story) trees are used there shall be one tree planted at a minimum of every 60 feet on center of linear distance along all required side and rear yards. These required trees may be grouped together in the side and rear yards; however in no case shall be spacing between the trees exceed 60 feet.
 - (ii) If deciduous ornamental (understory) trees are used there shall be one tree planted at a minimum of every 40 feet on center of linear distance along all required side and rear yards. These required trees may be grouped together in the side and rear yards; however, in no case shall spacing between the trees exceed 40 feet.
 - (iii) Deciduous shade trees and deciduous ornamental trees may be grouped together in the required yards; however, in no case shall the spacing between a deciduous shade tree and a deciduous ornamental tree exceed 40 feet.

2. Screening in the required interior side yard and rear yard of the project may include:
 - (i) An ornamental or decorative fence of up to a maximum height of seven feet may be used in conjunction with required landscaping.
 - (ii) An earthen berm may be used in conjunction with the required landscaping. It shall have a maximum height of seven feet, have a minimum crown width of two feet, a side-slope of no greater than 3:1, and shall be planted and covered with live vegetation.
 - (iii) A plant material screen consisting of a compact hedge of evergreen or densely twigged deciduous shrubs may be used in conjunction with the required landscaping.
 - h. All ornamental or decorative fencing, earthen berms, plant material screens, shrubs, trees, structures or other objects shall permit completely unobstructed visibility within the vision clearance area.
 - i. Barbed wire, razor wire, and electrified fences shall not be permitted on any property within any commercial district.
 - j. The minimum size of all required landscape plant materials, at the time of planting, including replacement trees and shrubs, shall be as follows:
 1. Deciduous shade (overstory) trees shall be 2½-inch caliper at six inches above the ground.
 2. Deciduous ornamental (under-story) trees shall be 1½-inch caliper at six inches above the ground.
 3. Multistemmed trees shall be at least eight feet in height.
 4. Evergreen trees shall be at least six feet in height.
 5. Deciduous or evergreen shrubs shall be at least two feet in height. Shrubs shall be planted at a maximum of four feet on center of linear distance along the property line.
 6. Shrubs used to screen parking lots shall be a minimum of 18 inches in height.
 - k. All trees and shrubs shall be planted or transplanted in accordance with the standards contained in American Standard for Nursery Stock, copyrighted in 1986 by the American Association of Nurserymen and approved May 2, 1986, by the American National Standards Institute, Inc. or as hereafter may subsequently be amended. All trees and shrubs shall be mulched and maintained to give a clean and weed free appearance.
 - l. Existing trees already located on the property may fulfill the requirements for tree planting in required yards as long as the standards specified above are met.
 - m. The removal of any existing live tree of over four-inch caliper measured at 4½ feet above the ground or any existing shrub or evergreen tree over six feet in height shall be prohibited except to facilitate the placement of utilities or to provide for necessary easements or drainage improvements. Removal of said tree shall require the replanting of replacement tree so the total number of trees replanted equals the total number of trees removed. Replanting of replacement trees shall occur within six months of removal, or the next planting season, whichever occurs first.
 - n. All existing trees which are to be preserved shall be maintained without injury and with sufficient area for the root system to sustain the tree. Protective care and physical restraint barriers at the drip line, such as temporary protective fencing, shall be provided to prevent alteration, compaction, or increased depth of the soil in the root system area prior to and during groundwork and construction. Heavy equipment traffic and the storage of construction equipment or materials shall not occur within the drip line of the tree.
- (2) *Landscaping requirements for interior of parking lots.*
- a. The purpose of parking lot interior landscaping is to help reduce glare and heat buildup; to promote interior islands for pedestrian safety and traffic separation; to visually break up large expanses of pavement; and to

reduce surface runoff.

b. The interior of any parking lot shall be landscaped based on the following minimum standards:

Total Number of Parking Spaces	Required Interior Landscape Area
Less than 50 spaces required	None required
50 or more spaces required	Minimum 15 square feet per parking space

