

Title XV - LAND USAGE

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CHAPTER 150. - ZONING CODE

DIVISION 1. - GENERAL PROVISIONS

Sec. 150.01. - Short title.

This chapter shall be known as the comprehensive zoning code.

(Code 1968, § 130.01)

Sec. 150.02. - Purpose.

The purpose of this chapter is to encourage units of government to improve the health, safety, convenience, and welfare of their citizens and to plan for the future development of their community to that end.

(Code 1968, § 130.02; Ord. No. 934-82, 2-7-83)

Sec. 150.03. - Authority.

The authority for the adoption of this chapter rests upon ic 36-7-4, and all amendments thereto.

(Code 1968, § 130.03)

Sec. 150.04. - Jurisdiction.

The provisions of this chapter shall apply to all the territory within the corporate limits of the city.

(Code 1968, § 130.04)

Sec. 150.05. - Interpretation.

(A) General. The provisions of this chapter shall be minimum requirements. This chapter is not intended to abrogate any law, easement, covenant, or private agreement. Whenever the regulations provided in this chapter impose greater restrictions on the character of the use of buildings or lands than are imposed under any other law of this state, then the regulations established by virtue of this chapter shall prevail only if they assure the promotion of public health, safety, convenience and welfare of the citizens.

(B) Historic buildings and districts. Where preservation of existing conditions or restoration to original conditions consistent with the intent of an historic restoration project would constitute violations of the provisions of this chapter: a building on the National Register of Historic Places, a building within an established Historic District of the city, or other declared landmark of the state shall be exempt from such requirements that conflict with historic accuracy (refer to Article XI, Section 2 [section 150.180 et seq.]).

(Code 1968, § 130.05; Ord. No. 934-82, 2-7-83)

Sec. 150.06. - Status of previous ordinances.

Any and all ordinances passed by the common council of the city, under the provisions of IC 36-7-4 previous to the enactment of this chapter, are repealed.

(Code 1968, § 130.07)

Sec. 150.07. - Status of previous actions.

- (A) Building permits. Where a building permit for a building or structure has been issued in accordance with existing law to the enactment of this chapter, the building or structure may be completed according to the approved plans upon the building permit was issued, provided construction is begun within 90 days after the enactment of this chapter and diligently pursued to completion. The building or structure may, upon completion, be occupied under a certificate of occupancy by the use for which it was originally designated.
- (B) Variances, exceptions, special uses. Where the board of zoning appeals has granted a variance, exception, or special use prior to the enactment of this chapter, the permitted variance, exception, or special use shall be implemented within 90 days from the granting thereof and pursued diligently to completion; otherwise, the granting of the variance, exception, or special use is automatically revoked.

(Code 1968, § 130.08)

Secs. 150.08, 150.09. - Reserved.

Sec. 150.10. - Conformance.

- (A) Use. No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, expanded or enlarged except in conformity with all the provisions of this chapter and after the necessary permits have been obtained.
- (B) Height. No building or structure shall be erected or constructed, nor shall any existing building or structure be reconstructed, moved, expanded, or enlarged so as to exceed the height limitations established in this chapter.
- (C) Lot coverage. No building or structure or its accessory uses shall be erected or constructed, nor shall any existing building or structure and its accessory uses be reconstructed, moved, expanded, or enlarged so as to occupy a greater percentage of a lot than the limits established in this chapter.
- (D) Open space. No yard or open space or off-street parking or loading space provided about a building or structure for the purpose of complying with the provisions of this chapter shall be considered as providing yard, open space, or off-street parking or loading space for any other building or structure. No yard or lot existing at the time of the enactment of this chapter shall be reduced in dimension or area below the minimum standards provided in this chapter. Yards or lots created after the enactment of this chapter shall meet all requirements established herein.

(Code 1968, § 130.10; Ord. No. 934-82, 2-7-83)

Sec. 150.11. - Unlawful use.

Any building, structure, or use which was not lawful prior to November 5, 1973, and which is still in violation of the provisions of this chapter, shall be considered to be a nonconforming building, structure or use under the terms of this chapter. Any building, structure, or use which became not lawful after November 5, 1973, and which is still in violation of the provisions of this chapter, shall be considered unlawful.

(Code 1968, § 130.11; Ord. No. 934-82, 2-7-83)

Sec. 150.12. - Yard: lot coverage.

No single-family, two-family, or multiple-family dwelling, together with accessory buildings or structures, shall occupy more than the following percentages of the total area of the lots, exclusive of rights-of-way:

R-4 residence zone—40 percent lot coverage.

R-5 residence zone—50 percent lot coverage.

(Code 1968, § 130.12; Ord. No. 934-82, 2-7-83; Ord. No. 24-25, § 1, 8-4-25)

Sec. 150.13. - Right-of-way; measurement of setbacks.

When an official plan for the major and secondary highways in the city shall have been adopted by the common council of the city, then all setbacks for buildings and structures shall be measured from the proposed right-of-way lines as expressed in the plan. For the purpose of this chapter the right-of-way of any street shall be deemed to be 50 feet unless a larger right-of-way is required on the official thoroughfare plan for the city, in which case the larger right-of-way shall control.

(Code 1968, § 130.13; Ord. No. 934-82, 2-7-83)

Sec. 150.14. - Manufactured housing.

(A) Permanent placement. The establishment, location, and use of manufactured homes as scattered-site residences shall be permitted in any zone permitting installation of a dwelling unit, subject to the requirements and limitations applying generally to such residential use in the appropriate zone, and provided such homes shall meet the following requirements and limitations.

- (1) The home shall meet all requirements applicable to single-family dwellings and possess all necessary improvement location, building and occupancy permits and other certifications as required by this chapter.
- (2) The home shall meet the minimum square footage requirements for the appropriate zone.
- (3) The home shall be attached and anchored to a permanent foundation in conformance with the regulations in the Indiana One and Two Family Dwelling Code and with manufacturer's installation specifications.
- (4) The terms of this division (A) shall apply to the placement of manufactured housing located outside mobile home parks only.
- (5) The exterior siding material on the home shall extend below the top of the foundation by at least one inch.
- (6) The home shall have been constructed after January 1, 1981.

(B) Temporary placement.

- (1) Permitted placement. The placement of manufactured homes built prior to January 1, 1981, and mobile homes shall be permitted within the corporate limits of the City of Muncie, and outside of mobile home parks, on a temporary basis in the following circumstances:
  - (a) For use of a manufactured home or mobile home as a caretaker's quarters or a construction office at a job site.
  - (b) For use of a manufactured home or mobile home as a temporary residence, located on the building lot, during the course of construction of a site-built dwelling and when the board of zoning appeals has approved the temporary placement by granting a variance to the owner or contract buyer who is in the process of constructing said site-built dwelling after obtaining a building permit for same.
  - (c) For use of a manufactured home or mobile home as a temporary residence, located adjacent to an existing residence, when the board of zoning appeals has approved the temporary placement by granting

a variance to the owner or contract buyer whose own health or the health of another necessitates care and where the facts show that an unnecessary hardship would occur if not permitted to locate a temporary residence adjacent to the residence of one who is able to provide such care or is in need of such care.

- (2) Provisions regulating permitted placement. A temporary use permit shall be obtained prior to placement of a manufactured home or mobile home for temporary use as herein defined. For use of a manufactured home or a mobile home as a temporary residence, placement shall be additionally subject to:
  - (a) Applicable health provisions for sanitary facilities;
  - (b) Providing an adequate ground anchor; and
  - (c) Setback provisions as stated in the appropriate zone.
- (3) Time limitations for temporary placement. A temporary use permit may be issued for a period not to exceed one year. A variance, when granted under the circumstances herein described, shall not exceed one year. A variance may be renewed, at the discretion of the board of zoning appeals, for additional one-year periods by requesting such an extension through the established procedures for filing an appeal except that the normal filing fee shall be waived in cases of medical hardship as herein defined.

(Code 1968, § 130.14; amend. Ord. No. 934-82, 2-7-83)

#### Sec. 150.15. - Public utilities.

The provisions of this chapter shall not be construed to limit or interfere with the construction, installation, and maintenance of public utility transmission facilities.

(Code 1968, § 130.15; amend. Ord. No. 934-82, 2-7-83)

#### Sec. 150.16. - Yards affected by street widening.

Where a building is located on property acquired for public use by condemnation, purchase, or otherwise, that building or structure may be relocated on the same lot or premises although the area provisions of this chapter cannot be reasonably complied with. Furthermore, where a part of that building or structure is acquired for public use, the remainder of that building or structure may be repaired, reconstructed, or remodeled.

(Code 1968, § 130.16; amend. Ord. No. 934-82, 2-7-83)

#### Sec. 150.17. - Churches.

Nothing in this chapter shall be construed to exclude churches from any zone herein established, provided that any church building shall meet the yard, parking, height, and all other requirements contained in this chapter. No church building shall be located closer to an adjacent owner's property line, where said adjacent property is in a residence zone, than the following distances:

R-1 Residence Zone—100 feet.

R-2 Residence Zone—50 feet.

R-3 Residence Zone—25 feet.

R-4 Residence Zone—25 feet.

R-5 Residence Zone—25 feet.

(Code 1968, § 130.17; amend. Ord. No. 934-82, 2-7-83)

Sec. 150.18. - Public buildings.

Nothing in this chapter shall be construed to exclude buildings owned, leased, or used by a municipal, county, township, state, or federal government from any zone established in this chapter; however, all the buildings shall meet the yard, parking, and height provisions of this chapter and no building shall be closer to an adjacent owner's property line, where the adjacent property is in a residence zone than the following distances:

R-1 Residence Zone—100 feet.

R-2 Residence Zone—50 feet.

R-3 Residence Zone—25 feet.

R-4 Residence Zone—25 feet.

R-5 Residence Zone—25 feet.

(Code 1968, § 130.18; amend. Ord. No. 934-82, 2-7-83)

Sec. 150.19. - Tents.

No tent shall be erected, used, or maintained for living quarters in any zone. For the purpose of this chapter the term "TENT" shall mean a collapsible shelter of canvas or other material stretched and sustained by poles and used for outdoor camping.

(Code 1968, § 130.20; amend. Ord. No. 934-82, 2-7-83)

Sec. 150.20. - Visibility at intersections.

On a corner lot in any residential zone, nothing shall be erected, placed, planted, or allowed to grow in such a manner as to impede vision between a height of three feet and ten feet above the center line grades of the intersecting streets in the area bounded by the right-of-way lines of such intersecting streets and a line adjoining points along said intersecting right-of-way lines 50 feet from the point of intersection of said right-of-way lines. For commercial developments, see section 150.214.5.

(Code 1968, § 130.19; amend. Ord. No. 934-82, 2-7-83; Ord. No. 40-22, § 1, 12-5-22)

Sec. 150.21. - Fences; walls; hedges.

- (A) A fence, screen, or wall not more than eight feet in height, or a hedge of thick growth of shrubs or trees maintained so as not to exceed eight feet in height may be located in any side or rear yard in any zone, provided they shall not extend beyond the front wall of the building or, in the absence of a building, beyond the average setback of the buildings on the adjacent lots.
- (B) Fences, screens, walls, shrubs, and trees extending beyond the front wall of the building shall not exceed 42 inches in height and, when located in the year along the street sides of a corner lot, must comply with § 150.20. Trees, shrubs, flowers, and plants are not covered by this provision provided they do not produce a hedge effect.

(C) This provision shall not be interpreted to prohibit the erection of an open mesh type fence enclosing a farm, school, playground site.

(D) The IL Limited Industrial, II Intense Industrial, and AD Airport Development Zones are exempt from the above provisions in that the above provisions shall not be interpreted to prohibit the erection of a fence, screen, wall, shrub, or trees not to exceed eight feet in height.

(Code 1968, § 130.21; amend. Ord. No. 934-82, 2-7-83)

#### Sec. 150.22. - Division of a lot.

No lot or parcel of land shall be divided into two or more lots or parcels of land unless all lots or parcels of land resulting from the division shall conform with the provisions of this chapter. Any division of a lot or parcel of land which shall result in violation of this section shall make the buildings or structures on the lot or parcel of land unlawful.

(Code 1968, § 130.23; amend. Ord. No. 934-82, 2-7-83)

#### Sec. 150.23. - Accessory uses and structures.

##### (A) Definition.

(1) General definition. Accessory uses/structures shall be permitted in all zones in accordance with the provisions of this section. Accessory uses/structures:

- (a) Shall be incidental and commonly associated with the operation of the principal use of the lot.
- (b) Shall be operated and maintained under the same ownership and on the same lot as the principal use.
- (c) Shall, in residence zones, be clearly subordinate in height, area, and bulk to the principal use served.
- (d) Shall not be located closer to any lot line than the minimum setback line required, unless specified otherwise in this chapter.
- (e) Shall not be permitted, in residence zones, prior to the erection and operation of the principal use.

Such appurtenant features as walks, driveways, curbs, drainage installations, mailboxes, lamp posts, bird baths, fences, walls, uncovered patios, outdoor fireplaces, dog houses, tree houses, playground apparatus, waterfalls, or permanent landscaping shall be considered incidental uses/structures and not as accessory uses/structures subject to the provisions herein.

##### (2) Types of accessory uses/structures.

- (a) Such buildings or structures as garages, carports, canopies, portecocheres, bathhouses, cabanas, gazebos, storage buildings, greenhouses, guard houses, video-satellite dishes, fallout shelters, and similar accessory buildings or structures.
- (b) Signs, as regulated in § 150.27 of this chapter.
- (c) Swimming pools in residence zones may be installed only as accessory to a dwelling for the private uses of the owners and occupants of such dwelling and their families and guests, or as accessory to a nursery school or day camp for children, and only on the conditions as follows.
  - 1. Such pool shall be installed in the rear yard of the premises.
  - 2. There shall be erected and maintained at minimum a good quality fence not less than five feet in height enclosing the entire portion of the premises upon which such pool shall be installed and entirely surrounding the area in which such pool is located.

3. Every gate or other opening in the fence enclosing such pool, except an opening through the dwelling or other main building of the premises, shall be kept securely closed and locked at all times when the owner or occupant of the premises is not present at such pool.

(d) Amateur radio sending and receiving antennae, provided the height thereof including masts shall not exceed 75 feet measured from the finished lot grade at the base of the tower.

(e) Management office in multi-family dwelling complex and other structures providing services normally associated with tenants' convenience.

(f) Rummage sales as defined in this chapter.

(Ord. No. 40-85, 4-7-86)

(B) Height; setbacks. In any residence zone, an accessory building shall not exceed 17 feet in height and, when located in the rear yard, shall not be closer than three feet to the side and rear lot lines. In non-residence zones, an accessory building shall not exceed the height provisions as established in the appropriate zone and, when located in the rear yard, shall not be closer than three feet to the side and rear lot lines.

(C) On corner lot. Accessory buildings located on the street side of a corner lot shall be setback a minimum the same distance as that required for the main building. If the main building setback is less than the required setback, then the accessory building shall be setback a minimum the average of the main building setback and the setback of the main building on the adjacent property (or the required setback of the adjacent property, whichever is the least).

(D) On side yard. For an interior lot, an attached accessory building, or garage located on the side yard of a dwelling, shall be considered a part of the dwelling and not an accessory building and shall comply with the provisions of this chapter.

(Ord. No. 934-82, 2-7-83)

#### Sec. 150.24. - Nonconforming uses and structures.

(A) General. Within the zones established in this chapter there exist nonconforming uses and structures which may continue in accordance with the following provisions.

(B) Lots. In any zone permitting only single-family dwellings, a single-family dwelling shall be permitted on a lot which does not comply with the width and area requirements of this chapter provided the lot was of record at the time of the enactment of this chapter; and provided further that, adjustments in yards are in accordance with the provisions of this chapter. If two or more lots or parts of lots are in single ownership and enjoy continuous frontage at the time of the enactment of this chapter, and if all or part of the lots do not meet the width and area standards contained in this chapter, the lands involved shall be considered to be an undivided parcel. No portion of the parcel shall be used in a manner which may reduce compliance with the provisions of this chapter.

(C) Uses of land. A nonconforming use of land shall not be enlarged, expanded, nor extended to occupy a larger area of land than was occupied at the time of the enactment of this chapter. A nonconforming use may be extended throughout any part of an existing structure which was arranged for such use prior to the enactment of this chapter. The use shall not be moved in whole or in part to another location on the lot or parcel of land other than that occupied by the use at the time of the enactment of this chapter. If any such use ceases for a period of more than one year, (except when government action or legal proceeding impede access to the premises, as determined by the board of zoning appeals) any subsequent use of the land shall conform with the provisions of



this chapter unless 66 percent or more of the surrounding uses of land within a 660-foot radius are also nonconforming uses of the same restriction as the subsequent use, thereupon, the proponent of the subsequent use shall apply for a certificate of nonconformity under the established procedures and additionally provide signed affidavits affirming the existence of surrounding nonconforming uses, as herein defined, of the same restriction.

- (D) Structures. A nonconforming structure shall not be moved in whole or in part to another location on the lot or parcel of land unless the relocation would bring the structure into conformance with the provisions of this chapter. If a nonconforming structure is made to conform, any future expansion or enlargement of said structure shall be in conformance with the provisions of this chapter. A nonconforming structure may be expanded or enlarged provided such expansion or enlargement would not further encroach upon the nonconforming characteristic of the structure.
- (E) Substitution. A nonconforming use may be changed to another nonconforming use of the same or greater restriction provided the change does not cause further violation of the performance standards of this chapter.

(Code 1968, § 130.26; amend. Ord. No. 934-82, 2-7-83)

#### Sec. 150.25. - Repairs; restoration.

Nothing in this chapter shall prevent the repair of a nonconforming structure. Should such nonconforming structure or nonconforming portion of a structure be destroyed by any means, it may be reconstructed provided it does not further encroach upon the nonconforming characteristics of the structure. Nothing shall prevent the repair of a structure containing a nonconforming use and, where the structure is destroyed by any means, the resumption of said use shall be subject to the provisions of § 150.24(C).

(Code 1968, § 130.27; amend. Ord. No. 934-82, 2-7-83)

#### Sec. 150.26. - Proof of nonconformity.

- (A) A certificate of nonconformity shall transfer with ownership of property and shall be considered proof of a legal nonconforming use with said use being subject to the applicable provisions of § 150.24. Upon written request by the Administrative Zoning Officer or by his own volition, the owner of a property shall present documentary evidence to the Officer that a building or use owned by him qualifies as a legal nonconforming use. Such evidence shall be presented in conjunction with an application for a certificate of nonconformity, if needed. Such evidence shall document the preceding five years from the date of submission for said certificate and may include retail merchant certificates (for commercial and industrial uses), vouchers related to material purchased for construction, written testimony of adjoining property owners (past/present), photographs, photostatic copies of deeds or rulings made on property, rent receipts, and the like.
- (B) Upon submission of such evidence, the Administrative Zoning Officer may perform an inspection of the premises on a date and time agreeable to the owner. No inspection shall be attempted unless and until an agreement is reached with the owner. Following such inspection or submission of the application, the Administrative Zoning Officer shall respond within 30 days by issuing a certificate of nonconformity if he finds that the information given is satisfactory and the premises are, in his opinion, a de facto nonconforming use, or by denying a certificate of nonconformity.
- (C) Appeals from a decision of the Administrative Zoning Officer shall be filed in accordance with the provisions of

this chapter as set forth in § 150.234.

(Ord. No. 934-82, 2-7-83)

Sec. 150.27. - Residential facilities for developmentally disabled and mentally ill.

- (A) The provisions of this chapter shall not be construed to exclude a residential facility for the developmentally disabled which is duly licensed by the community residential facilities council of the state department of mental health, from a residential area solely because such residential facility is a business or because the persons residing in the residential facility are not related, provided that there is, at minimum, a linear distance of 3,000 feet from one such facility to another such facility as measured from the lot lines of the total properties containing the residential facilities.
- (B) The provisions of this section shall not be construed to exclude a residential facility for the mentally ill which is duly licensed by the community residential facilities council of the state department of mental health, from a residential area solely because such residential facility is a business or because the persons residing in the residential facility area are not related, provided that there is, at minimum, a linear distance of 3,000 feet from one such facility to another such facility as measured from the lot lines of the total properties containing the residential facilities.
- (C) A residential facility which is not licensed by the community residential facilities council of the state department of mental health as a residential facility for the developmentally disabled or a residential facility for the mentally ill shall be subject to all of the provisions of this chapter.

(Ord. No. 19-87, 8-3-87)

Sec. 150.28. - Adult entertainment business.

The establishment of any adult entertainment business shall be prohibited if such business is within 500 feet of two other such businesses or within 500 feet of the property line of any church, school, public building, or public land or the boundary line of any existing residence zone or farming zone. The distance between one adult entertainment business and another adult entertainment business shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior structural wall of each such business. The distance between an adult entertainment business and any church, school, public building, public land, residence zone or farming zone shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the adult entertainment business to the nearest property line of any church, school, public building, or public land or the closest boundary line of any residence zone or farming zone. If any adult entertainment business is part of or included within a building or structure containing multiple commercial uses, only the portion of the building or structure occupied by such adult entertainment business shall be included in determining the closest exterior wall of said establishment. No adult entertainment establishment shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas by display, decorations, sign, show window or other opening from any public way.

(Ord. No. 40-89, 8-7-89)

**Cross reference—** Definitions, see § 150.240

Secs. 150.29—150.34. - Reserved.

## DIVISION 2. - GENERAL EXCEPTIONS

### Sec. 150.35. - Structures other than building.

Towers, chimneys, stacks, spires, penthouses, cupolas, water tanks, silos, windmills, monuments, domes, grain elevators, and other like structures may be built to a greater height than established in this chapter except, in the approach area of any airport, where no structure shall be built which exceeds the maximum height permissible under the rules and regulations of any governmental agency.

(Code 1968, § 130.41; amend. Ord. No. 934-82, 2-7-83)

### Sec. 150.36. - Projections.

Cornices, eaves, sills, canopies, or similar architectural features, but not including bay windows or vertical projections, may extend or project into a required side yard not more than 18 inches and a maximum of 36 inches into a front or rear yard. Any enclosed porch shall be considered as part of the main building.

(Code 1968, § 130.42; amend. Ord. No. 934-82, 2-7-83)

### Sec. 150.37. - Setbacks.

Where a new building or an addition to an existing building is proposed on a lot which adjoins two or more lots occupied by buildings, the setbacks for the new building or addition to an existing building shall be the mean setback of the buildings on each side of the new building or addition to an existing building.

(Code 1968, § 130.43; amend. Ord. No. 934-82, 2-7-83)

### Sec. 150.38. - Residential side yard.

For a lot having a width of not less than 40 feet and not more than 50 feet at the building line at the time of the enactment of this chapter, residence buildings may have a minimum side yard of five feet.

(Ord. No. 934-82, 2-7-83)

### Sec. 150.39. - Reserved.

## DIVISION 3. - ZONES

### Sec. 150.40. - General.

In order to carry out the purposes of this chapter, the territory within the corporate limits of the city is divided into zones or districts, paying reasonable regard to existing conditions, the character of buildings erected in each zone, the most desirable use for which the land in each zone may be adapted, and the conservation of property values throughout the city.

(Code 1968, § 130.50)

Sec. 150.41. - Classes of zones.

The territory within the corporate limits of the city is divided into the following zones:

|      |                                       |
|------|---------------------------------------|
| F    | Farming Zone                          |
| R-1  | Residence Zone                        |
| R-2  | Residence Zone                        |
| R-3  | Residence Zone                        |
| R-4  | Residence Zone                        |
| R-4A | Residence Zone                        |
| R-5  | Residence Zone                        |
| R-6  | Residence Zone                        |
| BP   | Business and Professional Office Zone |
| CB   | Central Business Zone                 |
| BL   | Limited Business Zone                 |
| BC   | Community Business Zone               |
| BV   | Variety Business Zone                 |
| MT   | Major Trading Zone                    |
| IL   | Limited Industrial Zone               |
| II   | Intense Industrial Zone               |
| IP   | Industrial Park Zone                  |
| AD   | Airport Development Zone              |
| SSS  | Student Social Service Zone           |
| MHR  | Mobile Home Residence Zone            |

Sec. 150.42. - Zone maps.

- (A) General. The zones referred to in § 150.41 and their boundaries are shown upon maps which are made a part of this chapter. These maps are designated as the "Zone Maps for the City." The maps and all notations, references, and other information shown thereon, shall be as much a part of this chapter as if matters set forth in them were all fully described in this chapter.
- (B) Identification and recording. All city zone maps shall be identified by the signature of the mayor and the president of the common council of the city. They shall be attested by the city clerk and shall bear the seal of the city. Following the adoption of the city maps by the proper legislative authority, a copy of this chapter, inclusive of zone maps, shall be filed with the city clerk and the county recorder.
- (C) Zone boundaries. Where any property is indicated in the zone maps as acreage and is not subdivided into lots, or where a zone boundary line shall be determined by using the scale shown on the map, zone boundaries are intended to follow lot lines, property lines, railroad rights-of-way, city and county limits, shore lines, lines of streams, canals, lakes, or other bodies of water. Where a boundary divides a lot which was in single ownership at the time of the enactment of this chapter, the zone applying to the larger portion of the lot shall be considered as extending to the entire lot. If each portion of the lot is equal in size, then the most restrictive zone shall apply to both portions of the divided lot.
- (D) Restoration. In the event any official zone map may become damaged, destroyed, lost, or difficult to interpret due to physical deterioration or the nature and number of changes made, the common council of the city may by ordinance and after public hearing adopt a new official map.
- (E) Changes. No changes shall be made in the zone maps of the city, except in full conformity with the procedures set forth in this chapter. Zone maps shall be revised every year in December, and all zone changes officially adopted by the proper governmental body shall be incorporated on the maps. The maps as updated shall be submitted to the plan commission for its consideration. If the commission is satisfied that the changes are correct, it shall forward the maps to the common council of the city, for adoption. Once adopted, a copy of the updated maps shall be filed with the city clerk and the county recorder.
- (F) Street vacation. Whenever a street, road, alley, railroad right-of-way, or other public way is officially vacated, the zones on each side of the vacated way shall be extended to the center of the street, road, alley, railroad right-of-way, or public way. This change shall be automatically achieved and shall not require following procedures established in this chapter for proposed zone changes.
- (G) Annexation. Any territory officially annexed to the city, shall retain the same zone or zones as it had when the territory was unincorporated.
- (H) Similar uses. Similar uses to those permitted in each zone may be allowable. Whether a certain use is similar to a use listed in a specific zone, the similarity shall be determined by the commission under established procedures.
- (I) Procedural.
  - (1) Each proposed zoning change referred to the common council of the city, shall set forth the exact use for which the petitioner is requesting change. If the common council acts favorably on the requested change, the change shall be only for the specific use requested by the petitioner and for no other use. Should the

petitioner wish to change the use from the use originally granted but within the same general zone, he shall submit a new petition and follow established procedures as for a new change in zoning.