- c. The minimum size of a required interior landscaping area shall be 108 square feet. No planting area shall be less than six feet in dimension, measured from the inside of the permanent barrier to inside of permanent barrier, except those portions created by turning radii or angles of parking spaces.
- d. Required interior landscaped areas shall be in the ground and not be placed upon a pavement surface.
- e. A permanent barrier, such as curbing or wheel stops, shall enclose each interior landscaped area in order to minimize damage from vehicles and pedestrians, and improve parking lot maintenance.
- f. Regardless of any language elsewhere in this section, there shall be at least one tree provided for each 20 parking spaces.
- g. Trees located at the end of a parking bay shall be deciduous shade (overstory) or deciduous ornamental (understory).
- h. Trees located in any other portion of the interior landscaped area may be deciduous shade (overstory), deciduous ornamental (understory) or evergreen.
- i. The minimum size for trees shall be:
1. Two and one-half-inch calipers at six inches above the ground for deciduous shade (overstory);
 2. Two and one-half-inch caliper at six inches above the ground at the time of planting for deciduous ornamental (understory); and
 3. Six feet in height for evergreen trees.
- j. Each tree shall be a minimum of 2½ feet from the outside of any permanent barrier of a landscaped area or edge of the parking area.
- k. Hardy ground cover or grasses shall be planted to cover each interior landscaped area completely within three years. All ground cover shall have a mature height of not more than 2½ feet.
- l. Fifty percent of the required interior landscaped areas shall be installed at the end of parking bays. The balance of the required interior landscaped area may be installed anywhere within the parking lot outside of the parking lot setback areas.
- m. These requirements do not apply to parking garages or parking decks.
- n. These requirements shall apply to parking lots legally established after adoption of the ordinance from which this section is derived. If an existing parking lot is expanded after adoption of this section, then the entire parking lot shall meet all of the requirements of this section.

(3) *Landscape plan requirements.*

- a. All landscape plans shall be drawn on, or as a part of the final site plan, show dimensions and detailed elevation or section drawings of fences, show all existing elevations and proposed land contour lines having at

least one foot intervals.

- b. Include a tree survey of required yards indicating the exact location of all trees, shrubs, and evergreens.
- c. Show all proposed planting by labeling the species, size, and spacing on center.

(4) *Grounds maintenance.* The project owner or management shall:

- a. Maintain the landscaping by keeping lawns mowed, all plants maintained as disease free, and planting beds groomed, except in naturally occurring vegetation areas; and
- b. Replace any required plantings, which are removed or die after the date of planting. Such replacement shall occur not later than the next planting season.

(Code 1985, § 159.270; Ord. No. 3836, 6-20-1994; Ord. No. 4020, 2-20-1996)

Secs. 137-816—137-838. - Reserved.

DIVISION 6. - YARD SALES

Sec. 137-839. - Permitted in residential districts; restrictions; nonapplicability.

- (a) Yard sales are a permitted use in the R-1, R-2, R-3, and R-4 districts, but shall be subject to the following restrictions:
 - (1) No more than three sales may be conducted at a single address during any calendar year. Each sale may be conducted for up to three consecutive days.
 - (2) Only merchandise normally found in a residential household may be sold at the sale.
 - (3) All merchandise shall be placed within a secured structure immediately following the termination of the sale.
 - (4) No more than two signs of not more than four square feet are permitted to be displayed on the property of the residence where the sale is conducted. No more than two directional signs of not more than four square feet are permitted, provided written permission is received from the property owner upon whose property the signs are to be placed. Signs may not be exhibited for more than one day prior to the date of the sale and must be removed immediately following the termination of the sale.
 - (5) Signs shall not be placed on property belonging to the city or to any of the various departments thereof.
- (b) The provisions of this section shall not apply to the following sales:
 - (1) Sales conducted pursuant to the order of authorization of a court of competent jurisdiction.
 - (2) Public sales conducted by persons acting in accordance with their powers and duties as public officials.
 - (3) Sales conducted by duly licensed auctioneers, selling at auctions.
 - (4) The sale of no more than one motor vehicle titled to a person residing on the property on which the vehicle is offered for sale.

(Code 1985, § 159.295; Ord. No. 3150, 3-8-1988)

Secs. 137-840—137-856. - Reserved.

DIVISION 7. - MANUFACTURED HOUSING

Sec. 137-857. - Placement.

- (a) *Intent.* It is the intent of this section to comply with the state law mandating the placement of type I manufactured homes on residential zoning lots intended for conventional stick-built single-family housing. In order to protect the residents of both type I manufactured houses and of the surrounding neighborhood, the requirements and procedures are set forth in this section to assure acceptable similarity in appearance and soundness of construction between type I manufactured housing and stick-built housing.
- (b) *Permitted placement.* The establishment, location, and use of type I manufactured homes as permanent residential units approved individually, by specific materials and by design, shall be permitted in residential R-1 districts, subject to the developmental requirements and limitations which apply to the residential R-1 or residential R-2 districts, and provided those homes shall meet the following requirements and limitations:
 - (1) The dwelling shall meet the appropriate exterior appearance standards as hereinafter set forth in section 137-858.
 - (2) The dwelling shall be sited in residential R-1 or R-2 districts.
 - (3) The dwelling shall receive all required permits and conform with this chapter, chapter 101, article II, and other regulations of the city.
- (c) *Historic districts.* Due to the sensitive character of certain areas of the city, the establishment, use, or erection of manufactured homes is not permitted in any area:
 - (1) Which is identified as a proposed historic district, as documented in the historic and architectural survey;
 - (2) Which is designated as a local, state, or federal historic district; or
 - (3) Which may not be a recommended district in the survey, or a designated district, but which may be under consideration for historic district status by the historic review board.
- (d) *Location out of residential R-4 districts.* This division shall apply only to manufactured housing located outside of approved manufactured home parks, or manufactured home subdivisions.
- (e) *Year of manufacture.* For the purposes of IC 36-7-4-1106, this division shall apply only to manufactured homes constructed after January 1, 1981.

(Code 1985, § 159.305; Ord. No. 2988, 12-15-1986; Ord. No. 3698, 6-21-1993)

State Law reference— Manufactured home; standards and requirements, IC 36-7-4-1106.

Sec. 137-858. - Exterior appearance standards.

A type I manufactured home shall:

- (1) Contain a minimum of 950 square feet of occupied space and exceed a minimum width of 23 feet;
- (2) Be placed on a solid masonry foundation meeting all the requirements of a conventional single-family home foundation;
- (3) Have wheels, axles, and hitch mechanism removed;
- (4) Meet appropriate utility connection standards in accordance with approved home installation standards and rules of the city utilities;
- (5) Have siding material of type customarily used on site-constructed residences (see section 137-860);
- (6) Have roofing materials of a type customarily used on site-constructed residences (see section 137-860); and
- (7) Be placed onto a permanent exterior perimeter retaining wall, in accordance with section 137-859.

(Code 1985, § 159.306; Ord. No. 2988, 12-15-1986)

Sec. 137-859. - Foundation.

Manufactured homes must be set onto an excavated area with footings, foundations, and 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 permanent perimeter retaining wall. The wall shall be composed of solid masonry, which shall extend below the frost line. The design by a registered professional engineer or architect shall safely support those loads, as determined by the character of the soil.

(Code 1985, § 159.307; Ord. No. 2988, 12-15-1986)

Sec. 137-860. - Approved siding and roofing materials list for type I manufactured homes.

(a) The following siding materials are approved for usage on residential design type I manufactured homes:

- (1) Residential horizontal lap siding.
- (2) Residential horizontal vinyl lap siding.
- (3) Cedar or other wood siding.
- (4) Stucco siding.
- (5) Brick or stone siding.

(b) The following roofing materials are approved for usage on residential design type I manufactured homes:

- (1) Asbestos shingles on a roof pitched according to the design specifications of the shingles.
- (2) Fiberglass shingles on a roof pitched according to the design specifications of the shingles.
- (3) Shake shingles on a roof pitched according to the design specifications of the shingles.
- (4) Asphalt shingles on a roof pitched according to the design specifications of the shingles.
- (5) Tile materials on a roof pitched according to the design specifications of the materials.

(Code 1985, § 159.308; Ord. No. 2988, 12-15-1986)

Secs. 137-861—137-869. - Reserved.

DIVISION 8. - WELLHEAD PROTECTION LAND USE RESTRICTIONS

Sec. 137-870. - Prohibited uses.

The commercial storage and distribution of chemicals, materials, uses, and storage methods identified in section 137-872 shall be prohibited within the one-year time of travel for public wellfields. Maps of the one-year and five-year time of travel shall be as adopted by the city in accordance with the Safe Drinking Water Act and the Indiana Wellhead Protection Rule (327 IAC 8-4.1) which mandates the delineation of maps that identifies the time of travel and a wellhead protection program for each well or wellfield providing groundwater to a community public water system.

(Ord. No. 5932, § 1, 5-5-2025)

Sec. 137-871. - Conditional uses.