- (2) Should the petitioner to whom a zone change is granted for a specific use fail to begin construction or installation of a use approved by the common council of the city, within one year after the passage of the change of zone, the administrative zoning officer shall so inform the common council which may initiate proceedings to rezone the property subject of the zone change to its original classification.
- (3) Within 60 days prior to the expiration of the one year period, the petitioner may present the common council with a bill of particulars setting forth reasons for failure to commence construction or use. The common council may consider the reasons in deciding whether or not to initiate a change in zone as herein provided.

(Code 1968, § 130.52; amend. Ord. No. 67-83, 9-12-83)

Secs. 150.43, 150.44. - Reserved.

#### DIVISION 4. - FARMING ZONE

Sec. 150.45. - Permitted uses.

No building, structure, or land shall be used or occupied, and no building or structure shall hereafter be erected, constructed, reconstructed, moved, expanded, or enlarged, except for the following uses:

- (A) Single-family dwellings as regulated in §§ 150.47 through 150.53.
- (B) Field crops; dairies; tree crops; flower gardening; nurseries; orchards; farms for the hatching, raising, and sale of chickens, hogs, cattle, turkeys, or other poultry; farms for grazing, breeding, raising, and training horses; sheep raising, and fisheries. All livestock buildings or structures placed thereon shall be at least 200 feet from any side and rear property line and shall meet the provisions of §§ 150.48 and 150.52. All other farm buildings or structures shall meet the provisions of §§ 150.47 through 150.53.
- (C) Roadside stands, provided they offer for sale only agricultural products and provided no stand shall exceed an area of 200 square feet and no stand shall be located nearer than 20 feet to any existing or proposed right-of-way.
- (D) Buildings or structures owned, leased, or used by a municipal, township, county, state or federal government, provided the buildings or structures meet the provisions of § 150.18 and the provisions of §§ 150.47 through 150.53.
- (E) Buildings or structures used for religious assembly subject to the provisions of § 150.17 and the provisions of §§ 150.47 through 150.53.
- (F) Public schools, colleges, and universities, and private academic schools, all subject to the provisions of § 150.18 and the provisions of §§ 150.47 through 150.53.
- (G) Cemeteries provided the site for a cemetery is a minimum of ten acres in area, and all buildings placed thereon shall be at least 100 feet from any side and rear property line and shall meet the provisions of §§ 150.48 and 150.52.
- (H) Temporary recreational activities such as a circus or open athletic competition.
- (I) Sawmills, provided all buildings placed thereon shall be at least 100 feet from any side and rear property line

and shall meet the provisions of §§ 150.48 and 150.52.

- (J) Kennels and veterinary hospitals/clinics. Where all uses are completely enclosed within a building, all uses and buildings or structures placed thereon shall meet the provisions of §§ 150.47 through 150.53. Where there are open runways, pens, or similar open uses, all uses and buildings or structures placed thereon shall be at least 200 feet from any side and rear property line and shall meet the provisions of sections 150.48 and 150.52. Off-street parking and signage shall be in accordance with section 150.211 and section 150.212(E)(1), respectively.
- (K) Fire towers; chimney stacks; spires; penthouses; cupolas; water towers; silos; windmills; monuments; domes; and grain elevators, all as regulated in section 150.35.
- (L) Signs and outdoor advertising as regulated in section 150.212.
- (M) Accessory uses and structures as regulated in section 150.23.
- (N) Temporary buildings used during construction, and including storage of building materials and equipment, for a period not to exceed the duration of such construction.
- (O) Vegetative composting/mulching provided the composting operation is conducted at the person's residence or farm for vegetative matter and other types of organic material that are generated by the person's activities and stored, treated or disposed of at the person's residence or farm.

(Code 1968, § 130.61; Ord. No. 67-83, 9-12-83; Ord. No. 21-93, § 1, 7-12-93)

Sec. 150.46. - Special uses subject to approval by the board of zoning appeals.

The following uses shall be allowed when approved by the Delaware-Muncie Metropolitan Board of Zoning Appeals under the established procedures in section 150.216 and subject to the provisions herein specified:

- (A) Mineral extractions provided they comply with the performance standards set forth in section 150.217.
- (B) Salvage yards provided they comply with the performance standards set forth in section 150.218.
- (C) Refusal disposal sites provided they comply with the performance standards set forth in section 150.219.
- (D) Home occupations provided they comply with the performance standards set forth in section 150.222, and all uses and buildings or structures placed thereon shall meet the provisions of sections 150.47 through 150.53.
- (E) Seasonal work camps provided they comply with the performance standards set forth in section 150.223.
- (F) Private outdoor camps provided they comply with the performance standards set forth in section 150.224.
- (G) Nursery schools and child care centers provided they comply with the performance standards set forth in section 150.226, and all uses and buildings or structures placed thereon shall meet the provisions of sections 150.47 through 150.53.
- (H) Hospitals provided that the premises upon which they are built shall be a minimum ten acres in area, and shall uses and buildings or structures placed thereof shall be at least 100 feet from any side and rear property line and shall meet the provisions of sections 150.48 and 150.62.
- (I) Vegetative composting/mulching facility other than set forth in section 150.45(O) above when permitted by the board of zoning appeals as a special use under the terms of section 150.228.

(Ord. No. 67-83, 9-12-83; Ord. No. 21-93, § 2, 7-12-93)

Sec. 150.47. - Lot width, frontage, and area.

The width and lot frontage shall be a minimum of 150 feet at the building line and shall be a minimum of 30,000 square feet in area, exclusive of rights-of-way.

(Code 1968, § 130.62; Ord. No. 67-83, 9-12-83)

Sec. 150.48. - Front yard setback, all lots.

There shall be a front yard setback of a minimum of 50 feet in depth measured from the right-of-way line to the front wall of the building.

(Code 1968, § 130.63; Ord. No. 67-83, 9-12-83)

Sec. 150.49. - Side yard setback, interior lots.

There shall be two side yard setbacks of an interior lot, each being a minimum 15 feet in width measured at right angles to the side property line.

(Code 1968, § 130.64; Ord. No. 67-83, 9-12-83)

Sec. 150.50. - Side yard setback, corner lots.

There shall be two side yard setbacks of a corner lot. The side yard adjoining the street shall be a minimum of 45 feet in depth measured from the right-of-way line to the side wall of the building. The side yard adjoining the adjacent property shall be a minimum of 15 feet in width measured at right angles to the side property line.

(Ord. No. 67-83, 9-12-83)

Sec. 150.51. - Rear yard setback, all lots.

There shall be a rear yard setback of a minimum 35 feet in depth measured from the rear property line to the rear wall of the building.

(Code 1968, § 130.65; Ord. No. 67-83, 9-12-83)

Sec. 150.52. - Height.

No building or structure shall exceed 45 feet in height.

(Code 1968, § 130.66; Ord. No. 67-83, 9-12-83)

Sec. 150.53. - Minimum floor area and building width.

The minimum floor area of any dwelling shall be not less than 950 square feet exclusive of garages, carports, open porches, or breezeways. The dimensions of the dwelling shall be not less than 24 feet in width nor less than 24 feet in depth.

(Code 1968, § 130.67; Ord. No. 67-83, 9-12-83)

Sec. 150.54. - Reserved.



## DIVISION 5. - R-1 RESIDENCE ZONE

### Sec. 150.55. - Permitted uses.

No building, structure, or land shall be used or occupied and no building or structure shall hereafter be erected, constructed, reconstructed, moved, expanded, or enlarged except for the following uses:

- (A) Single unit dwellings as regulated in sections 150.57 through 150.63.
- (B) Buildings or structures owned, leased, or used by a municipal, township, county, state, or federal government, provided the buildings or structures meet the provisions of section 150.18 and the provisions of sections 150.57 through 150.63.
- (C) Public schools, colleges, and universities, and private academic schools, all subject to the provisions of section 150.18 and the provisions of section 150.57 through 150.63.
- (D) Buildings or structures used for religious assembly subject to the provisions of section 150.17 and the provisions of sections 150.57 through 150.63.
- (E) Signs and outdoor advertising as regulated in section 150.212.
- (F) Temporary buildings used during construction, and including storage of building materials and equipment, for a period not to exceed the duration of such construction.
- (G) Accessory uses and structures as regulated in section 150.23.

(Code 1968, § 130.70; Ord. No. 67-83, 9-12-83)

### Sec. 150.56. - Special uses subject to approval by the board of zoning appeals.

The following uses shall be allowed when approved by the Delaware-Muncie Metropolitan Board of Zoning Appeals under the established procedures in section 150.216 and subject to the provisions herein specified:

- (A) Charitable institutions provided buildings or structures placed thereon meet the provisions of section 150.17 and the provisions of section 150.57 through 150.63.
- (B) Hospitals provided that the premises upon which they are built shall be a minimum ten acres in area, and all uses and buildings or structures placed thereon shall be at least 100 feet from any side and rear property line and shall meet the provisions of sections 150.58 and 150.62.
- (C) Cemeteries provided the site for a cemetery is a minimum of ten acres in area, and all buildings placed thereon shall be at least 100 feet from any side and rear property line and shall meet the provisions of sections 150.58 and 150.62.
- (D) Nursery schools and child care centers subject to the performance standards contained in section 150.226, and provided all uses and buildings or structures placed thereon shall meet the provisions of sections 150.57 through 150.63.
- (E) Home occupations subject to the performance standards contained in section 150.222, and provided all uses and buildings or structures placed thereon shall meet the provisions of section 150.57 through 150.63.
- (F) Nursing homes. All buildings placed thereon shall be at least 100 feet from any side and rear property line and shall meet the provisions of sections 150.58 and 150.62.

(Ord. No. 67-83, 9-12-83)

Sec. 150.57. - Lot width, frontage, and area.

The width and street frontage of a lot shall be a minimum of 40 feet at the building line and there shall be a minimum 4,800 square feet in area, exclusive of rights-of-way. Whenever public sewer and/or water facilities are not available and no unit sanitary sewer is available, the board of health requirements for lot area shall prevail, but shall not be less than 4,800 square feet in area, exclusive of rights-of-way.

(Code 1968, § 130.71; Ord. No. 67-83, 9-12-83; Ord. No. 24-25, § 2, 8-4-25)

Sec. 150.58. - Front yard setback, all lots.

There shall be a front yard setback of a minimum of 20 feet in depth measured from the right-of-way line to the front wall of the building.

(Code 1968, § 130.72; Ord. No. 67-83, 9-12-83; Ord. No. 24-25, § 3, 8-4-25)

Sec. 150.59. - Side yard setback, interior lots.

There shall be two side yard setbacks of an interior lot, each being a minimum five feet in width measured at right angles to the side property line.

(Ord. No. 67-83, 9-12-83; Ord. No. 24-25, § 4, 8-4-25)

Sec. 150.60. - Side yard setback, corner lots.

There shall be two side yard setbacks of a corner lot. The side yard adjoining the street shall be a minimum of 20 feet in depth measured from the right-of-way line to the side wall of the building. The side yard adjoining the adjacent property shall be a minimum of five feet in width measured at right angles to the side property line.

(Ord. No. 67-83, 9-12-83; Ord. No. 24-25, § 5, 8-4-25)

Sec. 150.61. - Rear yard setback, all lots.

There shall be a rear yard setback of a minimum 15 feet in depth measured from the rear property line to the rear wall of the building.

(Code 1968, § 130.74; amend. Ord. No. 67-83, 9-12-83; Ord. No. 24-25, § 6, 8-4-25)

Sec. 150.62. - Height.

No building or structure shall exceed 30 feet in height.

(Code 1968, § 130.75; amend. Ord. No. 67-83, 9-12-83)

Sec. 150.63. - Minimum floor area and building width.

The minimum floor area of any dwelling shall be not less than 600 square feet exclusive of garages, carports, open porches, or breezeways. The dimensions of the dwelling shall be not less than 24 feet in width nor less than 24 feet in depth.

(Code 1968, § 130.76; amend. Ord. No. 67-83, 9-12-83; Ord. No. 24-25, § 7, 8-4-25)

Sec. 150.64. - Reserved.

#### DIVISION 6. - R-2 RESIDENCE ZONE

Sec. 150.65. - Permitted uses.

No building, structure, or land shall be used or occupied and no building or structure shall hereafter be erected, constructed, reconstructed, moved, expanded or enlarged except for the following uses:

- (A) Single unit dwellings as regulated in §§ 150.67 through 150.73.
- (B) Buildings or structures owned, leased, or used by a municipal, township, county, state, or federal government, provided said buildings or structures meet the provisions of § 150.18 and the provisions of §§ 150.67 through 150.73.
- (C) Public schools, colleges, and universities, and private academic schools, all subject to the provisions of § 150.18 and the provisions of §§ 150.67 through 150.73.
- (D) Buildings or structures used for religious assembly subject to the provisions of § 150.17 and the provisions of §§ 150.67 through 150.73.
- (E) Signs and outdoor advertising as regulated in § 150.212.
- (F) Temporary buildings used during construction, and including storage of building materials and equipment, for a period not to exceed the duration of such construction.
- (G) Accessory uses and structures as regulated in § 150.23.

(Code 1968, § 130.80; amend. Ord. No. 67-83, 9-12-83)

Sec. 150.66. - Special uses subject to approval by the board of zoning appeals.

The following uses shall be allowed when approved by the Delaware-Muncie Metropolitan Board of Zoning Appeals under the established procedures in § 150.216 and subject to the provisions herein specified:

- (A) Charitable institutions provided buildings or structures placed thereon meet the provisions of § 150.17 and the provisions of §§ 150.67 through 150.73.
- (B) Hospitals provided that the premises upon which they are built shall be a minimum ten acres in area, and all uses and buildings or structures placed thereon shall be at least 100 feet from any side and rear property line and shall meet the provisions of §§ 150.68 and 150.72.
- (C) Cemeteries provided the site for a cemetery is a minimum of ten acres in area, and all buildings placed thereon shall be at least 100 feet from any side and rear property line and shall meet the provisions of §§ 150.68 and 150.72.
- (D) Nursery schools and child care centers subject to the performance standards contained in § 150.226, and provided all uses and buildings or structures placed thereon shall meet the provisions of §§ 150.67 through 150.73.
- (E) Home occupations subject to the performance standards contained in § 150.222, and provided all uses and

buildings or structures placed thereon shall meet the provisions of §§ 150.67 through 150.73.

- (F) Planned Unit Development (PUD) subject to the performance standards contained in § 150.220. All uses and buildings or structures placed thereon shall meet the provisions of § 150.68 and 150.72.

(Ord. No. 67-83, 9-12-83)

Sec. 150.67. - Lot width, frontage, and area.

The width and street frontage of a lot shall be a minimum of 40 feet at the building line and there shall be a minimum 4,800 square feet in area, exclusive of rights-of-way. Whenever public sewer and/or water facilities are not available and no unit sanitary sewer is available, the board of health requirements for lot area shall prevail, but shall not be less than 4,800 square feet in area, exclusive of rights-of-way.

(Code 1968, § 130.81; amend. Ord. No. 67-83, 9-12-83; Ord. No. 24-25, § 8, 8-4-25)

Sec. 150.68. - Front yard setback—All lots.

There shall be a front yard setback of a minimum of 20 feet in depth measured from the right-of-way line to the front wall of the building.

(Code 1968, § 130.82; amend. Ord. No. 67-83, 9-12-83; Ord. No. 24-25, § 9, 8-4-25)

Sec. 150.69. - Side yard setback—Interior lots.

There shall be two side yard setbacks of an interior lot, each being a minimum five feet in width measured at right angles to the side property line.

(Ord. No. 67-83, 9-12-83; Ord. No. 24-25, § 10, 8-4-25)

Sec. 150.70. - Side yard setback—Corner lots.

There shall be two side yard setbacks of a corner lot. The side yard adjoining the street shall be a minimum of 20 feet in depth measured from the right-of-way line to the side wall of the building. The side yard adjoining the adjacent property shall be a minimum of five feet in width measured at right angles to the side property line.

(Ord. No. 67-83, 9-12-83; Ord. No. 24-25, § 11, 8-4-25)

Sec. 150.71. - Rear yard setback—All lots.

There shall be a rear yard setback of a minimum 15 feet in depth measured from the rear property line to the rear wall of the building.

(Code 1968, § 130.84; amend. Ord. No. 67-83, 9-12-83; Ord. No. 24-25, § 12, 8-4-25)

Sec. 150.72. - Height.

No building or structure shall exceed 30 feet in height.

(Code 1968, § 130.85; amend. Ord. No. 67-83, 9-12-83)

Sec. 150.73. - Minimum floor area and building width.

The minimum floor area of any dwelling shall be not less than 600 square feet, exclusive of garages, carports, open porches, and breezeways. The dimensions of the dwelling shall be not less than 24 feet in width nor less than 24 feet in depth.

(Code 1968, § 130.86; amend. Ord. No. 67-83, 9-12-83; Ord. No. 24-25, § 13, 8-4-25)

Sec. 150.74. - Reserved.

DIVISION 7. - R-3 RESIDENCE ZONE

Sec. 150.75. - Permitted uses.

No building, structure, or land shall be used or occupied and no building or structure shall hereafter be erected, constructed, reconstructed, moved, expanded, or enlarged except for the following uses:

- (A) Single unit dwellings as regulated in §§ 150.77 through 150.83.
- (B) Buildings or structures owned, leased, or used by a municipal, township, county, state, or federal government, provided said buildings or structures meet the provisions of § 150.18 and the provisions of §§ 150.77 through 150.83.
- (C) Public schools, colleges, and universities, and private academic schools, all subject to the provisions of § 150.18 and the provisions of §§ 150.77 through 150.83.
- (D) Buildings or structures used for religious assembly subject to the provisions of § 150.17 and the provisions of §§ 150.77 through 150.83.
- (E) Signs and outdoor advertising as regulated in § 150.212.
- (F) Temporary buildings used during construction, and including storage of building materials and equipment, for a period not to exceed the duration of such construction.
- (G) Accessory uses and structures as regulated in § 150.23.

(Code 1968, § 130.90; amend. Ord. No. 67-83, 9-12-83)

Sec. 150.76. - Special uses subject to approval by the board of zoning appeals.

The following uses shall be allowed when approved by the Delaware-Muncie Metropolitan Board of Zoning Appeals under the established procedures in § 150.216 and subject to the provisions herein specified:

- (A) Charitable institutions provided buildings or structures placed thereon meet the provisions of § 150.17 and the provisions of §§ 150.77 through 150.83.
- (B) Hospitals provided that the premises upon which they are built shall be a minimum ten acres in area, and all uses and buildings or structures placed thereon shall be at least 100 feet from any side and rear property line and shall meet the provisions of §§ 150.78 and 150.82.
- (C) Cemeteries provided the site for a cemetery is a minimum of ten acres in area, and all buildings placed thereon shall be at least 100 feet from any side and rear property line and shall meet the provisions of §§

150.78 and 150.82.

- (D) Nursery schools and child care centers subject to the performance standards contained in § 150.226, and provided all uses and buildings or structures placed thereon shall meet the provisions of §§ 150.77 through 150.83.
- (E) Home occupations subject to the performance standards contained in § 150.222, and provided all uses and buildings or structures placed thereon shall meet the provisions of §§ 150.77 through 150.83.
- (F) Accessory dwelling provided the floor area of the accessory dwelling be not less than 300 square feet and provided the additional off-street parking requirements are met in accordance with § 150.211.
- (G) Planned Unit Development (PUD) subject to the performance standards contained in § 150.220. All uses and buildings or structures placed thereon shall meet the provisions of §§ 150.78 and 150.82.

(Ord. No. 67-83, 9-12-83)

Sec. 150.77. - Lot width, frontage, and area.

The width and street frontage of a lot shall be a minimum 40 feet at the building line and there shall be a minimum 4,800 square feet in area, exclusive of rights-of-way. Whenever public sewer and/or water facilities are not available and no unit sanitary sewer is available, the board of health requirements for lot area shall prevail, but shall not be less than 4,800 square feet in area, exclusive of rights-of-way.

(Code 1968, § 130.91; amend. Ord. No. 67-83, 9-12-83; Ord. No. 24-25, § 14, 8-4-25)

Sec. 150.78. - Front yard setback—All lots.

There shall be a front yard setback of a minimum of 20 feet in depth measured from the right-of-way line to the front wall of the building.

(Code 1968, § 130.92; amend. Ord. No. 67-83, 9-12-83; Ord. No. 24-25, § 15, 8-4-25)

Sec. 150.79. - Side yard setback—Interior lots.

There shall be two side yard setbacks of an interior lot, each being a minimum five feet in width measured at right angles to the side property line.

(Ord. No. 67-83, 9-12-83; Ord. No. 24-25, § 16, 8-4-25)

Sec. 150.80. - Side yard setback—Corner lots.

There shall be two side yard setbacks of a corner lot. The side yard adjoining the street shall be a minimum of 20 feet in depth measured from the right-of-way line to the side wall of the building. The side yard adjoining the adjacent property shall be a minimum of five feet in width measured at right angles to the side property line.

(Ord. No. 67-83, 9-12-83; Ord. No. 24-25, § 17, 8-4-25)

Sec. 150.81. - Rear yard setback—All lots.

There shall be a rear yard setback of a minimum 15 feet in depth measured from the rear property line to the rear wall of the building.

(Code 1968, § 130.94; amend. Ord. No. 67-83, 9-12-83; Ord. No. 24-25, § 18, 8-4-25)

Sec. 150.82. - Height.

No building or structure shall exceed 30 feet in height.

(Code 1968, § 130.95; amend. Ord. No. 67-83, 9-12-83)

Sec. 150.83. - Minimum floor area and building width.

The minimum floor area of any dwelling shall be not less than 600 square feet, exclusive of garages, carports, open porches or breezeways. The dimensions of the dwelling shall be not less than 24 feet in width nor less than 24 feet in depth.

(Code 1968, § 130.96; amend. Ord. No. 67-83, 9-12-83; Ord. No. 24-25, § 19, 8-4-25)

Sec. 150.84. - Reserved.

DIVISION 8. - R-4 RESIDENCE ZONE

Sec. 150.85. - Permitted uses.

No building, structure, or land shall be used or occupied and no building or structure shall hereafter be erected, constructed, reconstructed, moved, expanded, or enlarged except for the following uses:

- (A) Single unit dwellings as regulated in §§ 150.87 through 150.93.
- (B) Buildings or structures owned, leased, or used by a municipal, township, county, state, or federal government, provided said buildings or structures meet the provisions of § 150.18 and the provisions of §§ 150.87 through 150.93.
- (C) Public schools, colleges, and universities, and private academic schools, all subject to the provisions of § 150.18 and the provisions of §§ 150.87 through 150.93.
- (D) Buildings or structures used for religious assembly subject to the provisions of § 150.17 and the provisions of §§ 150.87 through 150.93.
- (E) Signs and outdoor advertising as regulated in § 150.212.
- (F) Temporary buildings used during construction, and including storage of building materials and equipment, for a period not to exceed the duration of such construction.
- (G) Accessory uses and structures as regulated in § 150.23.
- (H) Accessory dwelling provided the floor area of the accessory dwelling be not less than 300 square feet and provided the additional off-street parking requirements are met in accordance with § 150.211.

(Code 1968, § 130.100; amend. Ord. No. 67-83, 9-12-83; Ord. No. 24-25, § 20, 8-4-25)

Sec. 150.86. - Special uses subject to approval by the board of zoning appeals.

The following uses shall be allowed when approved by the Delaware-Muncie Metropolitan Board of Zoning Appeals under the established procedures in § 150.216 and subject to the provisions herein specified:

- (A) Charitable institutions provided buildings or structures placed thereon meet the provisions of § 150.17 and the provisions of §§ 150.87 through 150.93.
- (B) Hospitals provided that the premises upon which they are built shall be a minimum ten acres in area, and all uses and buildings or structures placed thereon shall be at least 100 feet from any side and rear property line and shall meet the provisions of §§ 150.88 and 150.92.
- (C) Cemeteries provided the site for a cemetery is a minimum of ten acres in area, and all buildings placed thereon shall be at least 100 feet from any side and rear property line and shall meet the provisions of §§ 150.88 and 150.92.
- (D) Nursery schools and child care centers subject to the performance standards contained in § 150.226, and provided all uses and buildings or structures placed thereon shall meet the provisions of §§ 150.87 through 150.93.
- (E) Home occupations subject to the performance standards contained in § 150.222, and provided all uses and buildings or structures placed thereon shall meet the provisions of §§ 150.87 through 150.93.
- (F) [Reserved.]
- (G) Planned Unit Development (PUD) subject to the performance standards contained in § 150.220. All uses and buildings or structures placed thereon shall meet the provisions of § 150.88 and 150.92.

(Ord. No. 67-83, 9-12-83; Ord. No. 24-25, § 21, 8-4-25)

Sec. 150.87. - Lot width, frontage, and area.

The width and street frontage of a lot shall be a minimum of 50 feet at the building line and there shall be a minimum 6,250 square feet in area, exclusive of right-of-ways. Whenever public sewer or water facilities are not available and no unit sanitary sewer is available, the board of health requirements for lot area shall prevail, but shall be not less than 6,250 square feet in area, exclusive of right-of-ways. The lot area shall be used to determine the amount of lot coverage allowed in accordance with § 150.12.

(Code 1968, § 130.101; amend. Ord. No. 67-83, 9-12-83)

Sec. 150.88. - Front yard setback—All lots.

There shall be a front yard setback of a minimum of 25 feet in depth measured from the right-of-way line to the front wall of the building.

(Code 1968, § 130.102; amend. Ord. No. 67-83, 9-12-83)

Sec. 150.89. - Side yard setback—Interior lots.

There shall be two side yard setbacks of an interior lot, each being a minimum five feet in width measured at right angles to the side property line.

(Ord. No. 67-83, 9-12-83)

Sec. 150.90. - Side yard setback—Corner lots.



There shall be two side yard setbacks of a corner lot. The side yard adjoining the street shall be a minimum of 20 feet in depth measured from the right-of-way line to the side wall of the building. The side yard adjoining the adjacent property shall be a minimum of five feet in width measured at right angles to the side property line.

(Ord. No. 67-83, 9-12-83)

Sec. 150.91. - Rear yard setback—All lots.

There shall be a rear yard setback of a minimum 25 feet in depth measured from the rear property line to the rear wall of the building.

(Code 1968, § 130.104; amend. Ord. No. 67-83, 9-12-83)

Sec. 150.92. - Height.

No building or structure shall exceed 30 feet in height.

(Code 1968, § 130.105; amend. Ord. No. 67-83, 9-12-83)

Sec. 150.93. - Minimum floor area and building width.

The minimum floor area of any dwelling shall be not less than 720 square feet, exclusive of garages, carports, open porches or breezeways. The dimensions of the dwelling shall be not less than 24 feet in width nor less than 24 feet in depth.

(Code 1968, § 130.106; amend. Ord. No. 67-83, 9-12-83)

DIVISION 9. - R-4A RESIDENCE ZONE

Sec. 150.93.1. - Permitted uses.