The commercial storage and distribution of chemicals, materials, uses, and storage methods identified in section 137-872 may be conditionally approved by the board of zoning appeals and the common council outside of the one-year time of travel but within the five-year time of travel for public wellfields. Maps of the one-year and five-year time of travel shall be as adopted by the city in accordance with the Safe Drinking Water Act and the Indiana Wellhead Protection Rule (327 IAC 8-4.1) which mandates the delineation of maps that identifies the time of travel and a wellhead protection program for each well or wellfield providing groundwater to a community public water system.

(Ord. No. 5932, § 1, 5-5-2025)

Sec. 137-872. - Identified chemicals, materials, uses, and storage methods.

- (a) Petroleum or petroleum-based products, including fuels, fuel additives, lubricating oils, motor oils, hydraulic fluids, and other similar petroleum based products;
- (b) Antifreeze, transmission fluids, brake fluids, and coolants;
- (c) Solvents (raw or spent), including cleaning solvents, degreasing solvents, stripping compounds, dry cleaning solvents, painting solvents, and/or hydrocarbon or halogenated hydrocarbon solvents;
- (d) Inks, printing and photocopying chemicals, and waste rags used for solvent-based cleaning;
- (e) Organic pigments;
- (f) Liquid storage batteries;
- (g) Non-aerosol, non-latex based paints, primers, thinners, dyes, stains, wood preservatives, varnishing and cleaning compounds, paint sludges, and paint filters;
- (h) Corrosion and rust prevention solutions;
- (i) Industrial and commercial cleaning supplies, including drain cleaners;
- (j) Sanitizers, disinfectants, bactericides, and algacides;
- (k) Pesticides, herbicides, and fertilizers;
- (l) Acids and bases with a pH less than or equal to two or greater than or equal to 12.5;
- (m) Aqueous metals;
- (n) Road salt;
- (o) Any other regulated substance in a quantity sufficient to present a reasonable likelihood that it has or is likely to damage groundwater or surface water, and stored, transferred or used in a manner either not in compliance with applicable federal, state or local requirements; or in a manner which represents an unreasonable risk of release to the soil, groundwater or surface water;
- (p) A drum storage area;
- (q) Waste pile, including one consisting of contaminated soil awaiting removal;
- (r) Waste or material surface impoundment that contains waste containing free liquids or other material susceptible to ground infiltration;
- (s) Rail or truck-loading or transfer area;
- (t) Auto salvage facility;
- (u) An outdoor storage or disposal area with material susceptible to ground infiltration when exposed to precipitation.

(Ord. No. 5932, § 1, 5-5-2025)

Sec. 137-873. - Underground storage tanks.

Underground storage tanks (UST) shall be prohibited within the one-year time of travel for public wellfields. Underground storage tanks shall include any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of petroleum, or any other product containing concentrations of drinking water contaminants as tracked and regulated by the Indiana Department of Environmental Management, and the volume of which (including the volume of underground pipes connected thereto) is ten percent or more beneath the surface of the ground. For the purposes of this section this shall not include:

- (1) Farm or residential tanks of 185 gallons or less capacity used for storing fuel for noncommercial purposes;
- (2) Tank used for storing heating oil for consumptive use on the premises where stored;
- (3) Septic tank; as regulated, approved, and permitted by the St. Joseph County, Indiana, Board of Health;
- (4) Pipeline facility (including gathering lines) regulated under:
 1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671 et seq.);
 2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001 et seq.); or
 3. Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in divisions (1)(d)1. or (1)(d)2. of this definition;
- (5) Surface impoundment, pit, pond or lagoon;
- (6) Storm water or wastewater collection system as may be approved by the City of Mishawaka Engineering Department as part of a final site plan;
- (7) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, water regulations 50 shaft or tunnel) if the storage tank is situated upon or above the surface of the floor;
- (8) Property that has established C-10 zoning on the effective date of the division 8, Wellhead Protection Land Use Restrictions. This shall specifically not include C-10 uses identified by reference within a planned unit development zoning classification. C-10 zoned property established after the effective date shall comply with all division 8, Wellhead Protection Land Use Restrictions.

(Ord. No. 5932, § 1, 5-5-2025)

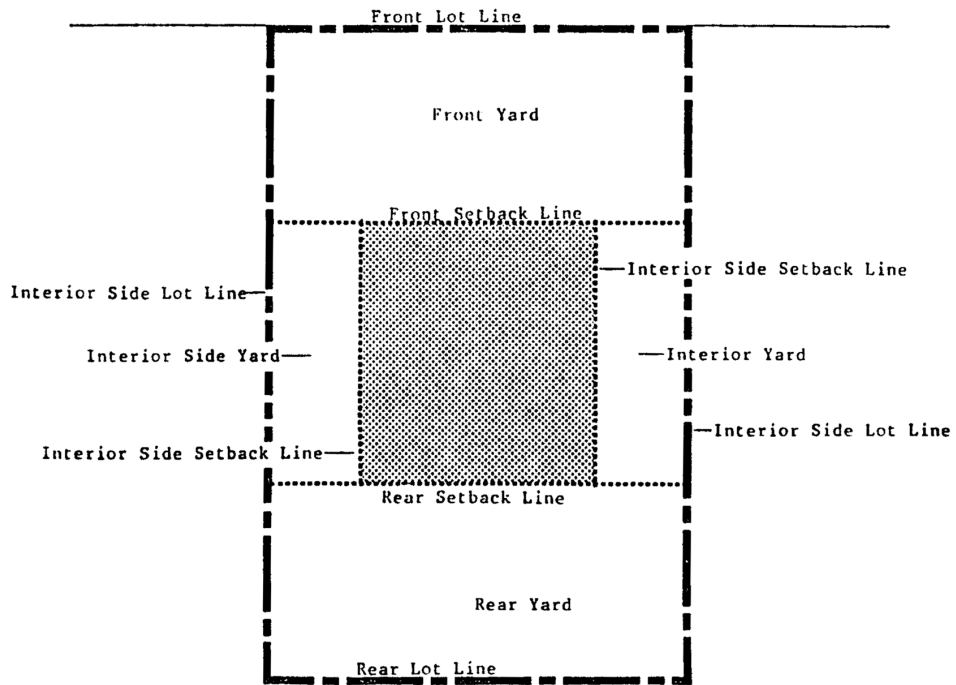
Sec. 137-874. - Conflicting ordinances.

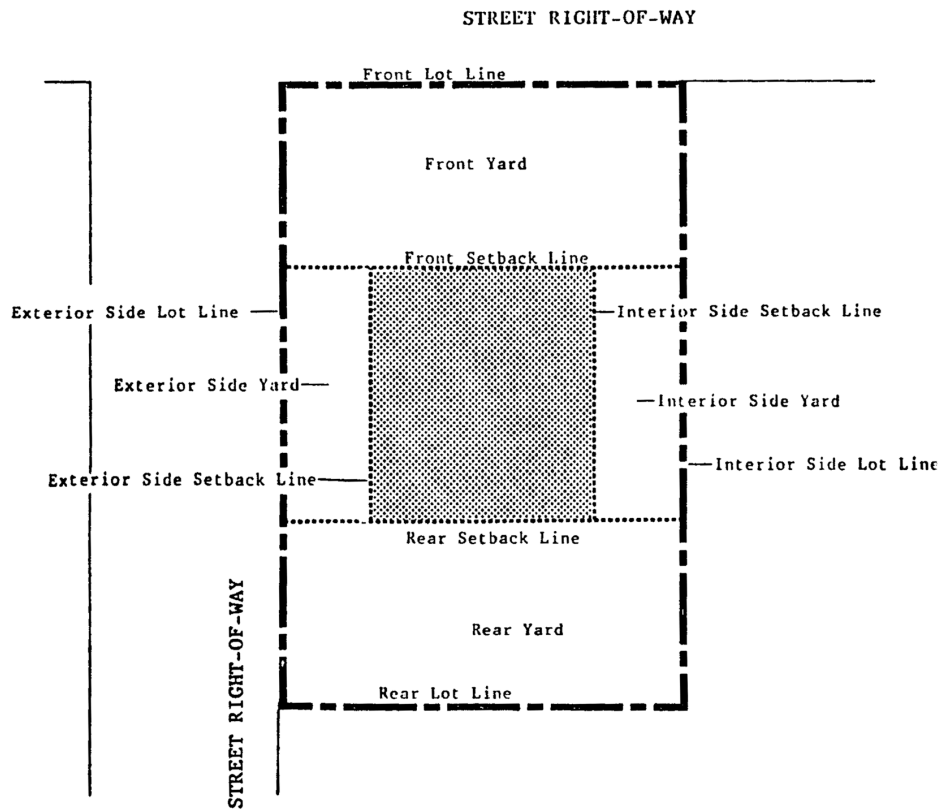
The Wellhead Protection Land Use Restrictions identified herein shall be deemed as additional requirements to minimum legal requirements identified by zoning districts or other local codes and ordinances, also including other governmental entities. In case of conflicting requirements, the most restrictive shall apply.