No building, structure, or land shall be used or occupied and no building or structure shall hereafter be erected, constructed, reconstructed, moved, expanded, or enlarged except for the following uses:

- (A) Single unit 2-unit, and 3-unit dwellings as regulated in §§ 150.93.3 through 150.93.9.
- (B) Buildings or structures owned, leased, or used by a municipal, township, county, state, or federal government, provided said buildings or structures meet the provisions of § 150.18 and the provisions of §§ 150.93.3 through 150.93.9.
- (C) Public schools, colleges, and universities, and private academic schools, all subject to the provisions of § 150.18 and the provisions of §§ 150.93.3 through 150.93.9.
- (D) Buildings or structures used for religious assembly subject to the provisions of § 150.17 and the provisions of §§ 150.93.3 through 150.93.9.
- (E) Signs and outdoor advertising as regulated in § 150.212.
- (F) Temporary buildings used during construction, and including storage of building materials and equipment, for a period not to exceed the duration of such construction.
- (G) Accessory uses and structures as regulated in § 150.23.

(Ord. No. 67-83, 9-12-83)

Sec. 150.93.2. - Special uses subject to approval by the board of zoning appeals.

The following uses shall be allowed when approved by the Delaware-Muncie Metropolitan Board of Zoning Appeals under the established procedures in § 150.216 and subject to the provisions herein specified:

- (A) Charitable institutions provided buildings or structures placed thereon meet the provisions of § 150.17 and the provisions of §§ 150.93.3 through 150.93.9.
- (B) Hospitals provided that the premises upon which they are built shall be a minimum ten acres in area, and all uses and buildings or structures placed thereon shall be at least 100 feet from any side and rear property line and shall meet the provisions of §§ 150.93.4 through 150.93.8.
- (C) Cemeteries provided the site for a cemetery is a minimum of ten acres in area, and all buildings placed thereon shall be at least 100 feet from any side and rear property line and shall meet the provisions of §§ 150.93.4 through 150.93.8.
- (D) Nursery schools and child care centers subject to the performance standards contained in § 150.226, and provided all uses and buildings or structures placed thereon shall meet the provisions of §§ 150.93.3 through 150.93.9.
- (E) Home occupations subject to the performance standards contained in § 150.222, and provided all uses and buildings or structures placed thereon shall meet the provisions of §§ 150.93.3 through 150.93.9.
- (F) Planned Unit Development (PUD) subject to the performance standards contained in § 150.220. All uses and buildings or structures placed thereon shall meet the provisions of §§ 150.93.4 through 150.93.8.

(Ord. No. 67-83, 9-12-83)

Sec. 150.93.3. - Lot width, frontage, and area.

The width and street frontage of a lot shall be a minimum of 50 feet at the building line and there shall be a minimum 6,250 square feet in area, exclusive of right-of-ways. Whenever public sewer or water facilities are not available and no unit sanitary sewer is available, the board of health requirements for lot area shall prevail, but shall be not less than 6,250 square feet in area, exclusive of right-of-ways. The lot area shall be used to determine the amount of lot coverage allowed which shall be the same as for an R-4 Residence Zone in accordance with § 150.12.

(Ord. No. 67-83, 9-12-83)

Sec. 150.93.4. - Front yard setback—All lots.

There shall be a front yard setback of a minimum of 25 feet in depth measured from the right-of-way line to the front wall of the building.

(Ord. No. 67-83, 9-12-83)

Sec. 150.93.5. - Side yard setback—Interior lots.

There shall be two side yard setbacks of an interior lot, each being a minimum five feet in width measured at right angles to the side property line.

(Ord. No. 67-83, 9-12-83)

Sec. 150.93.6. - Side yard setback—Corner lots.

There shall be two side yard setbacks of a corner lot. The side yard adjoining the street shall be a minimum of 20 feet in depth measured from the right-of-way line to the side wall of the building. The side yard adjoining the adjacent property shall be a minimum of five feet in width measured at right angles to the side property line.

(Ord. No. 67-83, 9-12-83)

Sec. 150.93.7. - Rear yard setback—All lots.

There shall be a rear yard setback of a minimum 25 feet in depth measured from the rear property line to the rear wall of the building.

(Ord. No. 67-83, 9-12-83)

Sec. 150.93.8. - Height.

No building or structure shall exceed 30 feet in height.

(Ord. No. 67-83, 9-12-83)

Sec. 150.93.9. - Minimum floor area and building width.

The minimum floor area of any dwelling shall be not less than 720 square feet, exclusive of garages, carports, open porches, or breezeways. The dimensions of the dwelling shall be not less than 24 feet in width nor less than 24 feet in depth.

(Ord. No. 67-83, 9-12-83)

Sec. 150.94. - Reserved.

DIVISION 10. - R-5 RESIDENCE ZONE

Sec. 150.95. - Permitted uses.

- (A) Permitted uses. No building, structure, or land shall be used or occupied and no building or structure shall hereafter be erected, constructed, reconstructed, moved, expanded, or enlarged except for the following uses:
- (1) Single unit dwellings as regulated in §§ 150.96 through 150.99.
  - (2) Two-unit development through, and including, 24-unit development as regulated in §§ 150.96 through 150.99 and, where applicable, subject to the approval of the Administrative Building Council.
  - (3) Buildings or structures owned, leased, or used by a municipal, township, county, state, or federal government, provided said buildings or structures meet the provisions of § 150.18 and the provisions of §§ 150.96 through 150.99.
  - (4) Public schools, colleges, and universities, and private academic schools, all subject to the provisions of § 150.18 and the provisions of §§ 150.96 through 150.99.

- (5) Nursery schools and child care centers subject to the provisions of § 150.226 (C) and provided all buildings or structures placed thereon shall meet the provisions of §§ 150.96 through 150.99.
- (6) Buildings or structures used for religious assembly subject to the provisions of § 150.17 and the provisions of §§ 150.96 through 150.99.
- (7) Signs and outdoor advertising as regulated in § 150.212.
- (8) Temporary buildings used during construction, and including storage of building materials and equipment, for a period not to exceed the duration of such construction.
- (9) Accessory uses and structures as regulated in § 150.23.
- (B) Special uses subject to approval by the board of zoning appeals. The following uses shall be allowed when approved by the Delaware-Muncie Metropolitan Board of Zoning Appeals under the established procedures in § 150.216 and subject to the provisions herein specified:
  - (1) Multi-unit developments of 25, or more, units subject to the performance standards contained in § 150.227. All uses and buildings or structures placed thereon shall meet the provisions of §§ 150.96 through 150.99.
  - (2) Group housing subject to the performance standards contained in § 150.225. All uses and buildings or structures placed thereon shall meet the provisions of §§ 150.96 through 150.99.
  - (3) Charitable institutions provided buildings or structures placed thereon meet the provisions of § 150.17 and the provisions of §§ 150.96 through 150.99.
  - (4) Hospitals provided that the premises upon which they are built shall be a minimum ten acres in area, and all uses and buildings or structures placed thereon shall be at least 100 feet from any side and rear property line and shall meet the provisions of §§ 150.97(A) and 150.98.
  - (5) Cemeteries provided the site for a cemetery is a minimum of ten acres in area, and all buildings placed thereon shall be at least 100 feet from any side and rear property line and shall meet the provisions of §§ 150.97(A) and 150.98.
  - (6) Home occupations subject to the performance standards contained in § 150.222, and provided all uses and buildings or structures placed thereon shall meet the provisions of §§ 150.96 through 150.99.
  - (7) Planned Unit Development (PUD) subject to the performance standards contained in § 150.220. All uses and buildings or structures placed thereon shall meet the provisions of §§ 150.97(A) and 150.98.
  - (8) Nursing homes. All buildings placed thereon shall be at least 100 feet from any side and rear property line and shall meet the provisions of §§ 150.97(A) and 150.98.

(Code 1968, § 130.110; amend. Ord. No. 67-83, 9-12-83)

Sec. 150.96. - Lot width, frontage, and area.

- (A) Single and 2-unit residential lots. The width and street frontage of a single and 2-unit residential lots shall be a minimum of 50 feet at the building line and there shall be a minimum 6,500 square feet in area, exclusive of rights-of-way. Whenever public sewer or water facilities are not available and no unit sanitary sewer is available, the board of health requirements for lot area shall prevail, but shall not be less than 6,500 square feet in area, exclusive of right-of-ways. The lot area shall be used to determine the amount of lot coverage allowed in accordance with § 150.12.
- (B) Multiple unit, of three or more, residential lots. The width and street frontage of multiple unit residential lots shall be a minimum of 100 feet at the building line and there shall be a minimum of 9,000 square feet in area, exclusive

of rights-of-way. Whenever public sewer or water facilities are not available and no unit sanitary sewer is available, the board of health requirements for lot area shall prevail, but shall not be less than 9,000 square feet in area, exclusive of rights-of-way. The lot area shall be used to determine the amount of lot coverage allowed in accordance with § 150.12. Of the open space provided by the lot coverage requirement, 100 square feet per unit shall be set aside for open recreational or landscaped area and not used for off-street parking purposes.

(C) Non-residential lots. Non-residential lots shall meet the provisions of § 150.96(A) herein.

(Code 1968, § 130.111; amend. Ord. No. 67-83, 9-12-83)

#### Sec. 150.97. - Yard requirements.

(A) Front yard setback-all lots. There shall be a front yard setback of a minimum of 20 feet in depth measured from the right-of-way line to the front wall of the building.

(Code 1968, § 130.112)

(B) Side yard setback-interior lots.

(1) Single unit residential lots, There shall be two side yard setbacks of an interior lot, each being a minimum five feet in width measured at right angles to the side property line.

(2) Two unit and multiple unit residential lots. For residences of more than one unit, there shall be two side yard setbacks of an interior lot, each being a minimum five feet in depth, plus an additional two feet per side for each unit above one unit up to a maximum of 25 feet per side yard.

(3) Non-residential lots. Non-residential lots shall meet the provisions of § 150.97(B)(1) herein.

(C) Side yard setback-corner lots.

(1) Single unit residential lots. There shall be two side yard setbacks of a corner lot. The side yard adjoining the street shall be a minimum of 20 feet in depth measured from the right-of-way line to the side wall of the building. The side yard adjoining the adjacent property shall be a minimum of five feet in width measured at right angles to the side property line.

(2) Two unit and multiple unit residential lots. For residences of more than one unit, there shall be two side yard setbacks of a corner lot. The side yard adjoining the street shall be a minimum of 20 feet in depth measured from the right-of-way line to the side wall of the building. The side yard adjoining the adjacent property shall be a minimum of five feet, plus an additional two feet for each unit above one unit, up to a maximum of 25 feet.

(3) Non-residential lots. Non-residential lots shall meet the provisions of § 150.97(C)(1) herein.

(D) Rear yard setback-all lots. There shall be a rear yard setback of a minimum 20 feet in depth measured from the rear property line to the rear wall of the building.

(Code 1968, § 130.114)

(Ord. No. 67-83, 9-12-83)

#### Sec. 150.98. - Height.

No single unit residential building or structure shall exceed 30 feet in height. For 2-unit, multiple unit, and nonresidential structures, no building or structure shall exceed 45 feet in height.

(Code 1968, § 130.115; amend. Ord. No. 67-83, 9-12-83)

Sec. 150.99. - Minimum floor area and building width.

The minimum floor area of any single unit dwelling shall be not less than 720 square feet exclusive of garages, carports, open porches, or breezeways. The minimum floor area of any 2-unit dwelling shall be not less than 600 square feet per dwelling unit. The minimum floor area of any multiple unit dwelling shall be not less than 400 square feet per dwelling unit. For single unit, 2-unit, and multiple unit dwellings, the dimensions of the dwelling shall be not less than 24 feet in width nor less than 24 feet in depth.

(Code 1968, § 130.116; amend. Ord. No. 67-83, 9-12-83)

DIVISION 11. - R-6 RESIDENCE ZONE

Sec. 150.99.1. - Definition.

The R-6 Residence Zone shall be known as a mixed land use zone. A mixed land use zone shall mean the development of one-unit, 2-unit, 3-unit and 4-unit structures in combinations of all four types of structures. There shall be allowance for zero lot line development with the 2-unit, 3-unit and 4-unit structures. In-lots shall refer to those contiguous lots upon which a two-unit, 3-unit or 4-unit structure may be constructed. An out-lot shall refer to those lots upon which a one unit structure may be constructed. In no case shall there be more than one unit per in-lot, or out-lot. The development may include townhouses, cluster garden structures, apartments, and condominiums.

(Ord. No. 67-83, 9-12-83)

Sec. 150.99.2. - Permitted uses.

No building, structure, or land shall be used or occupied and no building or structure shall hereafter be erected, constructed, reconstructed, moved, expanded, or enlarged except for the following uses:

- (A) One-unit, 2-unit, 3-unit and 4-unit structures in combinations of all four types of use as regulated in §§ 150.99.4 through 150.99.21.
- (B) Buildings or structures owned, leased, or used by a municipal, township, county, state, or federal government, provided said buildings or structures meet the provisions of § 150.18 and the provisions of §§ 150.99.5, 150.99.6, 150.99.7, 150.99.9, and 150.99.13.
- (C) Buildings or structures used for religious assembly subject to the provisions of § 150.17 and the provisions of §§ 150.99.5, 150.99.6, 150.99.7, 150.99.9, and 150.99.13.
- (D) Public schools, colleges, and universities, and private academic schools, all subject to the provisions of § 150.18 and the provisions of §§ 150.99.5, 150.99.6, 150.99.7, 150.99.9, and 150.99.13.
- (E) Signs and outdoor advertising as regulated in § 150.212.
- (F) Temporary buildings used during construction, and including storage of building materials and equipment, for a period not to exceed the duration of such construction. No storage shall occur in the open on any lot upon which construction has been completed.
- (G) Accessory uses and structures as regulated in § 150.23.

(Ord. No. 67-83, 9-12-83)

Sec. 150.99.3. - Special uses subject to approval by the board of zoning appeals.

The following uses shall be allowed when approved by the Delaware-Muncie Metropolitan Board of Zoning Appeals under the established procedures in § 150.216 and subject to the provisions herein specified:

- (A) Nursery schools and child care centers subject to the performance standards contained in § 150.226, and provided all uses and buildings or structures placed thereon shall meet the provisions of §§ 150.99.5, 150.99.6, 150.99.7, 150.99.9 and 150.99.13.
- (B) Home occupations subject to the performance standards contained in § 150.222, and provided all uses and buildings or structures placed thereon shall meet the provisions of §§ 150.99.5, 150.99.6, 150.99.7, 150.99.9 and 150.99.13.

(Ord. No. 67-83, 9-12-83)

Sec. 150.99.4. - Area.

The area of land shall contain not less than 1-½ acres, exclusive of right-of-ways.

(Ord. No. 67-83, 9-12-83)

Sec. 150.99.5. - Front yard setback-all lots.

There shall be a front yard setback of a minimum of 15 feet in depth measured from the right-of-way line to the front wall of the building.

(Ord. No. 67-83, 9-12-83)

Sec. 150.99.6. - Side yard setback.

- (A) Interior lots. There shall be two side yard setbacks of an interior lot, each being a minimum five feet or ten percent of the width of the lot, whichever is the greater, measured at right angles to the side lot line except where there may be an abutting wall or common wall provided for zero lot line development. When an abutting wall or common wall is provided, no side yard setback shall be required.
- (B) Corner lots. There shall be two side yard setbacks of a corner lot. The side yard adjoining the street shall be a minimum of 25 feet measured from the right-of-way line to the side wall of the building. The side yard adjoining the adjacent property shall be a minimum of five feet or ten percent of the width of the lot, whichever is the greater, measured at right angles to the side property line except where there may be an abutting wall or common wall provided for zero lot line development. When an abutting wall or common wall is provided, no side yard shall be required.

(Ord. No. 67-83, 9-12-83)

Sec. 150.99.7. - Rear yard setback-all lots.

There shall be a rear yard setback of a minimum 20 feet in depth measured from the rear property line to the rear wall of the building.

(Ord. No. 67-83, 9-12-83)

Sec. 150.99.8. - Minimum floor area.

The minimum floor area of any dwelling shall be not less than 720 square feet in area, exclusive of garages, carports, open porches, or breezeways.

(Ord. No. 67-83, 9-12-83)

Sec. 150.99.9. - Height.

No building or structure shall exceed 30 feet in height.

(Ord. No. 67-83, 9-12-83)

Sec. 150.99.10. - Number of units.

The maximum number of units under the same roof shall not exceed 4.

(Ord. No. 67-83, 9-12-83)

Sec. 150.99.11. - Lot area and size.

The depth of any lot shall not be less than 85 feet. The width of any lot shall not be less than 40 feet except where an abutting wall or common wall is provided at both side lot lines for a zero lot line development. When an abutting wall or common wall is provided at both side lot lines, the width of the lot may be the width of the dwelling unit on said lot but shall not be less than 28 feet. Lot width requirements shall denote lot frontage requirements.

(Ord. No. 67-83, 9-12-83)

Sec. 150.99.12. - Density.

(A) The building density of land coverage consisting of the minimum of 1-½ acres shall be as follows:

Twenty percent one-unit structures

Twenty percent two-unit structures

Thirty percent three-unit structures

Thirty percent four-unit structures

(B) The building density of land coverage consisting of more than six acres shall be a minimum of ten percent with a maximum of 30 percent of all four types of structures.

(C) There shall be, at maximum, not more than two structures of like usage adjacent to one another.

(Ord. No. 67-83, 9-12-83)

Sec. 150.99.13. - Lot coverage.

The maximum total of building coverage for each lot shall not exceed 50 percent.



(Ord. No. 67-83, 9-12-83)

Sec. 150.99.14. - Parking.

There shall be provisions for two parking spaces for each dwelling unit to be placed in the rear yard setback area of the dwelling.

(Ord. No. 67-83, 9-12-83)

Sec. 150.99.15. - On-street parking.

There shall be provisions set out for three inset parking spaces every 150 feet for limited parking facilities to be placed in the street right-of-way requirement. Each inset shall be a minimum width of ten feet and a maximum length of 70 feet.

(Ord. No. 67-83, 9-12-83)

Sec. 150.99.16. - Garages.

There shall be a maximum size for any garage being constructed in the development of 24 by 24 feet to be placed in the rear yard setback area.

(Ord. No. 67-83, 9-12-83)

Sec. 150.99.17. - Street width.

The width of any street inside the development shall be a minimum of 22 feet.

(Ord. No. 67-83, 9-12-83)

Sec. 150.99.18. - Alley ways.

The width of any alley shall be a minimum of ten feet with a six feet easement requirement on each side for the purpose of utilities.

(Ord. No. 67-83, 9-12-83)

Sec. 150.99.19. - Sanitary facilities.

No mixed land use development shall be allowed to occur where approved sanitary facilities are not available.

(Ord. No. 67-83, 9-12-83)

Sec. 150.99.20. - Covenants.

There may be covenants, grants, and easements placed on the proposed area involved.

(Ord. No. 67-83, 9-12-83)

Sec. 150.99.21. - Rights-of-way.

Areas proposed for the street right-of-way dedication must be in accordance to the provisions set out by the official thoroughfare plan for the city.

(Ord. No. 67-83, 9-12-83)

Sec. 150.99.22. - Procedure.

When the owner or owners of a tract of land file for rezoning for the purpose of developing a mixed land use with the Delaware-Muncie Metropolitan Plan Commission, said application shall include all of the following items:

- (A) Location and size of area involved.
- (B) Density of land use.
- (C) Location, function, ownership, and manner of maintenance of common open space.
- (D) Use, approximate height, bulk, and location of buildings and other structures.
- (E) Location of sanitary facilities to the project and method of disposing of storm water.
- (F) Relationship of proposed streets to streets in the proximity of the project.

(Ord. No. 67-83, 9-12-83)

DIVISION 12. - BP BUSINESS AND PROFESSIONAL OFFICE ZONE

Sec. 150.100. - Permitted uses.

No building, structure, or land shall be used and no building, or structure shall hereafter be erected, structurally altered, enlarged, or maintained except for the following uses.

- (A) Single-family dwellings, as regulated in the R-4 Residence Zone.
- (B) Buildings owned, leased, or used by municipal, township, county, state, or federal governments.
- (C) Religious and charitable institutions.
- (D) Public schools; colleges and universities; nursery schools and child care centers.
- (E) Business and professional offices.
- (F) Credit bureaus.
- (G) Political offices; union offices; real estate offices; insurance offices.

(Ord. No. 624-80, 11-10-80)

Sec. 150.101. - Yard and height requirements.

- (A) There shall be a front yard of not less than 25 feet in depth measured from the right-of-way line to the front wall of the building.
- (B) There shall be two side yards, each six feet in width and measured at right angles to the side lot line.
- (C) There shall be a rear yard 30 feet in depth measured at right angles to the rear lot line.
- (D) No building or structure shall exceed 1-½ stories or 30 feet in height.

(Ord. No. 624-80, 11-10-80)

Sec. 150.102. - Conditions.

- (A) All business and professional offices, credit bureaus and political, union, real estate, and insurance offices shall be service in nature only and generally open to the public only during the day. The sale of goods and merchandise, the preparation and service of food, and the storage and handling of goods, materials, and equipment shall not be permitted. Parking of trucks, other than in the course of delivery of supplies and equipment used in such offices, shall not be permitted. Direct vehicular access to each such office shall be separate and distinct from direct access to any other office, and in no case shall there be access to one such establishment from within another. Only such signs as are permitted in Residence Zones shall be permitted in the BP Business and Professional Office Zone.
- (B) Off-street parking shall be three parking spaces for each office suite within any structure or building, plus one parking space for each 300 square feet of gross floor area in excess of 2,000 square feet of gross floor area.

(Ord. No. 624-80, 11-10-80)

Secs. 150.103, 150.104. - Reserved.

DIVISION 13. - CB CENTRAL BUSINESS ZONE

Sec. 150.105. - Permitted uses.

No building, structure, or land shall be used, and no building or structure shall hereafter be erected, structurally altered, enlarged, or maintained except for the following uses:

- (A) Single-family, 2-family, and multiple-family dwellings, as regulated in the R-5 Residence Zone.
- (B) Buildings owned, leased, or used by a municipal, township, county, state, or federal government.
- (C) Religious and charitable institutions.
- (D) Railroad rights-of-way including yards, storage, switching, or shops owned and operated by railroad companies.
- (E) Public schools, nurseries, and child care centers.
- (F) Business and professional offices.
- (G) Liquor stores, bars, taverns, and dance halls.
- (H) Food stores, drugstores, clothing stores, and jewelry stores.
- (I) Credit bureaus.
- (J) Restaurants.
- (K) Machine shops.
- (L) Retail stores and shops.
- (M) Banks, building and loans, and lending institutions.
- (N) Barber shops; beauty parlors.
- (O) Health centers.
- (P) Restaurants, drive-in restaurants, cafes, and lunchrooms.

- (Q) Hotels, motels, motor hotels, boarding houses, and rooming houses.
- (R) Political offices, union offices, and real estate offices.
- (S) Transportation terminals.
- (T) Outdoor advertising, as regulated in this chapter.
- (U) Communication centers-telephone and telegraph.
- (V) Radio and television stations, including towers and other appurtenances.
- (W) Parking lots; parking garages.
- (X) Fraternal, philanthropic, civic, and service organizations.
- (Y) Auto repair, sales, and showrooms.
- (Z) Newspapers, publishing establishments, and printing shops.
- (AA) Gasoline stations; car washes.
- (BB) Department stores, sporting goods, art and music centers and supplies, and art galleries.
- (CC) Laundries; dry cleaning establishments.
- (DD) Photographic studios and offices.
- (EE) Billiard parlors.
- (FF) Pawnshops, pet shops, pottery, souvenir, and flower shops.
- (GG) Auto equipment stores.
- (HH) Electrical contractors; insurance.
- (II) Theatres.
- (JJ) Business machines, electronic equipment, and typewriter equipment.
- (KK) Jewelers; camera shops.
- (LL) Bakeries.
- (MM) Bardware stores, furniture stores, and paint and glass stores.
- (NN) Warehouses.
- (OO) Highrise apartment buildings.
- (PP) Mortuaries.
- (QQ) License bureaus; travel services.
- (RR) Fraternities and sororities.
- (SS) Adult entertainment business subject to the performance standards of this section and to the provisions of Article IX, Section 19 of the Comprehensive Zoning Ordinance.

(Code 1968, § 130.120; amend. Ord. No. 90-83, 12-6-83; Am. Ord. No. 40-89, 8-7-89)

#### Sec. 150.106. - Front yard.

There shall be no front yard requirements, except that all buildings shall conform to existing building lines. Whenever a new building is proposed or an addition to an existing building is contemplated, the average front yard shall be observed.

(Code 1968, § 130.121)

Sec. 150.107. - Side yard.

There shall be no side yard requirements.

(Code 1968, § 130.122)

Sec. 150.108. - Rear yard.

There shall be no rear yard requirements.

(Code 1968, § 130.123)

Sec. 150.109. - Height.

There shall be no height requirements.

(Code 1968, § 130.124)

Sec. 150.110. - Minimum floor area.

There shall be no minimum floor area requirements.

(Code 1968, § 130.125)

Secs. 150.111—150.114. - Reserved.

DIVISION 14. - BL LIMITED BUSINESS ZONE

Sec. 150.115. - Permitted uses.

No building, structure or land shall be used, and no building or structure shall hereafter be erected, structurally altered, enlarged, or maintained except for the following uses:

- (A) Single-family dwellings as regulated in the R-5 Residence Zone.
- (B) Two-family and multiple-family dwellings as regulated in the R-5 Residence Zone.
- (C) Buildings owned, leased, or used by municipal, township, county, state, or federal governments.
- (D) Professional offices.
- (E) Banks, building and loans, and lending institutions.
- (F) Retail stores and shops.
- (G) Beauty parlors; barber shops.
- (H) Automobile parking as required for dwellings and other permitted uses, excluding public and private parking lots or parking structures.
- (I) Dry cleaning; self-service laundries.
- (J) Schools.
- (K) Outdoor advertising, as regulated in this chapter.

(L) Drugstores, stationery stores, and florist shops.

(M) Shoe repair shops.

(N) Camera and photographic supply store.

(O) Grocery stores.

(P) Mini warehouses/enclosed storage.

(Code 1968, § 130.130; Ord. No. 40-22, § 2, 12-5-22)

#### Sec. 150.116. - Front yard.

There shall be a front yard of not less than 25 feet measured from the right-of-way line to the front wall of the building. Dwellings will comply with the R-5 Residence Zone standards.

(Code 1968, § 130.131)

#### Sec. 150.117. - Side yard.

There shall be a 5-foot side yard. When an abutting wall or a common wall is provided, no side yard shall be required. Dwellings shall comply with the R-5 Residence Zone standards.

(Code 1968, § 130.132)

#### Sec. 150.118. - Rear yard.

There shall be a rear yard of not less than 25 percent of the depth of the lot, but need not exceed 25 feet.

(Code 1968, § 130.133)

#### Sec. 150.119. - Height.

No building shall exceed 2-½ stories or 35 feet in height. Dwellings shall comply with the R-5 Residence Zone standards.

(Code 1968, § 130.134)

#### Sec. 150.120. - Conditions.

All business establishments shall be retail or service in nature dealing directly with the customer. Eating establishments of a drive-in nature directly to customers waiting in parked motor vehicles shall not be permitted. Parking of trucks as an accessory use when used in the conduct of a permitted business shall be limited to vehicles of not over 1-½ ton capacity, when located within 150 feet of a dwelling. Direct vehicular access to each business establishment shall be separate and distinct from direct access to any other business establishment, and in no case shall there be access to one such establishment from within another.

(Code 1968, § 130.135)

#### Secs. 150.121—150.124. - Reserved.

### DIVISION 15. - BC COMMUNITY BUSINESS ZONE

Sec. 150.125. - Permitted uses.

No building, structure, or land shall be used, and no building or structure shall be hereafter erected, structurally altered, enlarged, or maintained except for the following uses:

- (A) Uses permitted in the BL Limited Business Zone.
- (B) Health centers.
- (C) Restaurants, but not drive-in restaurants, cafes, and lunchrooms.
- (D) Business and professional offices, political offices, union offices, and real estate offices.
- (E) Outdoor advertising, as regulated in this chapter.
- (F) Parking lots, not parking garages.
- (G) Fraternal, philanthropic, civic, and service organizations.
- (H) Gasoline stations, car washes, subject to performance standards set forth in this chapter.
- (I) Photographic studios and offices.
- (J) Grocery stores.
- (K) Bakeries.
- (L) Jewelers; camera shops.
- (M) Fraternities; sororities.
- (N) Hardware stores, furniture stores, paint and glass stores.
- (O) License bureaus; travel services.
- (P) Laundries; dry cleaning establishments.
- (Q) Department stores, sporting goods, and art and music centers.
- (R) Florist shops; candy and ice cream stores.

(Code 1968, § 130.140)

Sec. 150.126. - Front yard.

There shall be a front yard of not less than 25 feet in depth measured from the right-of-way line to the front wall of the building.

(Code 1968, § 130.141)

Sec. 150.127. - Side yard.

There shall not be any minimum side yard requirements except that where a BC Community Business Zone abuts a residence zone no building shall be closer to any existing dwelling than 50 feet.

(Code 1968, § 130.142)

Sec. 150.128. - Rear yard.

There shall be a rear yard of not less than 25 percent of the depth of the lot, but need not exceed 25 feet.

(Code 1968, § 130.143)

Sec. 150.129. - Height.

No building or structure shall exceed three stories or 45 feet in height.

(Code 1968, § 130.144)

Sec. 150.130. - Conditions.

Business establishments shall be of a retail or service nature. Goods shall be sold at retail. Servicing and processing shall be conducted within completely enclosed buildings. Drive-in establishments other than gasoline service stations, offering goods and services directly to customers waiting in parked vehicles shall not be permitted. Whenever a business establishment abuts a residence zone, the area between the business establishment and the residence zone shall be adequately buffered.

(Code 1968, § 130.145)

Secs. 150.131—150.134. - Reserved.

DIVISION 16. - BV VARIETY BUSINESS ZONE

Sec. 150.135. - Permitted uses.

No building, structure, or land shall be used, and no building or structure shall be hereafter erected, structurally altered, enlarged, or maintained except for the following uses:

- (A) Uses permitted in the CB Central Business Zone.
- (B) Uses permitted in the BL Limited Business Zone.
- (C) Uses permitted in the BC Community Business Zone.
- (D) Skating rinks.
- (E) Mobile home sales.
- (F) Feed and fuel stores.
- (G) Amusement enterprises.
- (H) Plumbing and sheet metal shops.
- (I) Gymnasiums.
- (J) Sign painting shops; welding shops.
- (K) Exterminating shops.
- (L) Taxidermists.
- (M) Rentals of garden equipment; garden supplies.
- (N) Shooting gallery.



(O) Window blinds-sales and repair.

(P) Storage of building materials.

(Q) Farm implement establishment for display, hire, sales, and repair, including sales lots.

(R) Animal hospitals, veterinary clinics, or kennels, provided any structure shall be not closer than 200 feet to any dwelling.

(S) Commercial baseball fields, swimming pools, and golf driving ranges.

(T) Greenhouses.

(U) Hotels, motels, and motor hotels.

(V) Outdoor storage of boats and RVs.

(Code 1968, § 130.150; Ord. No. 40-22, § 3, 12-5-22)

#### Sec. 150.136. - Front yard.

There shall be a front yard of not less than 25 feet measured from the right-of-way line to the front wall of the building.

(Code 1968, § 130.151)

#### Sec. 150.137. - Side yard.

There shall not be any minimum side yard requirements except that where a BV Variety Business Zone abuts a residence zone no building shall be closer to any existing dwelling than 50 feet.

(Code 1968, § 130.152)

#### Sec. 150.138. - Rear yard.

There shall be a rear yard of not less than 25 percent of the depth of the lot, but need not exceed 25 feet.

(Code 1968, § 130.153)

#### Sec. 150.139. - Height.

No building or structure shall exceed three stories or 45 feet in height.

(Code 1968, § 130.154)

#### Sec. 150.140. - Floor area.

There shall be no minimum floor area requirements.

(Code 1968, § 130.155)

#### Secs. 150.141—150.144. - Reserved.

### DIVISION 17. - MT MAJOR TRADING ZONE

Sec. 150.145. - General.

The MT Major Trading Zone shall be reserved for shopping centers which, for the purpose of this chapter, shall be defined as a group of stores functioning as a unit, planned and designed on a site not less than ten acres in area. All uses permitted in the BV Variety Business Zone shall be permitted in the MT Major Trading Zone.

(Code 1968, § 130.160; amend. Ord. No. 90-83, 12-6-83)

Sec. 150.146. - Approval procedure.

- (A) An individual, group of individuals, or corporation wishing to obtain approval for a shopping center shall submit to the commission, together with an application for zone change, copies of the center's design and layout, a market analysis, a financial statement, a construction timetable, and a traffic survey-all prepared by a competent firm.
- (B) Upon filing of the application and material, the commission shall proceed with the review and analysis of the proposal, giving special attention to the adequacy of all throughfares to carry additional traffic generated by the shopping center; the size, layout, and capacity of areas proposed for vehicular access, parking, loading, and unloading; the relation of the center to access streets; the location, size, and use of buildings and structures; the landscaping of areas to harmonize with adjoining neighborhoods; the adequacy of storm and sanitary sewers; the unity and organization of buildings and service facilities.
- (C) On the basis of the material filed, the commission shall determine whether or not the project shall be approved. If the requested change is approved it shall be subject to the submission and approval of a final development plan to the commission, which plan shall conform with all performance standards set forth in this chapter. The plan shall be submitted within one calendar year from the date of rezoning, otherwise the rezoning shall be considered null and void. No permit shall be issued for the construction of a shopping center until the commission has reviewed and approved the final plan and copy of the same is certified to the developer.

(Code 1968, § 130.161)

Sec. 150.147. - Front yard.

There shall be a front yard of not less than 50 feet measured from the right-of-way line to the front wall of the building.

(Code 1968, § 130.162)

Sec. 150.148. - Side yard.

There shall be no minimum side yard requirements except that no building shall be closer than 50 feet to any residence zone or existing dwelling.

(Code 1968, § 130.163)

Sec. 150.149. - Rear yard.

There shall be no minimum rear yard requirements except that no building shall be closer than 50 feet to any residence zone or existing dwelling.

(Code 1968, § 130.164)

Sec. 150.150. - Minimum floor area; height.

There shall be no minimum floor area or height requirements.

(Code 1968, § 130.165)

Secs. 150.151—150.154. - Reserved.

## DIVISION 18. - IL LIMITED INDUSTRIAL ZONE

Sec. 150.155. - General.

The IL Limited Industrial Zone is created to include industries whose manufacturing operations are carried on within enclosed buildings.

(Code 1968, § 130.170)

Sec. 150.156. - Permitted uses.

No building, structure, or land shall be used, and no building or structure shall be hereafter erected, structurally altered, enlarged, or maintained except for the following uses:

- (A) (1) Uses permitted on all business zones.
- (2) Offices provided for employees or guests, attached or detached, which are incidental to the industrial operation. Service facilities for the office shall be totally within a building and shall not display any exterior advertising.
- (B) Farm buildings, structures, and uses.
- (C) Public utilities; private utilities.
- (D) Communication systems and appurtenances.
- (E) Mass transportation terminals, not including truck terminals.
- (F) Recreation area established for the convenience and use of employees of a specific industry.
- (G) Temporary buildings and structures incidental to the development of land or to the erection of the same, provided the buildings and structures shall be removed at the termination of development or construction.
- (H) Radio and television towers, including studios and business offices.
- (I) Assembly operation for premanufactured parts.
- (J) Manufacture of nonalcoholic beverages or bottling of alcoholic and nonalcoholic beverages.
- (K) Office machinery, electrical and mechanical.
- (L) Manufacture of portable household appliances; electrical tools; electrical motors; and electric and neon signs.
- (M) Cloth products manufactured from finished cloth.
- (N) Milk processing, bottling, and manufacturing.
- (O) Jewelry manufacturing; engraving.
- (P) Food processing and packaging of products previously processed elsewhere.

- (Q) Leather products manufactured from finished leather.
- (R) Manufacturing of pharmaceuticals, medicines, and cosmetics.
- (S) Manufacturing of optical goods; recording instruments.
- (T) Warehouse and distribution operation, completely enclosed.
- (U) Upholstering shops; manufacturing of mattresses.
- (V) Canning, bottling, processing, and packing of food.
- (W) Manufacturing of cans and containers, excluding glass containers.
- (X) Cabinet manufacturing.
- (Y) Manufacture and assembly of communication equipment.
- (Z) Electroplating operations.
- (AA) Manufacturing of margarine products.
- (BB) Manufacturing of office equipment.
- (CC) Manufacturing of malt products.
- (DD) Machine, welding, tool, and die shops.
- (EE) Vegetative composting provided the operation is conducted within enclosed buildings and structures and in compliance with all state and federal requirements.

(Code 1968, § 130.171; Ord. No. 21-93, § 3, 7-12-93)

#### Sec. 150.157. - Front yard.

See performance standards, section 150.162 of this chapter.

(Code 1968, § 130.172)

#### Sec. 150.158. - Side yard.

See performance standards, section 150.162 of this chapter.

(Code 1968, § 130.172)

#### Sec. 150.159. - Rear yard.

There shall be provided a rear yard of not less than 30 feet in depth, unless abutting a railroad right-of-way, in which case the building shall be permitted within five feet of the right-of-way.

(Code 1968, § 130.174)

#### Sec. 150.160. - Residential setbacks.

No building or structure shall be closer to a dwelling than 100 feet.

(Code 1968, § 130.175)

#### Sec. 150.161. - Minimum floor area.

There shall be no minimum floor area requirements.

(Code 1968, § 130.176)

Sec. 150.162. - Performance standards.

- (A) General. No permit shall be issued for the erection, relocation, or expansion of any industrial use or building unless the same complies with the performance standards set forth herein.
- (B) Storage. All materials or products shall be kept within completely enclosed buildings or screened by a solid wall, fence, evergreen hedge, or trees of a minimum height of six feet and a maximum height of eight feet. Storage of material within the enclosure shall not exceed the height of the wall, fence, or vegetative screen. The total area devoted to outside storage shall not exceed 25 percent of the total gross area of enclosed structures.
- (C) Setbacks.
  - (1) No part of any structure (excluding an eave or cornice overhang not to exceed four feet, or a canopy at an entrance) shall be built closer than 120 feet to an interstate highway; 100 feet to a major state or county highway; 80 feet to a secondary highway; and 65 feet to any other street or highway.
  - (2) Where a front yard is located across a street and opposite to a dwelling or to a residence zone, a front yard of 100 feet shall be provided, Where a side yard abuts a dwelling or business zone a side yard of 50 feet shall be provided.
- (D) Screening. Where a front or rear yard abuts a dwelling or business zone, a masonry wall, fence, or compact hedge or row of shrubbery or evergreen trees shall be provided along or within 20 feet of the zone lot line. The screening shall be not less than six feet in height.
- (E) Height. Along any front, side, or rear yard adjacent to a residence or business zone, the maximum vertical height shall be 25 feet. For each foot of height in excess of 25 feet, to an absolute maximum of 35 feet, one additional foot shall be added to the adjacent setback(s).
- (F) Emission. The emission of smoke, particulate matter, and noxious and toxic gases shall be subject to the regulations of the state board of health or any and all air pollution control laws, ordinances, or statutes passed before and after the enactment of this chapter. The storage, utilization, or manufacture of products or materials shall conform with the standards prescribed by the National Fire Protection Association. The storing, utilizing, or manufacturing shall not produce a hazard or endanger the public health, safety, and welfare of the people of the county.
- (G) Discharge. No use shall accumulate or discharge any waste matter, whether liquid or solid, in violation of applicable standards set forth by the state board of health, the state stream pollution control board, or any pertinent local governmental agency. Sewage disposal plans and industrial waste treatment shall be approved by the stream pollution control board.
- (H) Sound. No use shall produce sound in such manner as to endanger the public health, safety, and welfare of the people of the county. Sound shall be muffled so as not to become detrimental or a nuisance due to pressure, amount, intermittence, beat, frequency, shrillness, or vibration.
- (I) Glare and heat. Any use established after the enactment of this chapter, shall be operated so as to comply with performance standards governing glare and heat, as set forth by the state.
- (J) Fire and explosives. Storage, utilization, or manufacture of products and materials shall conform to the standards prescribed by the National Fire Protection Association.

(K) Radiation. Any use shall conform to the Atomic Energy Commission standards for protection against radiation.

Also, the electromagnetic standards of the Federal Communications Commission shall be complied with.

(Code 1968, § 130.177; Ord. No. 40-22, § 4, 12-5-22)

Secs. 150.163, 150.164. - Reserved.

## DIVISION 19. - II INTENSE INDUSTRIAL ZONE

Sec. 150.165. - General.

The II intense industrial zone is created to include heavy manufacturing uses.

(Code 1968, § 130.180)

Sec. 150.166. - Permitted uses.

No building, structure, or land shall be used, and no building or structure shall be hereafter erected, structurally altered, enlarged, or maintained except for the following uses:

- (A) Uses permitted in the IL limited industrial zone.
- (B) Manufacturing of glass containers.
- (C) Manufacturing of cement, lime, and gypsum.
- (D) Open hearths; blast furnaces.
- (E) Coke ovens; creosote manufacturing.
- (F) Fat rendering; fertilizer manufacturing.
- (G) Slaughtering and food processing.
- (H) Manufacturing of explosives, matches, and fireworks.
- (I) Storage of petroleum products.
- (J) Manufacturing of chemicals, detergents, and soaps.
- (K) Foundries.
- (L) Manufacturing of railroad equipment; repair and services.
- (M) Utility pole yards and pipe yards.
- (N) Motor truck terminals subject to the performance standards set forth in this chapter.
- (O) Paper box and paper products manufactured from finished paper.
- (P) Vegetative composting provided the operation is conducted in compliance with all state and federal requirements.

(Code 1968, § 130.181; Ord. No. 21-93, § 4, 7-12-93)

Sec. 150.167. - Performance standards.

The same performance standards set forth in section 150.162(B) through (K) shall apply to the II intense industrial zone.

(Code 1968, § 130.182)

Secs. 150.168, 150.169. - Reserved.

## DIVISION 20. - IP INDUSTRIAL PARK ZONE

Sec. 150.170. - General.

The IP Industrial Park Zone is created so as to include in the industrial system such developments as industrial subdivisions not less than 25 acres in area, developed in accordance with a comprehensive plan approved by the commission.

(Code 1968, § 130.183)

Sec. 150.171. - The plan.

Any person, organization, or corporation contemplating the development of an industrial park zone or seeking a change in zone for the purpose of the development of the zone, shall file a complete site plan, accurate and to scale, showing how the project is to be carried out. Attractiveness, compatibility, and flexibility of design shall be fundamental areas studied by the commission in making its determination. The plan shall include street design, building arrangement, off-street parking and loading, accessory uses and facilities, and topography and setback requirements. The plan shall contain maximum building coverage of not more than 35 percent of the total area of the lot. The developer of an industrial park shall provide a system of sanitary sewers and a system of municipal or privately owned water supply. Should the proponents of an industrial park be seeking departures from applicable provisions of this chapter they shall submit reasons justifying the departures.

(Code 1968, § 130.184)

Sec. 150.172. - Procedure.

The same procedure as for attaining a proposed zone change shall be followed by the commission in making a determination as to whether or not an application for industrial park zoning should be favorably recommended.

(Code 1968, § 130.185)

Sec. 150.173. - Permitted uses.

Uses permitted in all business and industrial zones.

(Ord. No. 40-22, § 5, 12-5-22)

Sec. 150.174. - Performance standards.

The same performance standards set forth in section 150.162 shall apply to the IP Industrial Park Zone in addition to any applicable plat restrictions.

(Ord. No. 40-22, § 5, 12-5-22)

## DIVISION 21. - FLOOD AREAS

### Sec. 150.175. - General.

Provisions regarding flood plain management are contained in Chapter 159.

### Secs. 150.176—150.179. - Reserved.

## DIVISION 22. - HPD HISTORIC PRESERVATION ZONE

### Sec. 150.180. - Purpose.

The purpose of HPD Historic Preservation Zone is to protect areas, sites, locations, structures, and buildings which represent historical meaning to the city and are closely related to the city's heritage and cultural tradition.

(Ord. No. 234-76, 12-6-76)

### Sec. 150.181. - Permitted uses.

No building, structure, or land shall be used and no building shall be hereafter erected, structurally or architecturally altered, enlarged, or maintained, except for the following uses.

- (A) Buildings and structures of intrinsic historical significance such as cabins, covered bridges, churches, public buildings, transportation terminals, museums, and similar uses when the same are historically meaningful.
- (B) Signs which are in keeping with the nature and character of a historical building or site.
- (C) Museums, public or non-profit relating to the history and character of a specific historic building or site, or the city libraries.
- (D) Retail stores and service establishments that will attract and service local residents or tourists and will not adversely affect the character of the zone or that of adjoining residence areas.
- (E) Conditional uses not listed herein but considered to be germane to the HPD Zone, as determined by the board of zoning appeals.
- (F) Public utilities, public parks and recreational facilities.
- (G) Single-family or multiple-family dwellings.

(Ord. No. 234-76, 12-6-76)

### Sec. 150.182. - Permits.

- (A) No improvement location permit shall be issued for any permitted use by the administrative zoning officer until and unless a favorable report has been received from the historic preservation and rehabilitation commission established by the common council of the city by ordinance.
- (B) In establishing or expanding the HPD Historical Preservation Zone the Delaware-Muncie Metropolitan Plan Commission may be guided by recommendations advanced by the historic preservation and rehabilitation



commission. Where change in the exterior appearance of a building or structure is contemplated, no permit shall be issued by the administrative zoning officer until clearance has been obtained from the historic preservation and rehabilitation commission.

(Ord. No. 234-76, 12-6-76)

Secs. 150.183, 150.184. - Reserved.

#### DIVISION 23. - AD AIRPORT DEVELOPMENT ZONE

Sec. 150.185. - General.

The AD Airport Development Zone is created with the purpose of coordinating the location, size, and configuration of existing airports in the county, with patterns of residential growth and other major land uses as well as with other transportation facilities and services; to make the airport environs compatible with airport operations; to make physical development and land use of airports compatible with existing and proposed patterns of land use; to regulate the height of structures or natural growth erected, altered, allowed to grow, or maintained in any zone established by the Federal Aviation Agency.

(Code 1968, § 130.200)

Sec. 150.186. - Zone map.

In addition to the official zone maps for the city, typical airport maps are made a part of this chapter. The maps show the boundaries of the airports, instrument, noninstrument, VFR transition, horizontal, and conical zones; airport reference points and elevations.

(Code 1968, § 130.201)

Sec. 150.187. - Permitted uses.

No building, structure, or land shall be used, and no building or structure shall be hereafter erected, structurally altered, enlarged, or maintained except for the following uses:

- (A) Landing and takeoff runways.
- (B) Landing strips.
- (C) Hangars.
- (D) Taxi ways and parking ramps.
- (E) Airplane repair shops.
- (F) Restaurant facilities related to airport operations.
- (G) Airplane fuel storage.
- (H) Parking as required in this chapter.
- (I) Personnel and ticket offices.
- (J) Towers for control, landings, and takeoffs.

- (K) Sports assembly, not in airport proper.
- (L) Community parks, not in airport proper.
- (M) Farming.
- (N) Entertainment assembly, not in airport proper.
- (O) Communication, transportation, and utilities.
- (P) Motor vehicle transportation.
- (Q) Ambulance and fire protection.
- (R) Hotels; overnight accommodations.
- (S) Limited industrial operations compatible to the operation of airports when approved by the commission.  
Application for these uses shall be made according to established procedures and shall be subject to public hearing. Prior to approving any light and limited industrial use, the commission shall conclusively determine that the proposed use shall not constitute a hazard to airport traffic and to surrounding area.

(Code 1968, § 130.202)

Sec. 150.188. - Uses totally prohibited.

The following uses shall be prohibited in the AD Airport Development Zone and shall not be permitted under any conditions or circumstances:

- (A) No use may be made of land within an instrument, noninstrument, VFR transition, horizontal or conical zone as established by the Federal Aviation Agency for each airport in such manner as to create electrical interference with radio communication between the airports and aircrafts, make it difficult for flyers to distinguish between airport lights and others, result in glare in the eyes of flyers using the airport, impair visibility in the vicinity of the airport, or otherwise endanger the landing, takeoff, or maneuvering of aircraft.
- (B) No structure or tree shall be erected, altered, allowed to grow, or be maintained in any instrument approach or noninstrument approach, VFR transition approach, horizontal or conical zone as established by the Federal Aviation Agency to a height in excess of 35 feet, or to a height that may be in conflict with the standards of the Federal Aviation Agency. Height limitations shall be governed, whenever necessary, by standards established for the instrument approach zone, the noninstrument approach zone, horizontal zone, conical zone, VFR transition zone as established by the Federal Aviation Agency.

(Code 1968, § 130.203)

Sec. 150.189. - Marking and lighting.

The owner of any tree or structure which at the time of the enactment of this chapter may be in conflict with the height provisions, shall be required to permit the installation, operation, and maintenance thereon of the markers and lights as shall be deemed necessary to indicate to the operators of aircraft in the vicinity of the airport the presence of the airport hazards.

(Code 1968, § 130.204)

Sec. 150.190. - Existing uses.

No permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming use, structure, or tree to be made or become higher, or become a greater hazard to air navigation than it was on the date of the enactment of this chapter or any amendments thereto.

(Code 1968, § 130.205)

Secs. 150.191—150.194. - Reserved.

#### DIVISION 24. - SSS STUDENT SOCIAL SERVICE ZONE

Sec. 150.195. - Permitted uses.

- (A) The activities of fraternities are often disquieting to family life and may be carried on at hours that damage the peace, quiet, and welfare of residential areas. Therefore, it is appropriate to zone land for such uses and to require that such damaging activities catering to, or originating from, fraternity groups be made illegal in other residential areas.

(Ord. No. 74-88, 12-15-88)

- (B) No building, structure, or land shall be used, and no building or land shall hereafter be erected, structurally altered, enlarged, or maintained except for the following uses:

- (1) Fraternities; sororities.
- (2) Single-family dwellings as permitted and regulated in the R-5 Residence Zone.
- (3) Two-family dwellings as permitted and regulated in the R-5 Residence District Zone.
- (4) Buildings and structures owned and operated by a college, university, or institution of higher learning.

(Code 1968, § 130.210)

Sec. 150.196. - Lot width and area.

The width of a lot shall be not less than 100 feet. The area of the lot shall be not less than one acre.

(Code 1968, § 130.211)

Sec. 150.197. - Front yard.

There shall be a front yard of not less than 70 feet.

(Code 1968, § 130.212)

Sec. 150.198. - Side yard.

There shall be two side yards, each 25 feet in width; however, no building shall be closer than 50 feet to any dwelling, school, church, or institution for human care. Side yards shall be measured at right angles to the side lot lines.

(Code 1968, § 130.213)

Sec. 150.199. - Rear yard.

There shall be a rear yard of not less than 50 feet in depth measured at right angles to the rear lot line.

(Code 1968, § 130.214)

Sec. 150.200. - Height.

No building or structure shall exceed three stories.

(Code 1968, § 130.215)

Sec. 150.201. - Minimum floor area.

The minimum floor area of a residence shall be as regulated in the R-5 Residence Zone.

(Code 1968, § 150.216)

Secs. 150.202—150.204. - Reserved.

DIVISION 25. - MHR MOBILE HOME RESIDENCE ZONE

Sec. 150.205. - General

- (A) Mobile homes are increasingly becoming a part of the urban scene, therefore it has become necessary to establish a zone for them containing basic and uniform regulations and performance standards in order to protect the safety, health, and welfare of their occupants as well the total community.
- (B) A mobile home park must be sufficient to accommodate the desired number of units, parking area for motor vehicles, access roads and walkways, and recreational facilities-all as required in §§ 150.205 through 150.207 of this chapter. Among the features to be considered in the planning of mobile home parks shall be; size, shape, topography, land costs, local codes and ordinances; uses of adjoining properties, availability of water supply, drainage, and sewage disposal. Prior to filing an application for a MHR Mobile Home Residence Zone the interested persons shall consult with local and state health authorities to determine the suitability of the site.

(Code 1968, § 130.220)

- (C) Permitted uses are as follows.

- (1) Mobile Home Parks as defined and regulated in this chapter.
- (2) Signs as regulated in this chapter.

(Ord. No. 75-85, 1-6-86)

Sec. 150.206. - Standards.

The following standards which shall be over and above those which may be required by other local or state agencies, shall be complied with in any plan, application, or request for a change in zone to permit a mobile home park:

- (A) Roads, parking. All streets intended to be dedicated to the public shall be constructed and designed in

compliance with the standards set forth in the subdivision regulations. All streets intended to be privately owned and maintained shall be constructed and designed in compliance with the standards specified herein.