(Ord. No. 5932, § 1, 5-5-2025)

APPENDIX. - DESIGNATION OF LOT LINES

STREET RIGHT-OF-WAY





(Code 1985, ch. 159, app.; Ord. No. 2988, 12-15-1986)

Appendix A - SCHEDULE OF FEES

2022

<u>ELECTRICAL:</u>	
MINIMUM PERMIT	\$30.00
METER SERVICE (REPLACE/REPAIR/TEMPORARY)	\$20.00
MOBILE HOME	\$20.00
CIRCUITS (NEW AND REPLACED)	\$5.00
MAIN SERVICE (NEW/REPLACED):	
(INCLUDES CIRCUITS) For every 200 amp over 600 amp	\$25.00

100 AMP	\$100.00
200 AMP	\$125.00
400 AMP	\$150.00
600 AMP/MORE	\$175.00
PLUS EACH SUB-PANEL:	
(INCLUDES CIRCUITS) For every 200 amp over 600 amp	\$25.00
60 AMP	\$25.00
100 AMP	\$100.00
200 AMP	\$125.00
400 AMP	\$150.00
600 AMP/MORE	\$175.00
LICENSE—NEW/RENEWAL	\$125.00
<u>HVAC:</u>	
MINIMUM PERMIT	\$30.00
SPACE HEATERS:	\$20.00
FURNACES:	\$15.00
50,000—300,000 1ST UNIT	
2ND UNIT	
MORE THAN 300,000	
CENTRAL AIR:	

Less 5 ton	\$15.00
5—10 ton	\$25.00
More than 10 tons	\$40.00
WATER CHILLERS	\$75.00
VENTILATION/EXHAUST:	
Less 500cfm	\$5.00
500—1500cfm	\$10.00
COMMERCIAL HOODS:	
500—1500cfm	\$25.00
More than 1500cfm	\$50.00
REFRIGERATION/COOLING:	
1—5HP	\$15.00
6—10HP	\$25.00
More than 10HP	\$40.00
ROOFTOP FURNACE/AIR:	
7.5 ton—300,000	\$40.00
More than 7.5 ton	\$60.00
HEAT PUMPS:	
1,000—60,000 1ST UNIT	\$15.00
ADDITIONAL UNITS	\$10.00 EA.
7.5 TON—300,000	\$40.00
More than 7.5 ton	\$75.00

EARTH COUPLED WATER	\$50.00
BOILER/STEAM/HOT WATER:	
60,000—300,000 BTU 1st UNIT	\$20.00
Additional Units	\$10.00 EA.
MORE THAN 300,000 BTU	\$50.00 EA.
THROUGH WALL COMBINATION:	
1ST UNIT	\$10.00
ADDITIONAL UNITS	\$5.00 EA.
AIR HANDLERS:	
400—2500cfm	\$25.00
More than 2500cfm	\$60.00
DUCT/REGISTER CHANGE:	
Change Fee	\$2.00 EA.
GAS PIPING:	
1—4 Outlets	\$3.00
5/More	\$1.00 EA.
LICENSE: NEW/RENEWAL	\$125.00
<u>PLUMBING:</u>	
MINIMUM PERMIT	\$30.00
EACH TRAP	\$5.00
WATER HEATER	\$6.00

WATER SOFTENER	\$6.00
WATER SERVICE	\$9.00
GAS OUTLET (1—4)	\$3.00
GAS OUTLET (5/MORE)	\$1.00 EA.
GAS TANKS	\$10.00 EA.
GAS PUMPS	\$10.00 EA.
FIRE SPRINKLER (1—4)	\$50.00
FIRE SPRINKLER (5—50)	\$75.00
FIRE SPRINKLER (50/UP)	\$100.00
LAWN SPRINKLER	\$18.00
(BACKFLOW)	
MOBILE HOME SEWER	\$6.00
MISC. PIPE ALT.	\$6.00
INDUSTRIAL INTERCEPTOR	\$7.00
VACUUM BREAKERS/BACKFLOW PROTECTION	
(DEVICES ON TANKS, VATS, ETC. OR FOR UNPROTECTED FIXTURES ON WATER PIPING) 1—4	\$4.00
5/MORE	\$1.00 EA.
LICENSE: NEW/RENEWAL	\$125.00
<u>SIGNS:</u>	
MINIMUM FEE	\$30.00
FREESTANDING/FAÇADE	\$.40 SQ. FT.