- (1) All internal streets shall have a minimum width of 24 feet. If parking is prohibited on both sides of an internal street, the width may be reduced to 18 feet. Internal streets shall be 2-way streets if they are 500 feet or less in length or serve less than 25 mobile homes. They shall be one-way streets regardless of length if they provide access to mobile homes on one side of the street only. Dead-end streets shall be provided with a turn-around having at least 60 feet in diameter.
  - (2) Entrance streets connecting with internal streets shall be not less than 34 feet in width if parking is permitted on both sides. If parking is permitted on one side only, such a street may have a width of 27 feet, provided the entrance street is more than 100 feet in length and does not provide access to abutting mobile home lots within the first 100 feet.
  - (3) All streets shall intersect at right angles. Street intersections should be at least 150 feet apart and the intersection of more than two streets at one point shall be avoided.
  - (4) Grades shall be less than eight percent. Short runs up to 12 percent could be used if necessary. All streets shall be provided with a smooth, hard, and dense surface properly drained and according to the most recent city or county specifications.
  - (5) To reduce traffic hazards, parking or individual parking spaces on each lot shall be provided. They shall be provided a ratio of seven spaces for every four mobile home lots. Every parking space shall be located within 200 feet of the mobile home it is intended to serve.
- (B) Walkways. Where traffic is expected to be heavy, such as in the proximity of recreation areas, management, or service areas, 3-½ foot common walks shall be provided on each mobile home lot so as to connect it with the street. The walk shall have a minimum width of two feet.
- (C) Lots. Every lot in a mobile home park shall contain 3,500 square feet in area to avoid overcrowding and in order that modern mobile homes and appurtenances can be properly accommodated. There shall be 15-foot clearance between mobile homes, including mobile homes placed end to end. No mobile home shall be closer to any park property line than 25 feet; 30 feet to any street or right-of-way; 15 feet to any recreational area. In determining clearances and open space, accessory structures having a horizontal area in excess of 25 square feet located within ten feet of a window shall be considered as a part of the mobile home. Lots shall be at least eight feet in width with an extra two feet if they serve as walks. The on-lot parking space served by a driveway shall be nine feet wide and 20 feet long.
- (D) Recreation. Every mobile home park shall provide recreation areas in a ratio of at least 100 square feet of space for each mobile home lot. No outdoor recreation area, however, shall be less than 2,500 square feet. Recreation areas shall be located on sites substantially free from traffic interference and hazards. The same shall be properly buffered with trees, evergreens, or other vegetative growth.
- (E) Service buildings. There shall be a service building on every mobile home park to accommodate laundry and storage facilities whose construction shall conform to local and state building regulations. The building shall be of permanent construction and shall have a weather-resistant exterior finish of moisture-resistant material. Floors shall be impervious to water and sloped to drains connected to a sewerage system.
- (F) Sewerage, water.
- (1) No mobile home park shall be permitted unless the same shall be connected to existing sewerage facilities or unless it provides a sewage disposal plant which shall adequately serve the proposed park and any

future extensions of it. Any sewage disposal plant shall have the approval of the board of health.

- (2) No mobile home park shall be permitted unless the same is connected to a public water supply system or shall provide its own adequate centralized water facility acceptable to the board of health. Written certification from the agency shall be furnished to the commission. The sanitary sewer system and the storm sewer system shall be separate and shall be sized and designed according to standard engineering practice. Storm sewers shall provide a minimum velocity of two and one-half (2.5) per second when flowing full. Written certification from an appropriate body or agency shall be furnished to the Delaware-Muncie Metropolitan Plan Commission that the storm sewers are installed as such or that the drainage system has been approved.
- (G) Pest control. Mobile home parks shall establish and operate under the most rigid practices to control mosquitoes, flies, roaches, rats, fleas, ticks, chiggers, and other pests.
- (H) Refuse collection. Mobile homes shall each be equipped with a ten-gallon container. The container shall be regularly sprayed with suitable insecticides to reduce odors and to eliminate fly incidence. All refuse containing garbage shall be collected at least once weekly.
- (I) Electrical distribution.
  - (1) Electrical wiring, equipment, and appurtenances shall be installed and maintained in accordance with applicable permits, codes, and regulations. Where the codes do not exist the provisions of the national electrical code shall control.
  - (2) All streets, walkways, buildings, and other facilities shall be adequately lighted. An average illumination level of at least six-tenths footcandle and a minimum illumination level of one-tenth footcandle shall be maintained on all streets. Potentially hazardous locations such as intersections, steps or ramps shall be illuminated with a minimum level of footcandle.

(Code 1968, § 130.221; Ord. No. 75-85, 1-6-86)

#### Sec. 150.207. - Permits.

It shall be unlawful for any person to construct, alter, or extend any mobile home park unless he has been issued a zoning permit by the administrative zoning officer. Applications for the permits shall be filed with the officer and shall contain the following information: name and address of the applicant; location and legal description of the property; complete engineering plans and specifications for the proposed park. Engineering plans shall include the area and dimensions of tract; number, location and size of all mobile home lots; location and width of all roadways and walkways; location of service buildings and other proposed buildings; location of water, plans, and specifications for the water supply system, refuse, drainage, and sewage disposal systems; plans and specifications for buildings constructed or to be constructed within the mobile home park; and the location and details of the lighting and electrical systems.

Copies of all information supplied to the administrative zoning officer for obtaining a permit shall also be filed with the Delaware-Muncie Metropolitan Plan Commission. No zoning permit shall be issued by the administrative zoning officer for the installation of a mobile home park until a zone change has been favorably completed and all the requirements of §§ 150.205 through 150.207 of this chapter have been met. Any extension of an existing park which was not a part of the original plan shall meet all the requirements of this chapter and a permit shall be obtained from the officer based on the number of additional lots and the per-lot fee as stated in this code. The zoning permit for the mobile home park shall not be

considered as a permit for common buildings constructed in conjunction with the park. All recreation buildings, service buildings, and other buildings housing common facilities shall be considered commercial buildings for the purpose of obtaining all applicable permits.

(Code 1968, § 130.222; Ord. No. 75-85, 1-6-86)

Secs. 150.208, 150.209. - Reserved.

## DIVISION 26. - PERFORMANCE STANDARDS

Sec. 150.210. - General.

The following standards shall be minimum requirements for uses permitted in this chapter. Because of the special character of the central business zone, the parking and loading facilities shall be developed as a part of a general plan based on location, system of streets and highways, and transit. The facilities may be developed by financial interests which may lease them to parking operators; by the city and operated by it or by private operators; by a group of merchants or investors; or by a single owner or partnership.

(Code 1968, § 130.230)

Sec. 150.211. - Parking and loading.

- (A) Purpose. In order to reduce congestion in public streets and highways and to provide increased safety for the general public, every use of land shall be suited with on-site parking, loading and unloading facilities as required by this section.
- (B) Definition. For the purpose of this chapter, a "parking space for one vehicle" shall consist of not less than 162 square feet of area, exclusive of drives, aisles, and other necessary means of access, with free access from a public way. Each required parking space shall be designed so that any motor vehicle may proceed to and from said space without requiring the moving of any other vehicle or by passing over any other parking space, except where the parking area is limited to employees.
- (C) Standards. No new building or structure shall be constructed or used in whole or in part, and no building or structure, or part thereof, shall be altered, enlarged, reconstructed or used, and no land shall be used unless off-street parking is provided in accordance with the following conditions:
  - (1) Off-street parking facilities shall be opaquely screened from any residence zone, or any one- or two-family dwelling, with a suitable buffer or fence not less than five feet in height.
  - (2) All land used for off-street parking, and all driveways thereto, shall be paved or surfaced, for the duration of its use, in accordance with the most recent specifications of the city or county engineer to avoid nuisances of dust and erosion and shall be drained in a manner which shall meet the minimum required in such specifications.
  - (3) Any light used to illuminate land used for off-street parking or driveways thereto shall be installed and maintained so as to reflect the light away from any Residence Zone and any one-or two-family dwelling.
  - (4) Whenever the intensity of use of any building, structure or land shall be increased through the addition of dwelling units, floor area, beds, seating capacity or other unit of measurement, parking and loading facilities

as required in the section shall be provided, but only to the extent of such increase.

- (5) All off-street parking and loading facilities shall be designed with appropriate means of vehicular access to a public street or alley in a manner which will least interfere with traffic movement. No off-street parking space shall be designed to require backing of a vehicle into a public street.
- (6) All parking lots must have parking spaces designated for individuals with disabilities. The International Symbol of Accessibility must be clearly visible from the entrance of the lot and should designate each spot. The sign is to be located above the grade and placed so that it is visible when a vehicle is parked in the space.
  - a. At least two percent of all parking spaces in each lot must be accessible, in accordance with the standards of this paragraph. (See Table C-6) These spaces are to be on the shortest possible accessible route to an accessible building entrance. The parking spaces must be located on level terrain with surface slopes that do not exceed two percent in all directions.
  - b. Access aisles must be provided that have a minimum width of five feet and length of 20 feet, adjacent and parallel to the vehicle pull-up space. The design and layout of these spaces will follow guidelines indicated by Americans with Disabilities Act parking requirements diagram in the design manual.
  - c. For every six accessible spaces, one space is to be marked for vans. Van parking spaces must have adequate vertical as well as horizontal clearance. This affects parking garage ceilings and potential obstacles such as tree limbs. A minimum height of 98 inches and width of 16 feet is required to accommodate both parking space and an access aisle.

Table C-6  
Minimum Number of Accessible Parking Spaces  
ADA Standards for Accessible Design 4.1.2(5)

| Total Number of Parking Spaces Provided (per lot) | Total Minimum Number of Accessible Parking Spaces (60" & 96" aisles) | Van Accessible Parking Space with min. 98" wide access aisle | Accessible Parking Spaces with min. 60" wide access aisle |
|---------------------------------------------------|----------------------------------------------------------------------|--------------------------------------------------------------|-----------------------------------------------------------|
|                                                   | <i>Column A</i>                                                      |                                                              |                                                           |
| 1 to 25                                           | 1                                                                    | 1                                                            | 0                                                         |
| 26 to 50                                          | 2                                                                    | 1                                                            | 1                                                         |
| 51 to 75                                          | 3                                                                    | 1                                                            | 2                                                         |
| 76 to 100                                         | 4                                                                    | 1                                                            | 3                                                         |
| 101 to 150                                        | 5                                                                    | 1                                                            | 4                                                         |
| 151 to 200                                        | 6                                                                    | 1                                                            | 5                                                         |
|                                                   |                                                                      |                                                              |                                                           |



|               |                                          |                  |                   |
|---------------|------------------------------------------|------------------|-------------------|
| 201 to 300    | 7                                        | 1                | 6                 |
| 301 to 400    | 8                                        | 1                | 7                 |
| 401 to 500    | 9                                        | 2                | 7                 |
| 501 to 1000   | 2% of total parking provided in each lot | 1/8 of Column A* | 7/8 of Column A** |
| 1001 and over | 20 plus 1 for each 100 over 1000         | 1/8 of Column A* | 7/8 of Column A** |

\* one out of every 8 accessible spaces

\*\* 7 out of every 8 accessible parking spaces

- (7) Parking spaces and maneuvering aisles shall have the minimum dimensions set forth in the following table. The parking angle shall be measured between the centerline of the parking space and the centerline of the aisle.

Minimum Parking Space and Aisle  
Dimensions for Parking Areas

| Angle of Parking (Degrees) | Width of Parking Space (Feet) | Length of Parking Space (Feet) | Width of Maneuvering Aisle 1-Way (Feet) | Width of Maneuvering Aisle 2-Way (Feet) |
|----------------------------|-------------------------------|--------------------------------|-----------------------------------------|-----------------------------------------|
| 76 to 90                   | 9                             | 18                             | 24                                      | 24                                      |
| 61 to 75                   | 9                             | 18                             | 18                                      | 24                                      |
| 46 to 60                   | 9                             | 18                             | 17                                      | 24                                      |
| 00 to 45                   | 8                             | 22                             | 12                                      | 24                                      |

- (8) For parking areas containing 20 or more spaces, up to 15 percent of the required parking spaces may be landbanked as green space at the discretion of the owner/developer.
- (9) Off-street parking areas may be located in any front, side or rear yard area provided the following green belts are maintained:

Ten feet along any public roadway measured from the property line; and five feet along any side and/or rear property line adjacent to or abutting a residence zone.

No off-street parking area shall extend into any proposed right-of-way as set forth in the official thoroughfare plan. Whenever any green belt and/or landscaped area, provided to meet the requirements of this section, is removed by a public road widening project, the property from which the green belt or landscaped area has been removed shall still be considered in compliance with this section.

- (D) Off-street loading and unloading. There shall be provided and maintained space for vehicles standing, loading, and unloading on the same premises with every building, structure, or part thereof hereafter erected, established, or enlarged and occupied by manufacturing, storage, warehouse, goods display, retail store, wholesale store, market, hotel, laundry, dry cleaning, and uses involving the receipt and distribution by vehicles of material or merchandise, as follows: 12-foot by 35-foot loading space with fourteen-foot height clearance for every 20,000 square feet or fraction thereof of floor area in excess of 6,000 square feet of floor area used for the above mentioned purposes, or for every 20,000 square feet or fraction thereof of land used. This requirement shall be separate and apart from any and all other off-street parking requirements.
- (E) Off-street parking. The following off-street parking requirements shall be provided and maintained in conformity with the provisions of this chapter:

|     |                   |                                                                                                                                                                                                             |
|-----|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1) | Airport           | One parking space for every two employees plus one parking space for every four seats.                                                                                                                      |
| (2) | Apparel shop      | One parking space for each 303 square feet of gross floor area (3.3/1,000 GFA)                                                                                                                              |
| (3) | Apartments        | Two parking spaces for each dwelling unit                                                                                                                                                                   |
| (4) | Apartment hotel   | One parking hotel space for each sleeping room                                                                                                                                                              |
| (5) | Auditorium        | One parking space for each four seats based on the maximum seating capacity, including fixed and moveable seats                                                                                             |
| (6) | Auto sales        | One parking space for each 1,000 square feet used for retailing                                                                                                                                             |
| (7) | Auto sales/repair | One parking space for each 400 square feet of gross floor area (2.5/1000 GFA) plus two and one-half (2.5) spaces for each 1,000 square feet of external display area plus three spaces for each service bay |
| (8) | Bakery            | One parking space for each 303 square feet of gross floor area (3.3/1000 GFA)                                                                                                                               |

|      |                  |                                                                                                                                           |
|------|------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| (9)  | Bank             | One parking space for each 400 square feet of floor area                                                                                  |
| (10) | Barber shop      | Two parking spaces for each treatment station, but not less than four spaces for each 1,000 square feet of gross floor area (4/1,000 GFA) |
| (11) | Beauty parlor    | Two parking spaces for each treatment station, but not less than four spaces for each 1,000 square feet of gross floor area (4/1,000 GFA) |
| (12) | Billiard room    | Parking spaces equal in number to 30 percent of the capacity of persons                                                                   |
| (13) | Bowling alley    | Three parking spaces for each lane, plus one parking space for every six spectator seats.                                                 |
| (14) | Bus station      | One parking space for each ten seats in waiting room, plus one parking space for each two employees of connected retail use               |
| (15) | Boarding house   | One parking space for each sleeping room                                                                                                  |
| (16) | Cemetery         | One parking space for each two employees                                                                                                  |
| (17) | Clinic           | One parking space for each two employees plus three parking spaces for each doctor.                                                       |
| (18) | Church           | One parking space for each six seats in main auditorium.                                                                                  |
| (19) | Club house       | One parking space for each two sleeping rooms.                                                                                            |
| (20) | Cold storage     | One parking space for each 400 square feet of gross floor area (2.5/1,000 GFA)                                                            |
| (21) | Community center | Parking spaces equal in number to 30 percent of the capacity in persons                                                                   |
|      |                  |                                                                                                                                           |

|      |                              |                                                                                                                                             |
|------|------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| (22) | Country club                 | One parking space for each two employees, plus three parking spaces for each golf hole                                                      |
| (23) | Convalescent or nursing home | One parking space for each eight beds, plus one parking space for each two employees                                                        |
| (24) | Dancing academy              | One parking space for each 250 square feet of gross floor area (4/1000 GFA)                                                                 |
| (25) | Delicatessen                 | One parking space for each 303 square feet of gross floor area (3.3/1000 GFA)                                                               |
| (26) | Department store             | One parking space for each 303 square feet of gross floor area (3.3/1000 GFA)                                                               |
| (27) | Dormitory                    | One parking space for each two sleeping rooms.                                                                                              |
| (28) | Dormitory student            | One parking space (student) for each three dormitory residents plus one parking space for the supervisor.                                   |
| (29) | Dressmaking                  | One parking space for each 417 square feet of gross floor area (2.4/1000 GFA)                                                               |
| (30) | Dry cleaning                 | One parking space for each 417 square feet of gross floor area (2.4/1000 GFA)                                                               |
| (31) | Drugstore                    | One parking space for each 250 square feet of gross floor area (4/1000 GFA)                                                                 |
| (32) | Dwelling                     | Two parking spaces for each dwelling unit                                                                                                   |
| (33) | Two-family dwelling          | Two parking spaces for each dwelling unit                                                                                                   |
| (34) | Dwelling with roomers        | Two parking spaces for roomers each dwelling unit plus one parking space for each room rented to persons not members of the resident family |
| (35) | Fire stations                | One parking space for each three employees on shift                                                                                         |
| (36) | Flower shop                  | One parking space for each 303 square feet of gross                                                                                         |

|      |                                      |                                                                                                                                                                                                                           |
|------|--------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|      |                                      | floor area (3.3/1,000 GFA)                                                                                                                                                                                                |
| (37) | Fraternity                           | One parking space for each three active members or dormitory residents, plus one parking space for each two employees other than residents                                                                                |
| (38) | Funeral home                         | One parking space for each 400 square feet of gross floor area                                                                                                                                                            |
| (39) | Furniture store                      | One parking space for each 1,000 square feet of gross ground floor area plus one parking space for each 1,500 square feet of the gross area floors other than the ground floor used for sales, displays, or show purposes |
| (40) | Food market <3500 square feet of GFA | One parking space for each 333 square feet of gross floor area (3/1,000 GFA)                                                                                                                                              |
| (41) | Food market >3500 square feet of GFA | One parking space for each 250 square feet of gross floor area (4/1,000 GFA)                                                                                                                                              |
| (42) | Greenhouse                           | One parking space for each three employees plus one space for each 333 square feet of sales area (3/1,000 square feet of sales area)                                                                                      |
| (43) | Grain elevator                       | One parking space for each two employees                                                                                                                                                                                  |
| (44) | Gymnasiums                           | Parking spaces equal in number to 30 percent of the capacity of persons                                                                                                                                                   |
| (45) | Hospital                             | One parking space for each 2.5 employees plus one space for each five average daily outpatient visits plus one space for each four staff members plus one space for each three beds                                       |
| (46) | Home occupation                      | One parking space in addition to residence requirements                                                                                                                                                                   |
| (47) | Hotel                                | One parking space for each three employees, plus one parking space for each sleeping room                                                                                                                                 |

|      |                     |                                                                                                   |
|------|---------------------|---------------------------------------------------------------------------------------------------|
| (48) | Industrial park     | One parking space for each two employees on the largest shift                                     |
| (49) | Industrial uses     | One parking space for each two employees                                                          |
| (50) | Junkyard            | One parking space for each two employees.                                                         |
| (51) | Kindergarten        | One parking space for each two employees plus one parking space for each five children enrolled   |
| (52) | Laboratory          | One parking space for each two employees                                                          |
| (53) | Laundry             | One parking space for two washer and dryer machines                                               |
| (54) | Lodge               | Parking spaces equal in number to 30 percent of the capacity of persons                           |
| (55) | Library             | One parking space for each 333 square feet of gross floor area (3/1,000 GFA)                      |
| (56) | Mobile home park    | One parking space for each two employees plus two parking spaces for each mobile home             |
| (57) | Motel               | One parking space for each sleeping room plus one space for each two employees                    |
| (58) | Museum              | Parking space equal in number to 30 percent of the capacity of persons                            |
| (59) | Night club          | Parking spaces equal in number to 30 percent of the capacity of persons                           |
| (60) | Nursery (day)       | One parking space for each two employees, plus one parking space for each five children enrolled. |
| (61) | Office—Business     | One parking space for each 303 square feet of gross floor area (3.3/1,000 GFA)                    |
| (62) | Office—Professional | One parking space for each 303 square feet of gross                                               |

|      |                                     |                                                                                                                                                                            |
|------|-------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|      |                                     | floor area (3.3/1,000 GFA)                                                                                                                                                 |
| (63) | Outdoor business—<br>Recreation use | One parking space for each three employees plus one space for each 1,000 square feet of use area                                                                           |
| (64) | Penal institution                   | One parking space for each three employees plus one parking space for each ten inmates.                                                                                    |
| (65) | Photo studio                        | One parking space for each 417 square feet of floor area (2.4/1,000 GFA)                                                                                                   |
| (66) | Physician's office                  | One parking space for each employee and ten additional spaces per physician.                                                                                               |
| (67) | Police station                      | One parking space for each three employees on shift                                                                                                                        |
| (68) | Public utility                      | One parking space for each two employees, plus spaces adequate in number (as determined by the Delaware-Muncie Metropolitan Plan Commission), to serve the visiting public |
| (69) | Radio station                       | One parking space for each employee in the largest shift                                                                                                                   |
| (70) | Railway station                     | One parking space for ten seats in waiting room, plus one parking space for each two employees of connected retail use.                                                    |
| (71) | Recreational club                   | One parking space for each three rooming units, plus parking spaces equal in number to 30, of the capacity of persons of the club                                          |
| (72) | Restaurant                          | One parking space for each 100 square feet of gross floor area (10/1,000 GFA)                                                                                              |
| (73) | Riding stable                       | One parking-space for each 5,000 square feet of lot area                                                                                                                   |
| (74) | School                              | One parking space for each member of the staff,                                                                                                                            |

|      |                  |                                                                                                                                                                                                                                                |
|------|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|      |                  | plus one parking space for each six auditorium seats                                                                                                                                                                                           |
| (75) | School, nursery  | One parking space for each two nursery employees                                                                                                                                                                                               |
| (76) | School, high     | One parking space for each two faculty members and other full time employees, plus one parking space for each ten students based on the maximum number of students attending classes on the premises at any one time during any 24-hour period |
| (77) | Shoe repair      | One parking space for each 417 square feet of gross floor area (2.4/1,000 GFA)                                                                                                                                                                 |
| (78) | Shopping center  | One parking space for each 200 square feet of gross floor area (5/1,000 GFA)                                                                                                                                                                   |
| (79) | Slaughter-house  | One parking space for each two employees                                                                                                                                                                                                       |
| (80) | Sorority         | One parking space for each three active members or dormitory residents, plus one parking space for manager, plus one parking space for each two full-time employees other than students                                                        |
| (81) | Sanitarium       | One parking space for each six patient beds, plus one parking space for each staff or visiting doctor, plus one parking space for each four employees, including nurses                                                                        |
| (82) | Tavern           | Parking spaces equal in number to 30 percent of the capacity of persons                                                                                                                                                                        |
| (83) | Theatre          | One parking space for each six seats up to 400 seats, plus one parking space for each four seats above 400.                                                                                                                                    |
| (84) | Theatre, outdoor | One parking space for each two employees, plus one parking space for manager                                                                                                                                                                   |
|      |                  |                                                                                                                                                                                                                                                |



|      |                |                                                                                                   |
|------|----------------|---------------------------------------------------------------------------------------------------|
| (85) | Tourist home   | One parking space for each two employees, plus one parking space for each sleeping accommodation. |
| (86) | Truck terminal | One parking space for each two employees, plus four parking spaces for customers.                 |
| (87) | Veterinarian   | Two parking spaces for each three animal cages or pens.                                           |
| (88) | Video store    | One parking space for each 250 square feet of gross floor area (4/1,000 GFA)                      |
| (89) | Warehouse      | One parking space for each two employees                                                          |

For uses not listed, the most similar category shall be used as determined by the Administrative Zoning Officer. The following standards and categories shall be used for retail:

General retail 3.3 spaces per 1,000 GFA

Convenience retail 4 spaces per 1,000 GFA

Service retail 2.4 spaces per 1,000 GFA

Temporary retail 3.3 spaces per 1,000 GFA

(F) Special conditions. A church may, by agreement approved by the administrative zoning officer and filed with the plan commission office, use adjoining parking facilities when the same are not in use, instead of providing its own. A group of business or industrial uses may provide a joint parking area if the number of spaces in the area equals or exceeds the aggregate of the spaces required for the several uses. Where there may be more than one use in the same building or structure, the total off-street parking requirement shall be the sum of the requirements specified herein for each of the various uses.

(G) Bicycle parking. Bicycle parking spaces shall be provided in accordance with the requirements set forth as follows:

(1) Location and placement standards:

- (a) Bicycle parking shall be located as close or closer than the nearest car parking space to the building entrance, other than those spaces for persons with disabilities.
- (b) Bicycle parking facilities shall not interfere with accessible paths of travel or accessible parking as required by the American with Disabilities Act of 1990.
- (c) Bicycle racks shall not block the building entrance or inhibit pedestrian flow.
- (d) Bicycle racks shall be located to protect bicycles from damage from automobiles.
- (e) Bicycle parking shall be visible, well lit, and as convenient to cyclists as auto parking is to drivers.
- (f) All bicycle racks shall be designed to minimize visual clutter and be maintained in good condition.

- (g) All bicycle racks shall be securely anchored to the ground or building surface.
  - (h) In cases where bicycle parking spaces are not visible from the primary street, signage shall be used to direct cyclists safely to bicycle parking areas.
- (2) Design standards:
- (a) Each bicycle rack shall be designed to accommodate a minimum of two bicycle parking spaces.
  - (b) Bicycle racks shall be designed to accommodate U-shaped locking devices and support the bicycle in two places.
  - (c) Bicycle racks shall be designed to resist cutting, rusting, bending and deformation.
  - (d) The surfacing of such facilities shall be designed and maintained to be mud and snow free.
  - (e) Required bicycle parking spaces shall be at least four feet wide by six feet long.
  - (f) An access aisle of at least four feet shall be provided in each bicycle parking facility.
  - (g) Such space shall have a vertical clearance of at least six feet.
  - (h) Bicycle racks shall be placed on 48-inch centers.
- (3) When the intensity of use of any building, structure or premises shall be increased through additional number of dwelling units, gross floor area, seating capacity or other units of measurement specified herein that requires additional automobile parking spaces, bicycle parking as required herein shall be provided for such increase in intensity of use.
- (4) A reduction in the minimum required automobile parking is allowed equal to the percentage of bicycle parking spaces provided, with a five-percent maximum reduction.
- (5) Bicycle parking spaces shall be based on the required automobile parking spaces and shall be provided in accordance with the following:

| Auto Spaces Required                    | Bicycle Racks Required                                |
|-----------------------------------------|-------------------------------------------------------|
| <i>Non-Residential/Commercial Uses:</i> |                                                       |
| 0—20 spaces                             | 1 rack                                                |
| 21—50 spaces                            | 2 racks                                               |
| 51—75 spaces                            | 3 racks                                               |
| 76—100 spaces                           | 4 racks                                               |
| 101 + spaces                            | 5 racks +1 for each additional 100 spaces, 20 maximum |
| <i>Multi-Family Residential Uses:</i>   |                                                       |
| 8+ spaces                               | 1 rack for every 8 auto spaces required               |

(Code 1968, § 130.231; Ord. No. 12-95, §§ 1—3, 5-8-95; Ord. No. 50-04, § 1, 4-4-05; Ord. No. 6-11, § 1, 5-2-11; Ord. No. 40-22, §§ 6, 7, 12-5-22)

Sec. 150.212. - Signs and outdoor advertising.

(A) Purpose.

- (1) The purpose of this section is to promote and protect the public health, welfare, and safety of the community and its people by regulating existing and proposed outdoor advertising and outdoor signs of all types.
- (2) This section is also intended to protect property values; create a more attractive and economically vital business climate; enhance and protect the physical appearance of the community; preserve the scenic and natural beauty; and to provide more enjoyable and pleasant living conditions. The intent of this section is also to reduce the incidence of signs or advertising distractions which may contribute to traffic accidents by their placement.

(B) General provisions.

- (1) General definition of sign. Hereafter a general definition of a "sign" shall mean an identification, description, illustration, or device which is affixed to or erected upon a property or tract of land, a building or a structure, and which directs attention to a product, place, activity, service, institution, or business. All supports, poles, wires, and other sign apparatus shall be defined as part of a sign, and shall be referred to as sign apparatus.
- (2) Existing signs—Conforming.
  - (a) Definition. A "conforming sign" is a sign which meets the provisions established in the Code.
  - (b) Provisions. The lawful location and maintenance of conforming signs existing at the time of the enactment of this Code and any amendments thereof may be continued provided that the following conditions are met: That the existing sign is not expanded or reduced in size, or relocated in such a manner that would make the existing sign unlawful; that no additional signs are placed on the same sign apparatus, upon which the existing sign is located, in such a manner that would make the existing sign or sign apparatus unlawful; that an approved sign permit was obtained for the existing sign. When changes to an existing conforming sign are necessary, no such existing sign shall be expanded or reduced in size, or relocated without first obtaining an approved sign permit from the administrative zoning officer.
- (3) Existing signs—Nonconforming.
  - (a) Definition. A "nonconforming sign" is a sign which does not meet the provisions established in the Code.
  - (b) Provisions. The lawful use of a nonconforming sign, existing at the time of the enactment of this Code and any amendments thereof, may be continued provided that the following conditions are met: That the existing sign is not expanded in size, or relocated, unless the expansion or relocation brings the sign into conformity with the Code; that no additional signs are placed on the same sign apparatus upon which the existing sign is located; and that the existing sign is not located within the proposed or existing rights-of-way as designated by the Official Thoroughfare Plan-City of Muncie (1979). When changes to an existing nonconforming sign are necessary to bring the sign into conformity, no such existing sign shall be expanded in size, or relocated, without first obtaining an approved sign permit from the administrative zoning officer.

Whenever any existing nonconforming sign shall become damaged, by any means, so as to cause a need to replace more than 50 percent of the sign and sign apparatus, said sign shall be repaired or reinstalled in compliance with the provisions of this section, thereby creating a conforming sign.

Except for ordinary maintenance, poster panel replacement, copy changes or lettering or repair not involving structural material or electrical changes, no nonconforming outdoor advertising signs or part thereof shall be erected, altered, constructed, changed, converted, re-erected, additionally illuminated, reduced in size, enlarged or moved unless the entire nonconforming outdoor advertising sign and structure is brought into conformance with the provisions of this section.

(4) Existing signs—Deteriorated or inactive.

(a) Definitions.

1. "Deteriorated." A sign that is in a poor or dangerous condition, such as, but not limited to, broken or leaning sign apparatus, portions of the sign missing, or chipping of paint.
2. "Inactive." A sign which no longer directs attention to a business, activity, service, or product sold or provided on the premises.

(b) Provisions. When a sign has been deteriorated or inactive for a period of 30 days, the owner of the sign or the owner of the property upon which the sign is located, shall, upon written notice from the administrative zoning officer, remove the sign. The sign shall be removed within 30 days from the date of the notice sent to remove the sign. Failure to comply with the order shall authorize the officer to initiate action for the removal of the deteriorated or inactive sign.

- (5) Liability insurance. Any sign installing company which applies for a sign permit must have on file with the building commissioner's office, a current certificate of liability insurance, covering bodily injuries, including death, with limits of not less than \$100,000.00 for each person and \$300,000.00 for each accident and \$25,000.00 in property damage. The liability policy shall carry an endorsement saving the city from any claims, demands, or causes of action resulting from, in any manner, the erection or installation of the sign by the sign installation company.
- (6) Multiple frontages. Each side of a building or structure is to be considered separately for purposes of determining compliance with the provisions of this Code.
- (7) Multiple uses of a sign apparatus. When more than one sign is to be located, added to, or placed on the same sign apparatus as previously erected signs exist, all signs, existing and proposed, must meet the provisions of this Code, prior to the issuance of any additional sign permits.
- (8) Overall height. Notwithstanding the provisions of this Code, no sign shall at any point be over 45 feet in height above grade level unless the sign is located on a building which has a maximum permitted building height greater than 45 feet.
- (9) Rights-of-way. Notwithstanding the provisions of this Code, no sign shall be located or maintained within the proposed or existing right-of-way of any street or highway, as designated by the Official Thoroughfare Plan of the City of Muncie (1979). An exception to this requirement shall include a projecting sign, which may be located over public property, but shall not extend nearer to the curb line than five feet.
- (10) Setback from residence in a residential zone. Notwithstanding the provisions of this section, no sign shall be located closer than 50 feet to a residence in a residential zone, a school, or a church.

Notwithstanding the provisions of this section, any outdoor advertising sign shall be located in such a way that they maintain horizontal and vertical clearance of all overhead electrical conductors in accordance with the national electrical safety code, provided that in no case shall an outdoor advertising sign be erected closer than ten feet horizontally or vertically from any conductor or public utility guide wire.

- (11) Total number of on-premise signs per property. The total number of on-premise signs for a property having a commercial or industrial use located thereon shall be based on the following formula: Two on-premise signs shall be permitted on each separate street frontage. However, where there are multiple uses on a single property, each occupant thereon is permitted a maximum of two on-premise signs.
  - (12) Repair and maintenance. In the event any sign becomes damaged so as to create a potential hazard to the public health, safety and welfare and is in need of emergency repair and/or maintenance, all signs shall have the name of a contact person and a telephone number posted on the sign and/or sign apparatus, visible at all times. Such information shall also be provided as a part of the application record when obtaining any sign permit.
- (C) Permitted signs not requiring a sign permit. The following signs shall be allowable in all zoning districts: Directional or warning sign; political sign; public service sign; real estate sign; real estate development sign.
- (1) Directional or warning sign.
    - (a) Definition. Signs solely identifying situations of a directional, cautionary, or dangerous nature when public signs are not functional, such as, but not limited to, an entrance or exit sign.
    - (b) Provisions. If illuminated, the light source shall not be directed towards any street or any adjoining property in a residence zone. Signs identifying ingress and egress points of a property shall be placed in such a manner as not to interfere with the visibility of motorists or pedestrians.
  - (2) Political sign.
    - (a) Definition. A sign relating to the election of a person to public office, to a political party or group, or to a matter to be voted upon at an election called by a public body.
    - (b) Provisions. A political sign shall be removed within ten days following the election. A winning candidate in a primary election may maintain his sign until ten days following the general election. The person responsible for the removal of a political sign is the owner of the property upon which said political sign is located. If such signs are not removed within the specified time period, the administrative zoning officer may initiate action for removal of the sign.
  - (3) Public service sign.
    - (a) Definition. A sign required or specifically authorized for a public purpose.
    - (b) Provisions. A public service sign can be any especially licensed sign, permitted by a legislative body, by franchise or by special license such as a sign on a bus, bench, or trash receptacle. A public service sign may be a sign established by a public service agency as an aid to safety or service. A public service sign can also be a governmental or traffic sign.
  - (4) Real estate sign.
    - (a) Definition. A clearly temporary sign, pertaining only to the sale, lease, or rental of the premises upon which it is displayed.
    - (b) Provisions. A real estate sign shall not be illuminated and it shall be removed within ten days after the sale, lease, or rental of the property or premises.

(5) Real estate development sign.

- (a) Definition. A business sign placed on the premises of a subdivision or other real estate development.
- (b) Provisions. In the case of a real estate development sign, no sign shall be closer to an existing building than 100 feet. In a development of less than one acre, or having a frontage under 400 feet on the street on which the sign is to be placed, the minimum distance to a residence in a residential zoning district, which is not part of the development shall be at least 50 feet. The maximum time for an individual sign to remain on the premises shall be 12 successive months. Signs shall be removed when the development is completed or if the same would cease.

(D) Permitted signs requiring a sign permit. Allowable in all zoning districts.

(1) Home occupation sign.

- (a) Definition: A sign stating solely the name of a person and the name of the permitted home occupation.
- (b) Provisions: A home occupation sign shall be permitted only when the property has obtained a special use home occupation approval from the metropolitan board of zoning appeals. The maximum size shall be one square foot and it shall be placed flat against the residential structure. A home occupation sign shall not be illuminated in any manner. A sign permit shall be obtained prior to placement of a home occupation sign.

(2) Identification sign:

- (a) Definition. An identification sign shall mean a ground or wall sign stating the name of a person, firm or description of a permitted use.
- (b) Provisions. Signs may be used by professional, semi-professional, public, semi-public and religious institutions. One sign shall be permitted for each building entrance. If illuminated, the light source shall not be directly visible from any street or adjoining property in a residence zone. A sign permit shall be obtained prior to placement of an identification sign.

(E) Permitted signs requiring a sign permit. The following signs are allowable in nonresidential zoning districts: ground sign; off-premise sign; pole sign; projecting sign; roof sign; temporary sign; wall sign.

(1) Ground sign.

- (a) Definition. A low profile, on-premise sign completely or principally self-supported by posts or other sign apparatus independent of any building or other structure.
- (b) Provisions. A ground sign shall not at any point be over three feet in height above grade level when such sign is located within five feet of the right-of-way line. When located five or more feet from the right-of-way line, no ground sign shall at any point be over eight feet in height above ground level. A ground sign shall not be closer than three feet to any building, or ten feet to any other sign. Lighting reflectors shall not be more than six feet away from the ground sign which they are designed to illuminate. A sign permit shall be obtained prior to the placement of a ground sign.

(2) Off-premise sign.

- (a) Definition. A sign which directs attention to a use, business, product, service, or activity not conducted, sold, or offered upon the premises where the sign is located.
- (b) General provisions. Off-premise signs shall have six-foot clearance beneath the sign board including cut-outs. Extensions allowed shall not exceed 200 square feet in area. Maximum extension of cut-outs shall be: Above the sign board-six feet, below the sign board—one foot, and any sides of the sign board—three

feet. An off-premise sign shall be permitted within existing building lines. A sign permit shall be obtained prior to the placement of an off-premise sign.

(c) Special provisions.

1. Farming (F) Zoning District exclusive. A minimum distance to another legally established off-premise sign shall be 750 feet between signs on the same side of any street or highway. An off-premise sign shall not be placed closer than 100 feet to the cross section of any intersection, railroad on-grade crossing, or ingress-egress drive or entrance. An off-premise sign shall have a minimum side yard setback of three feet from the side property line and a minimum ten foot setback from the right-of-way line of any street or highway. There shall not be more than two off-premise signs per mile on the same side of any street or highway. There shall be a minimum distance of not less than 200 feet to any existing residence, church, school, or other facility of common human use.
2. Non-farm, non-residential zones. Off-premise signs shall be prohibited in the following zones: R-1 Residence, R-2 Residence, R-3 Residence, R-4. Residence, R-4A Residence, R-5 Residence, R-6 Residence, BP Business and Professional Office, SSS Student Social Service, and MHR Mobile Home Residence.

Off-premise signs may be permitted in the following zones provided the provisions of this Code are met as well as all applicable building codes and permit regulations: F Farming, BL Limited Business, BC Community Business, CB Central Business, BV Variety Business, MT Major Trading, IL Limited Industrial, II Intense Industrial, IP Industrial Park and AD Airport Development.

The number of off-premise signs shall be limited to not more than one such sign per 1,000 feet, linear measure, on and along both sides of any street or highway. A minimum distance from one off-premise sign to another legally established off-premise sign shall be 1,000 feet, linear measure, taken on and along the right-of-way lines on both sides of a street or highway.

The maximum area of display surface per off-premise sign shall not exceed 300 square feet. Only single-faced back-to-back sign boards shall be permitted.

An off-premise sign shall not be placed closer than ten feet to any right-of-way line of any street or highway carrying two lane traffic, excluding turn lanes, acceleration/ deceleration lanes and passing blisters. An off-premise sign shall not be placed closer than 25 feet to any right-of-way line of any street or highway carrying four lane traffic, excluding turn lanes, acceleration/deceleration lanes and passing blisters.

There shall be a minimum distance of not less than 60 feet from an off-premise sign to any residence or to any residence zone. There shall be a minimum distance of not less than 200 feet from an off-premise sign to any school, church or institution for human care.

The City of Muncie administrative zoning officer shall prepare and maintain a map indicating the location of all off-premise sign sites within the corporate limits of the city and the number of off-premise signs on each site. An off-premise sign site shall be that area described by legal description on the deed to the property as recorded in the office of the Delaware County recorder at the time of enactment of this amendment.

Based on the number of off-premise sign sites existing at the time of enactment of this amendment, the number of sites may be increased by one percent per year. The beginning one-year period shall start from the date of passage of this amendment to December 31, 1985, with each successive one-year period running from January 1 to December 31 thereafter.

For off-premise sign sites in existence prior to this amendment, an off-premise sign permit may be issued provided that there shall be not more than one off-premise sign per site, that the site is vacated by the discontinuance and removal from the site of all off-premise signs and that the off-premise sign and its location shall be in conformance with all applicable provisions of this section. Off-premise sign permits may be issued under this provision at any time as regulated.

For off-premise sign sites created by the one-percent growth rate, an off-premise sign permit may be issued provided that there shall be not more than one off-premise sign per site, that the off-premise sign and its location shall be in conformance with all applicable provisions of this section, and that there shall be not more than one permit issued within any ten-day period to an owner of an off-premise sign. When the number of permits issued equal the number of newly created sites, no new permits shall be issued under this provision until the next one-year period begins.

(3) Pole sign.

- (a) Definition. A high-profile, on-premise sign completely or principally self-supported by posts or other sign apparatus independent of any building or other structure.
- (b) Provisions. A pole sign shall have a minimum clearance of ten feet between the bottom of the face of the sign and grade or sidewalk level. If the pole sign is supported by more than one pole, the space between the poles shall not be enclosed in a manner which would impair general public visibility. The maximum width of pole covers shall be the sum total of 18 inches in a horizontal direction, plus the width of the pole covered. No pole sign shall be erected in excess of 45 feet in vertical height or 300 square feet in area per side. All bolted installation to concrete bases must have ground rods. Once a pole sign becomes inactive, as defined in this code, the pole or sign apparatus must be removed along with the sign itself. A sign permit shall be obtained prior to the placement of a pole sign.

(4) Projecting sign.

- (a) Definition. An on-premise sign attached to a building or structure and extending wholly or partly beyond the surface of the portion of the building or structure to which it is attached; or extending beyond the building line; or over public property.
- (b) Provisions. A projecting sign shall be placed at a distance not greater than two feet from the face of the wall to which it is attached, measured from the part of the sign nearest thereto. No projecting sign or part thereof shall extend nearer to the curb line than five feet, nor be placed lower than ten feet above grade or sidewalk level. No projecting sign shall be erected to a height greater than 60 feet above grade or higher than the cornice of any building which is three stories or more in height, unless the same be entirely of steel skeleton construction and shall present only 40 percent of the solid surface area to be affected by wind pressure. No projecting sign shall be erected when the area of one face of the sign shall exceed 240 square feet in area. Any movable part of the sign shall have an area not to exceed 100 square feet for a vertical sign, or 50 square feet for a horizontal sign. No projecting sign shall be secured with wood, nails, or wire, unless with seven strand guy wire; nor shall any projecting sign be hung or secured to



any other sign. Turnbuckles shall be placed in all chains and guy wires supporting a projecting sign weighing 200 pounds or more. A projecting sign exceeding ten square feet in area or 50 pounds in weight shall not be attached to nor supported by frame buildings, nor wooden framework of a building. Other projecting signs shall be attached to masonry or like walls, with galvanized expansion bolts at least three-eighths inch in diameter or shall be fixed in the wall by means of bolts extending through the wall. Projecting signs shall have no reflectors of the goose-neck type. No glass faces can be used in projecting signs, any other glass used shall be safety or plate glass at least one-fourth inch in thickness. A sign permit shall be obtained prior to the placement of a projecting sign.

(5) Roof sign.

- (a) Definition. An on-premise sign erected, constructed, or maintained upon the roof of any building or structure.
- (b) Provisions. No roof sign shall project beyond the outer edge the walls of the building in any direction. No roof sign having a tight, closed, or solid surface shall at any point be over 25 feet above the roof level. No roof sign with a tight, closed, or solid surface shall be erected on any building four stories or over in height, but roof sign structures not having a tight, closed, or solid surface may be erected on fire-resistive buildings to a height not exceeding 40 feet above the roof level, and upon non-fire-resistive buildings to a height not exceeding 30 feet above the roof level. The solid portions of the structures shall not exceed 40 percent of the superficial area thereof. All signs which are erected on the roof of a fire-resistive building shall be thoroughly secured to the building upon which they are installed, erected, or constructed, by iron or metal anchors, bolts, supports, seven strand guy cable, steel rods or braces. All roof signs erected on non-fire-resistive buildings shall be so erected that the live and dead-load stresses shall not in any manner adversely affect the building. Wind pressures of not less than 30 pounds to the square foot of the area of the sign must be withstood by said sign. All roof signs shall be composed entirely of noncombustible material, including sign apparatus and supports, except the ornamental moulding and battens behind the steel facings. A sign permit shall be obtained prior to the placement of a roof sign.

(6) Temporary sign.

- (a) Definition. A temporary sign shall mean any sign, sign board, banner, or lightweight advertising display of more than two feet in height, maintained for the purpose of displaying outdoor advertising by means of a reader board, permanently supported, anchored or attached to the ground or a building.
- (b) Provisions. No temporary sign shall be maintained, displayed, or placed on a property for a period longer than 30 days after the issuance of the permit and 90 days must expire before the permittee can reapply for a new permit for said sign on the property. A new permit is to be obtained for each 30-day period. No temporary sign shall at any point be over eight feet in height above grade level, except a banner, in which case, it must have at least a ten-foot clearance above grade. No temporary sign shall be placed within the city rights-of-way, proposed or existing. Any temporary sign unlawfully maintained in a public right-of-way, may be declared a public nuisance and a traffic hazard per State of Indiana Motor Vehicle Laws, Article III, and if necessary, the Administrative Zoning Officer shall remove the sign. Spot lights or flashing illumination not over forty-watt bulbs shall be used under any circumstances with temporary signs. Any temporary sign not complying with the provisions of this code shall, upon notice, be removed by the Administrative Zoning Officer. A sign permit shall be obtained prior to the placement of a temporary sign.

(7) Wall sign.

- (a) Definition. An on-premise sign attached to, or erected flatly against a wall of a building or structure.
- (b) Provisions. No wall sign shall project away from the wall more than 18 inches. When a wall sign is located over a sidewalk and projects more than six inches over the pedestrian area, the minimum distance from the sidewalk grade and the base of the sign shall be eight feet. A wall sign placed on a building of one story shall not project more than ten feet above the top of the wall or two feet beyond the ends of the wall to which it is attached. A wall sign placed on a building of two or more stories shall not project more than two feet above the top of the wall or beyond the ends of the wall to which it is attached. If the wall sign is an illuminated one, overhead lighting reflectors may project six feet beyond the building line, but in no case shall the lighting reflectors be more than six feet from the face of the wall sign. All reflectors extending over the sidewalk shall be secured and safely anchored. No wall sign shall be so erected as to prevent free ingress to or egress from the building, or any fire escape. A sign permit shall be obtained prior to the placement of a wall sign.

(8) Clustered use sign.

- (a) Definition. A sign, which identifies by name two or more uses located in a single integrated named commercial or industrial development or subdivision. Such signs are designated for identification and locational purposes rather than advertising purposes.
- (b) Provisions. Clustered use signs shall have a minimum clearance of ten feet between the bottom of the face of the sign and grade or sidewalk level. If the clustered use sign is supported by more than one pole, the space between the poles shall not be enclosed in a manner which would impair general public visibility. No clustered use sign shall be erected in excess of 45 feet in height; and a clustered use sign shall not exceed 300 square feet in signboard area per side, excluding supports and the identification name for the development. All bolted installation to concrete bases must have ground rods. Signboards must be constructed of permanent, all-weather materials and supported internally by metal poles or supports. Signs shall be representative of the integrated area the sign is intended to serve and a design plan shall be submitted with the permit application. A landscaped area of at least 100 square feet shall be provided at the base of the sign and this area shall be maintained in a healthy, neat and clean condition. To minimize glare and the general overwash of light to public right-of-way and residential uses, signs shall be illuminated only with steady, stationary, shielded and/or contained light sources directed solely onto or within the sign. A sign permit shall be obtained prior to the placement of a clustered use sign. After the initial installation, a sign permit shall be obtained prior to the installation of any additional or replacement signs for individual uses.
- (c) Locations. One clustered sign use sign may be erected at each major public right-of-way or private driveway entrance leading into an integrated commercial or industrial development or subdivision. The sign may be placed either on or off the property where the uses are located, but shall not be placed throughout the subdivision or development itself. No clustered use sign shall be erected within 50 feet of another clustered use sign or a pole sign. No clustered use sign shall be placed in the actual or proposed public right-of-way.

(F) Prohibited signs.

- (1) Definition. A sign not permitted under any circumstances.
- (2) Provisions. The following signs shall be prohibited in all locations unless otherwise specified in this code. Any types of signs:

- (a) Bearing statements, words, or pictures of an obscene and indecent character, such as would be offensive to public;
- (b) Where, because of size, location, coloring, content, or illumination, a sign may bear close resemblance to or being an imitation of highway or traffic sign or signals, and incorporates in any manner flashing or moving apparatus that may create a traffic hazard, (State of Indiana Motor Vehicle Laws, Article III);
- (c) Which interfere with the view of any signal, traffic sign, or street sign (State of Indiana Motor Vehicle Laws, Article III);
- (d) Inactive signs or sign apparatus as defined in this code;
- (e) Deteriorated, leaning, derelict, or structurally unsafe signs which constitute hazards by reason of inadequate maintenance, age, or abandonment, as defined in this code;
- (f) On trees, telephone or light poles, fences, and on city streets or rights-of-way, alleys or sidewalks;
- (g) Obstructing ingress and egress from a door, window, fire escape, or exit, and;
- (h) Unlawfully installed, erected, or maintained.

(G) Technical provisions.

(1) City electric code.

- (a) The light source shall not be exposed in a manner as to create hazards to pedestrians and motorists. The light source shall be shaded, hooded, or adequately screened to prevent the obstruction of pedestrian or motorist visibility.
- (b) All electrically illuminated signs with exposed terminals shall be erected or maintained in such a manner that the exposed tubing or terminals will be at least ten feet above the established grade, except where exposed tubing or terminals are properly protected as required by section 153.21. All wiring must be in metal raceway. Underwriters Laboratory, or Electrical Testing Laboratories Certification, or equivalent, must be included in the permit application when signs are electrically illuminated.

(2) Fire access. No sign or advertising display of any nature shall be installed, erected, maintained, or constructed in such a manner as to obstruct any fire escape or exit, or the ingress or egress from any window or door opening thereof, or be at any time attached in any manner to any fire escape.

(3) Glass in signs, where permitted.

- (a) Ornamental or plain flat glass shall not be permitted to be hung from any location which extends over a public right-of-way, (only permitted type of sign—projecting sign) unless the glass is supported at all times around the entire edge by a substantial metal supporting rib approved by the building commissioner and the glass is limited to 100 square inches in area within any one set of metal supporting ribs.
- (b) Exposed glass in any advertising display shall be permitted only when the area within any one set of metal ribs is not greater than 100 square inches for each and every piece of exposed glass. The building commissioner may approve larger areas of exposed glass, plastic, or composition material, when properly enclosed and protected.
- (c) All metal supporting ribs in any advertising display shall extend over and cover at least 14 inches of the portion of the surface of the glass that is to be exposed.
- (d) In case a picture for fancy display is to be used in an exposed area of any advertising display, not more than two open spaces not exceeding 150 square inches each may be permitted in one advertising display.

(4) Sound devices. Public address systems, loud speakers, or sound amplifying systems shall not be used in

conjunction with any outdoor advertising sign or structures. In all businesses, including shopping centers, all sound devices shall be used for communication within the building or buildings. The use of sound devices for advertising, communication, or the production of music outside the buildings, is prohibited.

(5) Supports.

- (a) The dead load of projecting signs may be supported with chains or guy wires, and the working stress of the chains or guy wires shall not exceed one-fifth ( ) of the ultimate strength of the chains or guy wires shall not be less than one-quarter ( ) inch in diameter. Chains or guy wires supporting the dead load of any such projecting sign shall be erected or maintained at an angle of not less than 30 degrees with the horizontal. Supporting chains or cables may be used for the resistance of wind pressure, and the working stress of the supporting chains or cables shall be so designed that it will not exceed one-quarter of the ultimate breaking strength of the chains or cables. The least cross-sectional diameter of the chains or cables resisting wind pressure shall be erected or maintained at an angle of 45 degrees or more with the face of the sign that the chains or cables are supporting.
- (b) In no case shall there be less than two chains or cables designed to resist the dead load and two chains or cables on each side to resist the live load of any projecting sign having 20 square feet in facial area. Chains or cables resisting a wind pressure on any side of a projecting sign shall be not more than eight feet apart.
- (c) All supporting chains or guy wires, where used either for the resistance of a live or dead load, shall be secured to a bolt or expansion screw that will develop the strength of the supporting chain, or cable, with a minimum one-half ( ) inch bolt or lag screw secured by an expansion shield or other method approved by the building commissioner.
- (d) Chains or guy wires used to support the live or dead load of projecting signs, erected or maintained at an angle of more than 45 degrees may be fastened to masonry walls with expansion bolts or by machine screw in iron supports. Where supporting chains or cable must be fastened to walls made of wood, the supporting or anchor bolts must go through the wood and be fastened securely on the other side.
- (e) No staples or nails shall be used to secure any projecting sign or display to any building or structure, unless the sign or display weighs less than one pound.
- (f) Stiff arms, compression members, or members in flexure may be used to support either the live load or the dead load of a projecting sign, but the effective or unsupported length of the main compression members of any sign or stiff arm shall not exceed 120 times the least radius of gyration, and for the secondary member, 200 times the least radius of gyration.
- (g) In any projecting sign or advertising display, the extreme fiber stress of the steel to be used shall not exceed 20,000 pounds per square inch, and for wood, 1,200 pounds per square inch for any grade of lumber.
- (h) In no case shall any advertising display support be attached to a parapet wall.