TEMPORARY	\$25.60
BILLBOARDS	\$50.00
LICENSE: NEW/RENEWAL	\$125.00
<u>BUILDING:</u>	
<u>Residential:</u>	
\$300.00—\$1,000.00	\$30.00
Add \$5.00 for every \$1,000.00 up to \$75,000.00	
Add \$1.00 for every \$1,000.00 after \$75,000.00	
Building Contractor License:	\$125.00
Re-Inspection—Final	\$50.00
<u>Commercial:</u>	
\$300.00—\$1,000.00	\$250.00
Add \$5.00 for every \$1,000.00 up to \$200,000.00	
Add \$1.00 for every \$1,000.00 after \$200,000.00	
Re-Inspection—Rough	\$100.00
Re-Inspection—Final	\$150.00

CITY OF MISHAWAKA
MISCELLANEOUS FEES

<u>UNMETERED WATER AND EXH. FANS</u>	
Residential (150 day) in city	\$50.00

Outside city	\$75.00
Apartments (per building)	\$50.00
Commercial building (240 day) Or \$5.00 per unit whichever is larger	\$120.00
Outside city	\$145.00
Industrial building (320 day)	\$600.00
Outside city	\$625.00
Exhaust fans (each)	\$5.00

WRECKING AND DEMOLITION PERMITS

Minimum Fee	\$30.00
Garage	\$30.00
<i>One or two story house including</i>	
Accessory building	\$50.00
Residence over two stories	\$75.00
Commercial building one story to 4,000 sq.ft.	\$75.00
Commercial building one story	
4,001 to 10,000 sq.ft.	\$100.00
Commercial building one story	
10,001 or more sq.ft.	\$150.00
Any structure with two or more stories, a fee of 50% of the single story fee will be added according to size of each story.	

SWIMMING POOLS:

--	--

Residential	\$50.00
Commercial	\$250.00
<u>MOVING PERMITS:</u>	
One or two story structure over public street or alley	\$75.00
Building greater than two stories	\$125.00
Private property; a building from one area to another	\$25.00
<u>MISCELLANEOUS PERMITS:</u>	
Minimum Fee	\$30.00
Elevator or escalator	\$30.00
Roof tanks	\$10.00
Fire escapes	\$5.00
Canopies and hoods (per running ft)	\$5.00
Change of Occupancy: Commercial Building	\$150.00
Commercial Fire Alarm	\$100.00
Commercial Kitchen Suppression System	\$50.00
Underground storage Tank	\$100.00
Spray Booth	\$150.00

PLANNING FEES

Name of Fee	Amount

Annexation over 10 Acres	\$500.00
Rezoning Petition	\$400.00
Vacation of ROW	\$400.00
Administrative Site Plan	\$200.00
Developmental Var. Commercial	\$300.00
Use Variance Commercial	\$400.00
Conditional Use Permit	\$500.00
Tax Abatement Residential	\$100.00
Tax Abatement Property	\$300.00
Tax Abatement Real Estate	\$300.00
ILP Two Unit Condominium	\$50.00
ILP High Density/Commercial	\$75.00—\$150.00
ILP Temporary Signs	\$50.00
ILP Permanent Signs	\$75.00—\$150.00
ILP Off Premise Signs	\$300.00
Form Zoning Verification	\$50.00

EMERGENCY MEDICAL SERVICES FEES

Name of Fee	Amount
BLS Non-Transport (Resident)	\$150.00
BLS Non-Transport (Non-Resident)	\$250.00

ALS Non-Transport (Resident)	\$360.00
ALS Non-Transport (Non-Resident)	\$460.00
BLS Non-Emergency (Resident)	\$347.60
BLS Non-Emergency (Non-Resident)	\$463.46
ALS Non-Emergency (Resident)	\$417.12
ALS Non-Emergency (Non-Resident)	\$556.16
BLS Emergency (Resident)	\$556.16
BLS Emergency (Non-Resident)	\$741.54
ALS-1 Emergency (Resident)	\$660.44
ALS-1 Emergency (Non-Resident)	\$880.58
ALS-2 Emergency (Resident)	\$955.91
ALS-2 Emergency (Non-Resident)	\$1,274.54
Loaded Miles (Resident)	\$12.03
Loaded Miles (Non-Resident)	\$16.04
Out of District	NA
ALS Assist	\$500.00
Event Standby 1 Paramedic	\$250.00/four hours
Event Standby 1 ALS Ambulance	\$750.00/four hours
Event Standby 1 BLS Ambulance	\$600.00/four hours

POLICE FEES

--	--

Name of Fee	Amount
Case Reports	\$5.00
Record Check	\$10.00
Fingerprint Card	\$5.00
Crime Stat Report	\$5.00

COPYING, INFORMATION AND FILING FEES

Name of Fee	Amount
Photocopies	
8½in X 11in or 8.5in X 14in	\$0.05 per page
11in X 17in	\$0.10 per page
Municipal Code Book	
Full code book	Actual Cost
Supplement Only	Actual Cost
On diskette	Actual Cost
Facsimile transmission	Actual Cost
Filing fees (nonrefundable)	
Annexation/zoning petition	\$300.00
Rezoning petition	\$300.00
Rezoning of nonconforming or legal nonconforming properties from their present zoning classifications to an R-1 zoning classification	\$25.00
Vacation of public right-of-way petition (plus recording and auditing fees)	\$250.00

Plan commission final site plan review (plus recording and auditing fees)	\$250.00
Administrative final site plan review (plus recording and auditing fees)	\$150.00
Development and sign variance appeals	
Residential R-1, R-2, and R-4 districts; S-2 planned unit development district for single-unit and two-unit residential	\$100.00
Residential R-3, commercial C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8, C-9, C-10; industrial I-1, I-2; special S-1, S-2 for high-density residential, commercial and industrial	\$250.00
Use variance	\$250.00
Conditional use permit appeal	\$250.00
Subdivision plats and replats (plus recording and auditing fees), for 20 lots or less	\$250.00
Each additional lot exceeding 20 lots	Additional \$3.00
Ordinance fees	
Zoning ordinances	\$50.00
Subdivision regulations	\$25.00
Sign ordinance	\$25.00
Design review ordinance	\$50.00
Zoning ordinance, subdivision regulations, sign ordinance, and design review ordinance (CD)	\$10.00
Aerial photographs	
200 scale, no larger than 24in X 36in	\$25.00
100 scale, no larger than 24in X 36in	\$25.00
Maps, up to entire city, no larger than 24in X 36in	\$25.00
Computer generated prints	

8.5in X 11in	\$0.50
11in X 17in	\$1.00
Permit fees	
Improvement location permit	
For single, two-unit, and attached condominium residential, new principle buildings and uses	\$25.00
For single, two-unit, and attached condominium residential, accessory buildings and uses (including additions, garages, pools, and fences)	\$10.00
For high-density residential, commercial and industrial principle and accessory structures	\$50.00
Sign improvement location permit for temporary signs	\$25.00
Sign improvement location permit for permanent signs	\$25.00
Sign improvement location permits for off-premises billboards	\$100.00
Historic preservation commission certificates of appropriateness	\$10.00
Requests for formal information	
Zoning verification letter	
Single-family residential	\$25.00
Non-single-family residential	\$50.00
Rebuild letter	
Single-family residential	\$25.00
Non-single-family residential	\$50.00
Grandfather/legal nonconforming letter	
Single-family residential	\$25.00

Non-single-family residential	\$50.00
Form verification letter sign-off for other government agencies (vehicle sales, off-premises signs, etc.)	\$25.00
Minor information research requests*	\$200.00
Major information research requests**	Actual Cost
*Requests involving the equivalent of less than half a day of staff time. This type of request could include property history, verification of adjacent property zoning, site plan approval dates and copies, certificates of occupancy, and other related information. This charge is related to researching and compiling the information and certifying the requested information in writing. All files are open for public review and research free of charge.	
** Requests involving the equivalent of more than half a day of staff time. This type of request could include property history, verification of adjacent property zoning, site plan approval dates and copies, certificates of occupancy, and other related information. This charge is related to researching and compiling the information and certifying the requested information in writing. All files are open for public review and research free of charge. This fee will vary based on the information requested and shall be limited to the actual cost incurred by the city to hire a private consultant or company to perform said work.	

(Ord. No. 5785, § 2, 4-19-2022)

Footnotes:

--- (1) ---

Editor's note— Ord. No. 5785, § 2, adopted April 19, 2022, repealed App. A in its entirety and enacted new provisions to read as herein set out. Former App. A pertained to similar subject matter and derived from Ord. No. 5635, § 1, adopted Dec. 3, 2018.