(H) Authority.

- (1) No sign as defined herein shall hereafter be erected, maintained, or constructed by any person except as provided in this section, or until after a permit to erect, construct, or maintain the same has been obtained from the administrative zoning officer. No such permit shall be issued until the prescribed fee is paid as set forth in this Code.
- (2) In case any sign or advertising display shall be installed, erected, maintained, or constructed in violation of any of the provisions of this section, the administrative zoning officer shall notify, in writing, the owner or lessee

thereof either to alter the sign so as to comply with this code and to secure the necessary permit thereof, or forthwith to remove the sign. If the order is not complied with within ten days after mailing the notice, the administrative zoning officer may remove the sign at the expense of the sign owner, lessee thereof, or the property owner.

- (3) The administrative zoning officer has the authority to appoint officers to enforce the provisions of this Code. These officers have the authority to issue necessary citations, to issue tickets and to remove unlawful signs.
- (4) The administrative zoning officer may adopt and prescribe suitable rules and regulations, consistent with the provisions of this Code, concerning the form and contents of all applications for the various kinds of permits herein required, and covering any other requirements for the applicant to protect the public safety and welfare.

(I) Sign permit procedures.

- (1) Procedures. No sign shall be installed, erected, maintained, or relocated without obtaining a sign permit issued by the administrative, zoning officer in accordance with established procedures and inspections. The application shall include information, site plans, and specifications as may be required by said officer. Office records shall contain an accurate description of the sign for which a permit is issued, its location, photograph, and the date of completion of installation.
- (2) Provisions. A sign permit shall expire if work is not started within 60 days of the date of the permit approval, or completed within 120 days of said date. A sign permit is not completely approved until after the actual sign permit is obtained from the administrative zoning officer and the permit fee is paid. If a sign permit, which has been approved by said officer, is not obtained from the office by the applicant within 60 days of the date of permit approval, the permit is null and void. Once a sign permit is approved, the installation or erection of any sign is subject to the provisions governing compliance set forth in this section. Extensions on any time limitation stated herein may be granted by the administrative zoning officer where the sign permittee presents evidence to show cause why such extension is necessary.

(J) Fees. Permit fees for sign shall be based on-site inspection costs.

| Type of Sign                                             | Fee     |
|----------------------------------------------------------|---------|
| Ground                                                   | \$25.00 |
| Home occupation                                          | 15.00   |
| Off-premises                                             | 25.00   |
| Plus for each additional face on the same sign apparatus | 20.00   |
| Pole                                                     | 25.00   |
| Projecting                                               | 25.00   |
| Roof                                                     | 15.00   |
|                                                          |         |

|                                                 |       |
|-------------------------------------------------|-------|
| Temporary per 30-day period                     | 10.00 |
| Wall                                            | 15.00 |
| Clustered Use Initial installation              | 30.00 |
| Post-installation additions and/or replacements | 20.00 |

(K) Penalties.

- (1) Penalty fee. Any person who shall erect, install, or alter a sign, as defined herein, prior to obtaining a sign permit, shall pay twice the amount of the permit fee set forth herein.
- (2) General penalty. Whoever violates any provision of this section shall be fined not more than \$1,000.00 for each offense.
- (3) Penalty provisions. The penalty fee assigned in subsection (1) above does not supersede the general penalty, and is to be considered a separate penalty. The general penalty assigned in division (2) above does not supercede the penalty fee, and is to be considered a separate penalty. However, in no event, shall the combined assessment of a penalty fee and a general penalty exceed \$1,000.00 for each offense. Each day's violation shall constitute a separate offense.

- (L) Injunctive relief against violation; recovery of costs. Any violations of this section may be restrained, enjoined, mandated, or abated by injunctive relief. Legal suit may be instituted either in the name of the administrative zoning officer or in the name of the city. The administrative zoning officer or the city, if successful, shall be entitled to recover all costs, expenses, and attorney's fees incurred in connection with the prosecution of the suit.

(Code 1968, § 130.232; Ord. No. 849-82, 7-12-82; Ord. No. 4-97, §§ 1, 2, 4-8-97; Ord. No. 40-22, §§ 8—10, 12-5-22)

Sec. 150.213. - Gasoline service stations.

- (A) Definition. For the purpose of this chapter a "gasoline service station" shall be a retail place of business engaged in supplying goods and services essential to the normal operation of automobiles, such as: the dispensing of gasoline and motor oil; the sale and servicing of tires, batteries, and other car accessories; and the washing and lubricating of motor vehicles. This shall not include: the sale of automobiles; the keeping of wrecked or disabled cars; the performing of body and fender work; or the painting or the performing of major motor repairs.
- (B) Standards. No gasoline service station shall be permitted unless it shall meet the following minimum requirements:
- (1) The owner, lessor, or lessee shall, upon making application for the gasoline station, submit a drawing describing the manner in which buildings will be located on the premises, the manner in which the site will be conditioned and beautified, the location of all permanent or floating signs, and any other similar requirement which may be required by the administrative zoning officer. The owner, lessee, or lessor will be held jointly responsible for conforming with all the details of the plan as submitted. Any violation of a part of the plan shall be held to be reason for the nullification of a permit or refusal to issue one.
  - (2) There shall be a maximum width of driveways at the sidewalk of 30 feet.

- (3) There shall be a minimum setback of 40 feet from any and all streets.
  - (4) There shall be a minimum frontage of 120 feet at the building line and a minimum of 12,000 square feet of lot area exclusive of rights-of-way.
  - (5) The minimum distance from any driveway to any exterior property line shall be 20 feet.
  - (6) The minimum angle of intersection of driveways with the street pavement shall be 60 degrees.
  - (7) The minimum distance between curb cuts shall be 30 feet.
  - (8) No service station shall be erected, operated, or maintained where an entrance or exit for motor cars is located on the same side of the street within 100 feet of a pedestrian entrance or exit from a public or private school, park, parkway, playground, library, church, hospital, home for children or senior citizens, or other public or semipublic institution.
  - (9) No gasoline pump shall be located closer than 15 feet to the nearest lot line or line of established street or highway. On a corner lot, when a gasoline pump or a series of pumps are placed in a pump island parallel to lot line or at an angle to the lot line, the end pump nearest to the street shall be located not closer than 20 feet to the street line, measured along the axis of the pump island or islands.
  - (10) The minimum distance from any driveway to any interior lot line shall be ten feet.
  - (11) A raised curb, six inches high and two feet wide, shall be placed within the street right-of-way.
  - (12) All hydraulic hoists and pits, lubricating, greasing, auto washing, and repairing equipment shall be entirely enclosed within a building.
  - (13) Every lot used as a gasoline service station shall be paved with asphaltic or concrete surfacing and shall be adequately drained.
  - (14) The minimum site of 12,000 square feet shall be limited to two service bays and two pump islands. Two pump islands and one bay may be added for each additional 2,000 square feet of extra site area.
  - (15) A five-foot decorative fence shall be erected along all property lines separating the site from any dwelling and any residence zone.
  - (16) Eight onsite parking spaces shall be provided at a gasoline service station with two or more service bays. In all other instances, two spaces shall be provided.
  - (17) Exterior lighting shall be installed and maintained so as to cast no glare upon adjacent property or public right-of-way.
  - (18) The parking of junk vehicles and rental vehicles shall not be permitted.
- (C) Signs. Gasoline service stations shall comply with the following sign standards in addition to those already specified in the outdoor advertising provisions as contained in this chapter.
- (1) One two-pole sign shall be permitted for each gasoline service station, which pole sign shall be limited to advertising the trade name. The maximum permitted sign surface area shall be 320 square feet on each side of a double-faced sign.
  - (2) No more than two ground signs for each street frontage shall be permitted within the property lines, each of which shall not exceed 25 square feet on each side of a double-faced sign. The sign shall be used to indicate services, prices, products, and the announcement of incentives. The signs shall be installed as stationary, fixed structures, not subject to being dislodged by high winds and shall not be portable or temporary structures.
  - (3) Wall signs shall be permitted on the principal service station buildings.
  - (4) Signs shall be permitted on the pump island but shall not exceed 20 square feet on each side of a double-

faced sign.

- (5) Window signs shall be permitted but shall not exceed six square feet in area.
- (6) Display signs shall be permitted but shall not exceed six square feet in area.
- (7) No sign shall be attached to a decorative fence installed with the purpose of screening the gasoline service station from a dwelling or residence zone.
- (8) Incidental signs, one sign for each subject, shall be permitted as follows:
  - (a) Station for sale, rent, or lease.
  - (b) Identification of the operator (one foot vertical and six feet horizontal).
  - (c) Directional signs (one square foot maximum).
- (9) No signs shall be placed on curbs or outside the property lines.
- (10) No signs shall be placed or installed on the site of a gasoline service station which will interfere with the vision of the motorist and will constitute a traffic hazard.

(Code 1968, § 130.233)

#### Sec. 150.214. - Swimming pools.

Swimming pools in residence districts may be installed only as accessory to a dwelling for the private use of the owners and occupants of the dwelling and their families and guests, or as accessory to a nursery school or day camp for children, and only on the conditions as follows:

- (A) The pool shall be installed in the rear yard of the premises.
- (B) There shall be erected and maintained at minimum a good quality fence not less than five feet in height, with posts imbedded in concrete, enclosing the entire portion of the premises on which the pool shall be installed and entirely surrounding the area in which the pool is located.
- (C) Every gate or other opening in the fence enclosing the pool, except an opening through the dwelling or other main building of the premises, shall be kept securely closed and locked at all times when the owner or occupant of the premises is not present at the pool.
- (D) The pool shall not be erected closer than four feet from the rear and side property lines of the premises, or, in the case of a corner lot, closer than ten feet from the required setback.
- (E) The pool shall not occupy more than 40 percent of the area of the rear yard excluding all garages or other accessory structures located in the area.
- (F) If the water for the pool is supplied from a private well, there shall be no cross-connection with the public water supply system.
- (G) If the water for the pool is supplied from the public water supply system, the inlet shall be above the overflow level of the pool.
- (H) The pool shall be chemically treated in a manner sufficient to maintain the bacterial standards established by the provisions of the Indiana State Sanitary Code relating to public swimming pools.
- (I) No public address system device which can be heard beyond the property lines of the premises on which any swimming pool has been installed may be operated in connection with the pool, nor may any lighting be installed in connection therewith which shall create glare beyond the property lines.

(Ord. No. 474-79, 6-4-79)



Sec. 150.214.5. - Development standards.

(A) Intent and purpose. These provisions are for the purpose of promoting the public health, safety, comfort, morals, convenience and general welfare; of securing adequate light, air, convenience of access, and safety from fire, flood and other danger; and of lessening or avoiding congestion in public ways. The intent of these provisions is to improve compatibility and provide transition between different uses and zones; to minimize the harmful effects of and reduce dust, debris, automobile headlight glare and other objectionable activities or views on adjoining or nearby residential uses; to protect property values and preserve the character of an area; to provide for landscaping to minimize the adverse effects of wind, heat, noise and glare, preserve the hydrology of a development site, assist in reducing the level of carbon dioxide in the atmosphere, prevent soil erosion, provide shade, and lessen the visual impact of development on the environment; and to preserve and improve the health, safety and general welfare of the public by promoting the environmental and public benefits of landscaped screening and buffer areas.

(B) Development standards.

- (1) Applicability: The development standards contained in this section shall apply to all development other than one- and two-family residential. No new building or structure shall be constructed or used in whole or in part, and no building or structure, or part thereof, shall be altered, enlarged reconstructed or used, and no land shall be used unless the requirements of this section are met subject to the following conditions:
  - (a) Enlargements or alterations which result in a greater than ten percent increase in the ground coverage or a greater than 25 percent increase of the floor area require compliance with this section.
  - (b) Changes in the use of existing buildings, structures or land shall require compliance with this section.
  - (c) Restoration of an existing building or structure that has been damaged or destroyed by any means shall be permitted without conforming to the requirements of this section provided the restoration does not increase the ground coverage that was occupied by the structure being replaced by more than ten percent and/or the restoration does not increase the floor area by more than 25 percent.
- (2) General objectives: Sites to be developed shall be of such character that they can be safely used for building purposes without danger to the public health or safety, or peril from fire, flood or other causes. Vegetative screening shall separate commercial and industrial uses from residential properties. Site development should accomplish the following objectives:
  - (a) Adequate and safe vehicular and pedestrian circulation between the site and the public street network.
  - (b) Safe and adequate interior site vehicular and pedestrian circulation, parking and loading facilities.
  - (c) Year-round accessibility.
  - (d) Environmentally sensitive areas shall be protected and left undisturbed.
  - (e) Adequate drainage facilities.
  - (f) Mitigation of the adverse effects of spillover light, smoke, noise, glare, vibration, odors, or noxious and offensive uses.
- (3) Standards. Developments shall comply with the following standards and the provisions of this chapter. Where standards may conflict, the following standards shall prevail.
  - (a) Green belt:
    1. As a minimum, that portion of any lot which is within ten feet of, and immediately adjacent to, the

existing or proposed right-of-way of any public roadway shall be reserved as a green belt. Green belt areas shall be composed of grass and/or softscape treatment only, except that it may include pedestrian walkways provided the walkway does not occupy more than 25 percent of the green belt area and green space is maintained on both sides of the walkway. Access roads and driveways may cut through a green belt area perpendicular to the public roadway or parallel to a lot line without replacement requirements. If access roads and driveways are located within a green belt area in any other manner, the green belt area shall be increased by at least an equal amount of area.

(b) Access:

1. Access roads. An access road shall mean a private roadway, providing ingress/egress for vehicles to enter and/or leave a lot from a public roadway, which provides access to more than one building, lot or use.
2. Driveway. A driveway shall mean a private entrance, providing ingress/egress for vehicles to enter and/or leave a lot from a public or private access road, which provides access to one building, lot or use.
3. Pedestrian facilities. Pedestrian facilities shall mean walkways providing access from building entrance to building entrance, parking area to building entrance, and/or parking area to parking area.
4. Construction and maintenance. All facilities (access, drive, pedestrian) shall be constructed and maintained so as to provide year round access and so that it will be maintained free of dust and debris.
5. Design. Points of access shall be combined wherever possible to minimize the number of access points onto public roadways. There shall be a maximum of two points of access per street frontage. The minimum maintained width of an access road shall be 18 feet for two-way traffic and ten feet for one-way traffic. Where a proposed access road lies within 30 feet of an existing three-way public or private road intersection, the centerline of the access road shall be in line with the centerline of such intersecting road. Wherever possible, access roads and driveways shall be designed so as to avoid funneling traffic into single family residential areas. Except for industrial uses, access roads and/or driveways shall be designed to allow for interconnection among and between contiguous lots in order to minimize turning movements onto and from public roadways. Except for industrial uses, pedestrian facilities shall be designed to allow for interconnection among and between developments and within a development to minimize conflicts with vehicular traffic and to promote safe and efficient access from entrance to entrance to parking areas. All facilities (access, drive, pedestrian) shall be constructed under design standards approved by the city engineering department.

(c) Lighting: Lighting provided on the site to ensure safe movement of persons and vehicles and for security purposes shall conform to the following:

1. All lighting shall be designed and arranged so as to minimize glare and reflection on adjacent properties. All lights shall be of a "cut-off" type with the lighting element completely shielded on all sides and top, excluding historic ornamental light fixtures and globes.
2. The maximum height of free standing lights shall not exceed 20 feet when within 200 feet of one- and two-family use and shall not exceed 30 feet when located more than 200 feet from one and two-family use.
3. The maximum height of lighting fixtures for pedestrian areas, including sidewalks adjacent to streets,

is to be 16 feet. These fixtures should be placed every 50 feet.

4. Site lighting shall be of uniform design and materials, and shall compliment the architecture and landscape of the developed site.
5. Lighting within gas station canopies and adjacent to residential areas shall be of a "downlighting" type with a light element completely shielded on all four sides and top.
6. Lighting shall not cause illumination of adjacent residential properties and shall provide warm white lighting. Lights shall be located to provide maximum visibility and safety.

(d) Trash collection areas:

1. Trash collection areas shall be effectively screened from public roadway view and view from adjacent noncommercial, nonindustrial properties.
2. Trash collection areas shall be located where their use will not interfere with traffic circulation of a public roadway or an access roadway.

(e) Outside storage:

1. Permanent outside storage of supplies and materials shall be screened from public roadway view and from the view from adjacent noncommercial, nonindustrial properties and uses. This provision shall not apply to the outside display of merchandise nor to temporary outside storage of supplies and materials used during on-site construction activities.
2. Outside display of merchandise shall not be closer than ten feet to any public roadway right-of-way line, existing or proposed. Outside display of merchandise shall be reasonably screened from the view of adjacent noncommercial, nonindustrial properties and uses.
3. No outside storage of supplies and materials or outside display of merchandise, and accompanying screening, shall be placed in a manner which would impede visibility at points of ingress/egress.

(f) Landscaping screening, planting and preservation. All portions of properties that are not intended for development shall remain in their natural state or be suitably landscaped with planting of trees (shade or ornamental), shrubbery, ground cover, grasses, mulches, etc. Landscaping shall minimize erosion and stormwater runoff, provide necessary buffering and generally serve to blend the proposed use with the character of the surrounding natural area. The following landscaping standards shall be met.

1. Landscaping materials selected shall be appropriate to local growing and climatic conditions. Native species of plants shall be included in the plan whenever possible. Whenever possible, natural vegetation shall be maintained by appropriate construction practices and site layout. To provide for easier and more cost efficient maintenance, the following trees, which are invasive, prone to disease, excessive breakage, and/or other problems, shall not be used and/or planted as a part of any required landscape plan: acer negundo, box elder; acer saccharinum, silver maple; and populus deltoides, cottonwood; and plants included on the Indiana Invasive Species Council's list of invasive plants. To protect the landscaping investment, care should be given to appropriate placement of trees to allow for growth of the root system without adversely affecting other improvements and adequate area for capturing rainfall.
2. Whenever appropriate, existing trees should be conserved and integrated into the plan. Healthy trees with diameters of 12 inches or greater, measured at four feet above grade, shall be marked on the plan and preserved to the extent possible. Where it is necessary to remove such mature trees, replacement trees shall be planted throughout the site at a ratio of two new trees for each one

removed. These replacement trees may count toward meeting the tree planting requirements set forth for the green belt and for parking spaces. Replacement trees shall meet the following requirements: shade trees shall have a minimum three-inch trunk diameter at three feet above grade, a minimum height of seven feet and branching no lower than  $\frac{1}{3}$  the height of the tree; ornamental trees shall have a minimum two-inch trunk diameter at two feet above grade, a minimum height of five (5) feet and branching no lower than  $\frac{1}{3}$  the height of the tree; and evergreen trees shall have a minimum height of seven feet and a width not less than 60 percent of the height.

3. Except where the standards of section 150.214.7 apply, landscape treatments shall be required based on the following:

Green belts, as defined herein, where landscaping shall include either shade and evergreen trees and/or ornamental trees as follows: One shade/evergreen tree for each 50 feet of frontage with a minimum diameter of two inches measured at six inches above grade; or one ornamental tree for each 35 feet of frontage with a minimum diameter of one and one-half to two inches measured at six inches above grade. The location of such trees is at the discretion of the developer/owner provided the required ratio is met and the trees are located in the green belt area.

Foundations, where foundation planting shall be equal to a minimum of five feet of landscaped area and three feet of sidewalk area for a minimum total of eight feet in depth along the front wall of the building and, for a corner lot, along the side street wall of the building, excluding entryways and loading areas.

Parking spaces, where the total number of trees planted on-site shall, at a minimum, equal one tree for each ten parking spaces. The location of such trees, which may include replacement trees, buffering trees and green belt trees, is at the discretion of the owner/developer provided the required ratio is met.

Peripheral areas, where there shall be a peripheral vegetated buffer strip a minimum of ten feet in depth, excluding areas subject to the green belt requirement, along any lot line abutting a noncommercial, nonindustrial property.

4. Planting and/or other landscape treatments (walls, fences, berms) shall be required, and permanent maintained, when abutting one- and two-family usage to accomplish an immediate buffer at least five feet in height. When abutting an undeveloped residence zone permitting one- and two-family dwellings, plantings and/or other landscape treatment shall be required to accomplish a buffer at least five feet in height within three growing seasons.
5. Landscape requirements refer to either softscape treatment such as greenery, plants, grass, and trees or to landscape such as decorative stone, brick, and masonry walls, except in the green belt area where softscape treatment is required. Generally, plants shall be spaced apart at distances no greater than two times the width of the plant at maturity.
6. All required landscaping shall be installed prior to the issuance of a certificate of occupancy. If it is not possible to install the required landscaping due to weather conditions or other circumstances, all landscaping shall be installed within eight months of the first occupancy of the buildings on the site. Surety may be required to ensure installation, such as, but not limited to, bonds, letters of credit, or personal guaranties.

7. It shall be the responsibility of owners and their agencies to ensure proper maintenance of the landscaping include replacing plantings, with identical varieties or a suitable substitute, which die during the first grow following their installation.

(g) Visibility at intersections:

1. Regardless of any provision of this section, nothing shall be erected, placed, planted or allowed to grow in such a manner as to impede vision between a height of three feet and ten feet above the centerline grades of intersecting public roadways in an area bounded by the right-of-way lines of such intersecting streets and a line adjoining points along said intersecting right-of-way lines 30 feet from the point of intersection of said right-of-way lines.

(C) Appeals.

- (1) Appeals. An owner may appeal any decision rendered in connection with this section to the board of zoning appeals or request a variance from a development standard under established schedules and procedures set forth in section 150.230 et seq. Whenever an owner has filed an appeal from standards contained elsewhere in this chapter with the intent to comply, in whole or in part, with the standards contained in this section, such intention to comply with the standards contained in this section shall be deemed a reason in support of such appeal.

(Ord. No. 11-95, § 1, 5-8-95; Ord. No. 50-04, § 1, 4-4-05; Ord. No. 40-22, § 11, 12-5-22)

Sec. 150.214.7. - 29th Street and Madison Street Corridor development standards.

(A) *Purpose*. The purposes of this section are to:

- (1) Implement the land use and urban design elements of the adopted comprehensive plan;
- (2) Encourage quality development along the designated corridors;
- (3) Complement public investment in new gateways and other features on corridors in South Muncie; and
- (4) Support current efforts to revitalize and redevelop South Muncie.

(B) *Applicability*.

- (1) *Applicability to corridors*. The standards set forth in this section shall apply to development and building along 29th Street from the Muncie Bypass to the eastern right-of-way line of South Madison Street and along South Madison Street, from the city limits, as they may be extended from time to time, to the southern right-of-way line of Memorial Drive, also known as 12th Street. Development affected by this section shall include any development in any industrial or business zoning district, any permitted multi-family development in a residential zoning district and any other development or use requiring a special use permit in a residential zoning district, excluding home occupations. For purposes of this section, development shall be considered to be "along" one of these corridors and controlled by these regulations if any of the following apply:
  - (a) The property on which the development or building will occur has direct access to and/or frontage on either or both of these corridors;
  - (b) If located in an area where the land has not been platted into blocks, the property on which the development will occur is located within 500 feet of either of these corridors; and
  - (c) If any portion of a parcel is subject to this section, as defined in the two previous paragraphs, then the entire parcel will be subject to these development standards.
- (2) *Types of development*. The development standards contained in this section shall apply to all development

other than one and two family residential. No new building or structure shall be constructed or used in whole or in part, and no building or structure, or part thereof, shall be altered, enlarged, reconstructed or used, and no land shall be used unless the requirements of this section are met subject to the following conditions:

- (a) Enlargements or alterations which result in a greater than ten percent increase in the ground coverage or a greater than 25 percent increase of the floor area require compliance with this section.
- (b) Changes in the use of existing buildings, structures or land shall require compliance with this section.
- (c) Restoration of an existing building, structure that has been damaged or destroyed by any means shall be permitted without conforming to the requirements of this section provided the restoration does not increase the ground coverage that was occupied by the structure being replaced by more than ten percent and/or the restoration does not increase the floor area by more than 25 percent.

(C) *General design standards.*

(1) *Streetscape and pedestrian accessibility.*

- (a) Sidewalks shall be six feet wide along 29th Street and Madison Street, being arterials, and five feet wide along collector and local side streets.
- (b) Where pedestrians are forced to cross traffic lanes on streets other than residential streets, changes in paving, medians and/or narrowing of the paved street shall be used where practicable to alert drivers to pedestrian traffic.
- (c) Where the right-of-way permits, a four (4) to seven (7) foot planting strip shall be provided by the developer between the sidewalk and curb to serve as a buffer.
- (d) Street trees (see acceptable list of street trees in design manual) are required along all sidewalks, if possible and with appropriate approvals, within the public right-of-way, except within utility easements and other required access areas. Otherwise trees should be located adjacent to the sidewalk between building and sidewalk. See sub-section 150.214.7(F)(2) for detailed requirements for landscaping materials.
- (e) Medians shall include street trees. See sub-section 150.214(F)(2) for detailed requirements for landscaping materials.

(2) *Bus stops.*

- (a) Any project with more than 100,000 square feet of floor area in one or more buildings shall include a bus-stop pull-off, with a shelter.
- (b) Design and location of bus stop pull-offs and shelters shall be in accordance with the Design Manual and the transit provider.
- (c) A minimum of one bench and one trash receptacle should be present at each stop.

(D) *Building setbacks.* A building subject to these regulations shall meet the minimum setback requirements of the applicable zoning district and shall be subject to the following additional setback standards (gas stations are exempt from the following setbacks; see section 150.213(B) for applicable setbacks):

- (1) A building covering less than 100,000 square feet shall be set back no more than 20 feet from the right-of-way line or by the minimum amount required for the zoning district, whichever is less.
- (2) A building covering 100,000 square feet or more shall be set back no more than 50 feet from the right-of-way line. This maximum shall not apply to a building which is part of a development plan that includes multiple lots, where other, smaller buildings will face the street and will meet the maximum setback required by sub-paragraph (1).

(E) *Parking area location and design.* The following standards shall apply to the location and design of required parking

- (1) The number of required parking spaces shall be determined from subsection 150.211(E)
- (2) The design standards set forth in subsection 150.211(C), paragraphs (1) through (8), shall apply to development along these corridors, in addition to the standards set forth below in the following paragraphs.
- (3) Pedestrian access to building entrances from the street shall be integrated with the existing pedestrian network. On lots where off-street parking is located between the street and the building, such access shall consist of sidewalks four feet in width running through planted medians or parking islands between parking bays. Parking lot layout shall take into consideration pedestrian and vehicular circulation; where it is necessary for pedestrians to cross vehicular circulation lanes, textured paving or other techniques shall be used to alert drivers to the crossings.
- (4) Parking areas in excess of the amount that can be provided within the maximum building setback, after providing for required landscaping, shall be provided to the side or rear of the building.
- (5) Parking lots shall provide connections to parking lots for uses in the same zoning district on adjacent properties.
- (6) Common, shared parking facilities are encouraged, wherever possible.
- (7) Semi-opaque screening is required between parking areas and public right-of-way, at least 36 inches in height but not to exceed 48 inches in height, excluding trees, and such screening may be located in the required greenbelt. Screening may consist of decorative masonry or stone walls, ornamental fences, earth forms or berms, and hedges or other vegetative screens. Such screening shall maintain visibility at intersections and a ten-foot clear zone, measured from the edge of the public roadway pavement, at points of ingress/egress.
- (8) For buildings greater than or equal to 100,000 square feet, 30 percent of the total parking area of a site shall be constructed with a pervious material such as pervious pavers, pervious concrete, or grass. For buildings greater than or equal to 50,000 square feet but less than 100,000 square feet, 20 percent of the total parking area of a site shall be constructed with a pervious material. (See Design Manual)
- (9) No impervious surface shall be permitted within ten (10) feet of the center of any tree.
- (10) Bicycle parking shall be required in accordance with the following standards:
  - (a) For a building under 100,000 square feet, for every 20 required vehicular parking spaces, bicycle rack space for one bicycle shall be provided.
  - (b) For a building equal to or greater than 100,000 square feet: for every 40 required vehicular spaces, bicycle rack space for one bicycle shall be provided.

(F) *Landscaping standards.*

- (1) *General rule.* A minimum of ten percent of the total area of any site is required to be landscaped according to the following specifications. Where the sum of the landscaping required by the following sections would occupy more than 15 percent of the total site area, all required landscaping may be reduced proportionately.
- (2) *Type and size of landscaping materials.* Landscaping materials required by this section shall meet at least the following size and quality standards at the time of planting:
  - (a) Shade trees shall have a minimum three-inch trunk diameter at three ft. above grade, a minimum height of seven feet, and branching no lower than  $\frac{1}{3}$  height of tree.
  - (b) Ornamental trees shall have a minimum two-inch trunk diameter at two feet. above grade, a minimum height of five feet, and branching no lower than  $\frac{1}{3}$  height of tree.

|          |               |        |              |             |               |                |                         |               |                 |
|----------|---------------|--------|--------------|-------------|---------------|----------------|-------------------------|---------------|-----------------|
| LAND USE | Single Family | Duplex | Multi-Family | Active Rec. | Institutional | Office; Retail | Warehouse; Lt. Industry | Hvy. Industry | Residential St. |
|----------|---------------|--------|--------------|-------------|---------------|----------------|-------------------------|---------------|-----------------|



|                |   |   |   |   |   |   |   |   |   |
|----------------|---|---|---|---|---|---|---|---|---|
| Single Family  | B | C | C | D | D | D | D | D | C |
| Duplex         | C | A | C | B | B | C | C | D | B |
| Multi-Family   | C | C | B | B | B | C | C | D | C |
| Active Rec.    | D | B | B | A | C | C | C | C | B |
| Institutional  | D | B | B | C | A | A | C | C | B |
| Office; Retail | D | C | C | C | A | A | C | D | B |
| Warehouse      | D | C | C | C | C | C | A | B | B |
| Hvy. Industry  | D | D | D | C | C | D | B | B | B |

(6) *Bufferyard design standards.* Bufferyard design standards in the following table are shown in terms of minimum width and number of plants required per 100 linear foot increment.

| Bufferyard | Minimum Bufferyard Width |       | Shade Trees | Ornamental Trees | Shrubs |
|------------|--------------------------|-------|-------------|------------------|--------|
|            | Side                     | Rear> |             |                  |        |
| A          | 5'                       | 10'   | 2           | 1                | 5      |
| B          | 5'                       | 10'   | 2           | 2                | 10     |
| C          | 10'                      | 20'   | 3           | 3                | 15     |
| D          | 15'                      | 25'   | 4           | 4                | 20     |

(7) *Screening of service areas.* Trash collection areas, drainage basins, outdoor storage, satellite dishes, HVAC systems, loading dock areas, and similar utility/service areas shall be screened from public view and from adjacent residential properties.

(8) *Landscaping in parking lots.*

(a) Parking area landscaping located within and surrounding the parking lot area shall include a minimum of one shade tree and five shrubs for every seven parking spaces provided and shall not be less than 20 trees per parking lot acre. Buildings with parking areas located in the front yard shall have a minimum of

one shade tree and five shrubs for every five parking spaces provided and no less than 24 trees per acre. For parking lots with 100 or more spaces, 20 percent of trees required, must be included within the interior of the parking lot, planted in islands of at least eight feet by 18 feet in dimension.

(b) No trees may be planted in an area where there is less than 2½ feet of soil on all sides of the tree.

(G) *Stormwater retention ponds.*

- (1) Permanent stormwater retention ponds and detention basins can function as an amenity to the site, in addition to its primary function as a stormwater device. In situations where such amenity features are provided, no screening of the pond from on-site or off-site views is required. Otherwise, the stormwater retention pond or detention basin must be screened from view by vegetative screening using locally-adapted evergreen species, planted so as to screen at least 75 percent of the perimeter of the facility to an average height of six feet above grade.
- (2) To qualify as an amenity to the site or development where it is located, the following basic amenity features should be provided within any stormwater control facility:
  - (a) Integrate the permanent stormwater retention pond or detention basin into the site design through the use of appropriate placement within the site and utilization of similar planting materials and building materials as used in the principal structure.
  - (b) Provide pedestrian access walks or trails to and/or around the stormwater control facility from the existing and/or proposed pedestrian network associated with the site.
  - (c) Include horizontal curves or other sculptural elements within the shape of the facility to avoid a simple square or round shape.
  - (d) Side slopes and safety ledges shall be constructed and maintained in accordance with the requirements of the stormwater and erosion control ordinances.
  - (e) Provide riparian plant materials throughout the stormwater control facility to prevent erosion and add visual interest, and additional perimeter plantings consisting of at minimum three ornamental trees or two shade trees, and four shrubs for every 100 linear feet equivalent to the pond's maximum pool circumference and located no more than 75 feet from the pond's maximum pool line.
  - (f) Include other permanent, pedestrian-oriented features, such as seating, dining tables, and trash receptacles, in areas around the stormwater control facility.

(H) *Landscape maintenance.* It is the responsibility of the property owner to ensure proper maintenance of the landscaping in a healthy growing condition so as to present a neat and orderly appearance. This includes, but is not limited to, watering, weeding, pruning, replacing dead plantings with identical varieties or a suitable substitute, mowing grass, and keeping the area free of trash, litter, weeds, refuse and debris. Failure to maintain required landscaping is a violation of the zoning ordinance and subject to penalties and other remedies for such violation.

(I) *Signs.* The standards of section 150.212 shall apply to signs located along the corridors, subject to the following modifications:

- (1) Pole signs are prohibited;
- (2) Ground signs shall be constructed in monument style, with a base consisting of stone, decorative CMU or concrete block, or brick, matching the materials used on the building facade.
- (3) A maximum of three ground signs are permitted for a building with a total floor area of 100,000 square feet or

more and frontage on at least two streets. For buildings with a total floor area of greater than 50,000 square feet but less than 100,000 square feet, or for a building with a floor area of 100,000 square feet or more but with frontage on only one street, a maximum of two ground signs are permitted. For buildings with a total floor area of less than 50,000 square feet, a maximum of one ground sign is permitted.

- (4) Where more than one ground sign is allowed, there shall be a separation of at least 300 feet between ground signs.
- (5) All ground signs must be set back at least five (5) feet from the public right-of-way and shall not exceed eighty (80) square feet in sign board area per side. No sign may interfere with vision clearance.
- (6) A wall sign shall cover no more than ten (10) percent of the facade.
- (7) One wall sign shall be permitted on each wall facing a public right-of-way or an internal circulation road or driveway, whether public or private.
- (8) Ground signs shall be surrounded by a landscaped area at least equal to the sign area of the sign erected. Landscaping shall consist of living vegetation and natural ground cover materials. Rock, stone, or gravel shall not exceed 20 percent of the landscaped area.

(J) *Outdoor display and sale of goods.* Temporary and permanent outdoor display and sale of produce goods, holiday goods, outdoor-related goods, and general merchandise is permitted, subject to the following conditions:

- (1) *Outdoor display and sale.* Outdoor display and sale may be allowed for the following goods and merchandise:
  - (a) General merchandise that is displayed and offered for sale outdoors include goods that are customarily sold in connection with an established retail business on the same lot. Examples of displays that may be permitted include sidewalk sales and tent sales. Outdoor display and sale of these goods is permitted for a period not to exceed four days four times per year.
  - (b) Outdoor-related goods include, but are not limited to, goods that are customarily used outside, including outdoor furniture, sporting goods for outdoor sports activities, plants, fertilizers, mulch, sod, lawn and gardening tools, storage sheds, grills, firewood, etc. Outdoor display and sale of these goods must be in connection with an established retail business on the same lot and is permitted without specified duration.
  - (c) Produce goods include fruits and vegetables and other similar goods. Holiday goods include, but are not limited to, Christmas trees and pumpkins. Outdoor display and sale of produce goods and/or holiday goods shall be permitted for a period not to exceed 30 consecutive days four times per year.
  - (d) The designated outdoor display and sales area must maintain compliance with landscaping requirements and setback regulations.

(2) *Design and location standards.*

- (a) For developments equal to or greater than 50,000 square feet, the locations for proposed outdoor display and sales shall be shown clearly on the site plan or development plan, and outdoor display and sales shall take place only in the designated areas.
- (b) The proposed display and sale areas must not impede vehicular or pedestrian traffic and shall not utilize more than 15% of the required parking.
- (c) The designated display and sale areas may not be located in required landscape or visual buffer areas.
- (d) If applicable, building, electrical, fire prevention code, and hazardous use permits must be obtained.

(K) *Building design standards.*

- (1) Building materials on the front facade, any facade visible from a public right-of-way, and any facade with a dedicated entrance into the building must be primarily of natural materials conveying permanence, such as but not limited to stone, wood siding, split face, scored, or ground face block.
- (2) A building facade greater than 50 feet in length shall contain architectural features, details and ornaments such as: offsets, arches; roof cornices; contrasting bases; contrasting masonry courses, water tables, or molding; pilasters or columns; corbeling; contrasting bands or color; stone or ceramic accent tiles; colonnades, or porches. Elements such as wall clocks, decorative light fixtures, and door or window canopies are recommended.
- (3) Facades visible from a public right-of-way may contain windows constituting a maximum of 60 percent of the facade between three feet and ten feet in height.

(L) *Additional requirements.*

- (1) Except as otherwise specifically required herein, the development standards set forth in subsections 150.214.5(B)(3)(a)–(e) shall apply to development along these corridors.
- (2) Street and site furnishings and amenities such as benches, trash receptacles, and pedestrian-scale lighting should be located where appropriate along sidewalks, adjacent to buildings, and within parking lots.

(M) *Temporary and permanent on-site storage.* Trailers, modular storage units and other on-site storage not within a permanent building shall be permitted only for developments greater than or equal to 100,000 square feet in accordance with the requirements of this sub-section:

- (1) Storage units must be located in low-visibility areas (such as behind the building), and shall be screened from public view and adjacent residential properties.
- (2) Storage units may not be located within required landscape or visual buffer areas.

(N) *Location and design of loading areas.*

- (1) Loading docks and bays for service to businesses shall be located and oriented toward the side or rear lot line.
- (2) Loading/service areas are not permitted within required planting buffers.

(O) *Drive-Thru stacking areas.* Stacking for drive-thru lanes shall be confined to the rear of the lot or parcel, with the outlet from such lines also being to the rear of the building where practicable. Lines for drive-thru facilities shall not be permitted along the front of structures. The minimum stacking capacity for drive-thru lanes shall be as follows:

| Use Type                 | Min. No. Spaces | Measured From      |
|--------------------------|-----------------|--------------------|
| Bank teller lane         | 5               | Teller or Window   |
| Automated Teller Machine | 3               | Teller             |
| Restaurant Drive-thru    | 8               | Pick-up Window     |
| Car Wash                 | 5               | Entrance           |
| Gas Pump island          | 3               | End of pump island |

## DIVISION 27. - SPECIAL USES

### Sec. 150.215. - General.

The purpose of §§ 150.215 through 150.224 of this chapter is to enable the establishment of certain uses enumerated in §§ 150.215 through 150.224 of this chapter, not otherwise permitted in this chapter, under reasonable and uniform limitations, safeguards, and controls deemed to be in the public interest.

(Code 1968, § 130.240)

### Sec. 150.216. - Procedure.

- (A) An application requesting authority to establish a special use in certain districts as herein permitted shall be filed with the board in the same manner as for an appeal, in forms prepared for the purpose and under established rules and schedules. Upon receipt of the application, a copy shall be forwarded to the commission. The commission shall make a thorough study and evaluation of the case and shall submit its recommendations to the board in writing. After having received the report of the commission, the board shall set a date for a public hearing and shall give notice of the hearing to all interested parties. At the hearing, the report of the commission shall be read in toto and shall be made a part of the board's record.
- (B) The board shall not be bound by §§ 150.215 through 150.224 of this chapter to permit special uses per se, but shall carefully consider the report of the commission, the prayer of persons aggrieved, the existing conditions on the premises, and its surroundings. The board may compel the submission of any data deemed essential in determining whether or not the proposed special use is compatible with surrounding areas.

(Code 1968, § 130.241)

### Sec. 150.217. - Mineral extraction.

- (A) General. Except as herein provided, nothing in this chapter shall prevent (outside of urban areas) the complete use and alienation of any mineral resources or forests by the owner or alienee thereof. For the purpose of this section, urban areas shall include all lands or lots within the limits of incorporated cities and towns, and any other lands or lots used for residential purposes where there are eight or more residences within any one-quarter (¼) mile square area, and such other lands and lots as have been, or are, planned for residential areas contiguous to incorporated cities or towns. For the purpose of preserving mineral resources and using them in the development and growth of the community, the encroachment of other uses upon land where the resources may be obtained should be avoided.
- (B) Zones in which permitted. The mining of minerals shall be considered a special use and may be permitted in the F Farming Zone, the IL Limited Industrial Zone, and the II Intense Industrial Zone subject to the determination of the board.

(C) Quality standards.

- (1) In determining whether or not the working of an area for the extraction of minerals is feasible and whether or not the operation should be permitted, the commission and the board may consider the following factors:
  - (a) The depth of overburden.
  - (b) The quality of deposits at various depths.
  - (c) The engineering problems concerning size and area.
  - (d) Existing and future land use.
  - (e) Ingress and egress and similar traffic problems.
  - (f) Proximity of existing residential development.
- (2) In determining the feasibility of a project, the commission and the board may avail themselves of technical aid from state and federal agencies with expertise on the question of mineral resources.

(D) Standards of operation. The following standards shall be complied with:

- (1) No excavation below adjoining property elevation closer than 1-½ feet horizontal to one foot vertical from the boundary of adjoining property measured at top excavation shall be permitted.
- (2) All equipment used for the production of rock and gravel shall be operated and maintained in such a manner as to comply with applicable state and federal regulations.
- (3) Noise level shall not exceed the decibel limits set forth by the state and federal governments.
- (4) All access roads from the operation of mining grounds to a public road or to adjoining lands shall be treated in such a manner as to render them dust-free for at least 200 feet of any road or zone.
- (5) All excess water shall be drained from trucks or other vehicles hauling materials from the location prior to their entrance into a public highway.
- (6) All lights on site shall be installed in compliance with current and acceptable industrial standards.
- (7) Buildings on the premises shall not become unsightly. Weeds and other such obnoxious vegetation shall be cut, trimmed, or sprayed periodically to preserve the character of the property and to prevent harmful effects upon surrounding areas.
- (8) The site may be used for allied or accessory uses, except for the disposal of refuse and similar uses.
- (9) No production shall be permitted which creates a slope steeper than one foot horizontal to one foot vertical, with the exception of rock quarrying, in which case a vertical face will be accepted.
- (10) Property used or to be used for production shall be enclosed along the exterior perimeter bordering on a highway, street, or thoroughfare, by an acceptable barrier.
- (11) Every point along the property lines within 300 feet of a dwelling, school, playground, hospital, or institution for human care, shall be treated in the following manner:
  - (a) Where accumulation of water reaches one foot or more in depth and occupies an area of 100 feet or more, all access to the accumulation shall be barred by a wire mesh fence at least four feet in height, or an equally effective barrier.
  - (b) Where slopes steeper than one foot vertical to two feet horizontal, or more than eight feet in height exist, access to the slopes shall be barred by a wire mesh fence at least four feet in height, or an equally effective barrier.
- (12) Whenever production shall have been completed, all plants and equipment shall be entirely removed from

the property and all stockpiles shall be removed or backfilled into the pits, within a reasonable time after the completion.

- (13) Digging shall not be permitted to depths in excess of those permitted by the state.
- (14) Every operator shall be insured before commencing the operation of rock and gravel removal. Any producer who may establish a rock and gravel operation after the adoption of this chapter shall post a bond with the city to assure total compliance. This bond shall run for three years and shall be in the amount of not less than 100,000.
- (15) Not more than one year prior to the termination of operations, persons or corporations engaged in rock and gravel mining shall prepare and make available to the commission and the board plans for the restoration of affected lands. These plans may include slope modification, planting, reforestation, the elimination of hazards, and similar measures.
- (E) Report. All persons or corporations engaged in rock and gravel mining shall prepare and make available to the commission information concerning the progress achieved in the mining of minerals. These reports shall include an aerial photograph delineating the boundaries of the operation as of the time of the report. These reports shall be filed with the commission at 5-year intervals.
- (F) Continuation of use. The continuation of the extraction of mineral resources may extend beyond the portion of the property being worked to the exterior boundaries of the property, provided the operation shall comply with the standards prescribed in this section.
- (G) Permits. No mineral resources shall be removed or processing plant be erected until and unless an improvement location permit has been obtained from the administrative zoning officer. No permit shall be issued for any new excavation or mining operation unless the necessary authorization has been received by the officer from the board.
- (H) Application. Application for the extraction of minerals shall be made in writing and shall contain the following data:
  - (1) Name and business address of the applicant;
  - (2) Zoning classification of the property;
  - (3) An accurate map showing exact dimensions of the property to be mined; and
  - (4) Consent of the title owner of the premises involved by a notarized instrument.

(Code 1968, § 130.242)

#### Sec. 150.218. - Salvage yard.

- (A) Definition. A salvage yard shall be an area where waste paper, rags, and discarded or salvaged materials are bought, sold, exchanged, baled, packed, disassembled, or handled. A salvage yard shall include auto wrecking yards, dismantling of machinery, house wrecking yards, used lumberyards, and yards for the storage of salvaged house wrecking and structural steel materials and equipment. A salvage yard shall constitute only that portion of a lot where waste materials, papers, rags, discarded or salvaged materials, automobiles not in running condition, house wrecking materials, dismantled machinery and equipment are concentrated. The presence of the materials on a part of a lot shall not preclude the use of the remaining unused area of the lot for salvage yard purposes.
- (B) Zones in which permitted. A salvage yard may be permitted in the F Farming Zone, the IL Limited Industrial Zone, and the II Intense Industrial Zone subject to the determination of the board.

(C) Conditions. A salvage yard may be permitted under the following conditions:

- (1) No salvage yard shall be closer than 350 feet to any highway, road, or street, and not less than 500 feet from any dwelling, school, church, or institution for human care.
- (2) A salvage yard shall be provided with an adequate road, passable under any weather conditions.
- (3) A salvage yard shall be enclosed along all the exterior boundaries by an approved fence of a type prescribed by the commission, and the same shall have only one entrance or exit.

(Code 1968, § 130.243)

Sec. 150.219. - Refuse disposal sites.

- (A) Definitions. A "refuse disposal site" shall mean an area privately or publicly owned, operated for the purpose of dumping, sanitary covering of solid wastes. The term "solid waste" shall mean any thing discarded such as garbage, rubbish, trash, litter, junk, and refuse, except solids and dissolved materials in domestic sewage and other significant pollutants in water sources, such as silt and dissolved or suspended solids in industrial waste water.
- (B) Zones in which permitted. Refuse disposal sites may be permitted in the F Farming Zone, the IL Limited Industrial Zone, and the II Intense Industrial Zone subject to the determination of the board.
- (C) Procedure.
  - (1) Individual, group of individuals, or corporation wishing to establish a refuse disposal site or sites shall:
    - (a) Submit a request for the site in forms provided by the board;
    - (b) Submit a map to scale showing the proposed site including adjacent area, and a complete plan on how the site is to be developed;
    - (c) Submit data relating to existing soils, including seasonal high water table, type and source of cover material; and
    - (d) Show proof that they own or can rent the necessary machinery to operate efficiently.
  - (2) Upon receiving all the aforementioned data, the board shall transmit a copy of the same to the commission. The commission shall study the case, availing itself of all necessary expertise, and shall make recommendations to the board as to whether or not the proposed refuse disposal sites fit into present and future land use patterns and further, as to whether or not the site is adequate and pollution-free. The determination of the commission shall be made at a regular meeting and forwarded to the board in writing.
  - (3) Upon receiving the recommendations of the commission, the board shall then make proper advertisement for a public hearing, notify all parties involved of the date and time of the hearing, and generally proceed in the same manner as for a variance, special exception, or similar appeal. At the public hearing the recommendations of the commission shall be read and made a part of the board's record. The recommendations may be to approve, approve with conditions, or disapprove. A decision of the board which may be contrary to the commission's recommendations shall require five affirmative votes, otherwise the commission's recommendations will hold.
- (D) Conditions under which a refuse disposal site shall not be permitted:
  - (1) Within 1,000 feet of an interstate or primary highway.
  - (2) Within the floodway of any stream or body of water, unless proper clearances are obtained in writing and



filed with the board and the commission prior to consideration of a proposed site. The clearance shall come from the United States Corps of Engineers and the Indiana department of natural resources, and shall be certified by the executive officer of each agency or his duly authorized representative.

- (3) Within an area from which leaching could drain into surface water.
- (4) Within sand and gravel pits, quarries, and ravines, unless it can be ascertained that drainage can be effectively controlled.
- (5) Within running water, spring sites, and standing water.
- (6) Within 1,000 feet of a dwelling, school, church, or institution for human care.
- (7) Within 300 feet of any industrial or commercial building.

(Code 1968, § 130.244)

Sec. 150.220. - Planned unit development.

- (A) Definition. A "Planned multiple-family development unit" shall mean a single-family, two-family, multiple-family development, or combination of all three uses developed as a single unit. The development may include group housing, townhouses, cluster garden structures, apartments, and condominiums.
- (B) Zones in which permitted. Planned multiple-family development units may be permitted in all residence zones (except R-1 Residence Zone) subject to the provisions of §§ 150.218 through 150.224 of this chapter.
- (C) Purpose. The purpose of the planned multiple-family development unit is to provide a more desirable living environment than would be possible through strict application of the provisions of this chapter; to encourage a more desirable use of open areas; to induce innovation in residential development so that the growing demands for housing may be met by greater variety in type, design, and layout of dwellings, and by the conservation of land; to stimulate a more efficient use of public and private services; to provide means by which the type, design, and layout of residential development can be related to sites and demands for housing consistent with the preservation of property values; and to add flexibility to zoning standards as shall encourage the disposition of proposals for the multiple-family development units without delay.
- (D) Procedure. The owner of any tract of land ten acres or more in area may file an application, for tentative approval, with the commission. The application shall include all of the following items:
  - (1) Location and size of area involved;
  - (2) Density of land use;
  - (3) Location, function, ownership, and manner of maintenance of common open space;
  - (4) Use, approximate height, bulk, and location of buildings and other structures;
  - (5) Feasibility of proposals for the disposition of sanitary and storm water;
  - (6) Covenants, grants, and easements to be placed on the use of the land and buildings;
  - (7) Provisions for parking of vehicles, and the location and width of proposed streets;
  - (8) Relationship of proposed streets to streets in the proximity of the project; and
  - (9) Schedule of construction and a written statement of how the project would be consistent with residential growth.
- (E) Principles and standards. In considering the planned multiple-family development units, the commission and the board shall adhere to the following principles and standards:

- (1) The population density and building coverage of the site for the project shall conform to the overall density and coverage of the zone in which it is located. However, lot dimensions, setbacks, and area do not have to meet requirements of the chapter, provided a more logical and desirable use of the property is proposed;
- (2) A variety of dwelling and building types shall be encouraged;
- (3) Where townhouses are suggested, there shall be no more than five townhouse units in any contiguous group. An average rear yard of 25 feet would be desirable where a lot does not abut a park or open-space easement. A minimum side yard on the two end units of contiguous townhouse groups, shall be seven feet, plus three feet for each additional story over one story;
- (4) Planting and utility strips may be eliminated and an equal amount of land area placed into an acceptable public park;
- (5) Areas proposed for dedication must be acceptable in size, shape, and location. Rights-of-way for riding, hiking, and other types of trails and scenic ways may be dedicated. Rights-of-way for watercourses and similar channels shall not be acceptable for space exchanges;
- (6) Clustering of dwellings may be accomplished through a reduction of lot area with overall density remaining the same, and the provisions of usable and desirable open-space easements dedicated;
- (7) Public utility and similar easements shall not be used for space exchange;
- (8) Any project which proposes to dedicate land for park and open space must include the total park area at the time of the filing of the application;
- (9) Maximum privacy for each multiple-family unit shall be provided through functional design, use of proper building materials, and landscaping;
- (10) The architectural design of each multiple-family unit shall be provided through functional design, use of proper building materials, and landscaping;
- (11) Building coverage shall not exceed 40 percent of the net lot area;
- (12) A minimum of 25 percent of the total lot area, exclusive of parking and streets, shall be landscaped for recreation; and
- (13) All onsite utilities shall be placed underground.

(Code 1968, § 130.245)

Sec. 150.221. - Truck terminals.

- (A) Definition. A "truck terminal" shall be the use of property or buildings for the temporary parking of motor freight vehicles or trucks of common or contract carriers during loading and unloading and between trips, including necessary warehouse space for storage of transitory freight.
- (B) Zones in which permitted. A truck terminal may be permitted in the II Intense Industrial Zone.
- (C) Conditions. A truck terminal may be permitted under the following conditions:
  - (1) No property to be used as a truck terminal shall be located closer to any dwelling or residence zone than 200 feet.
  - (2) The site shall be relatively flat, well-drained, and large enough to accommodate any foreseeable need for expansion.
  - (3) The site shall be fully enclosed by a fence or wall adequate to insure that no portion of a vehicle shall

extend beyond the lot line.

- (4) The principal access shall not be a local street but a secondary or major highway.
- (5) All vehicular exits and entrances shall be located not less than 100 feet apart.
- (6) Minimum distances on docks to property lines, measured at right angles to the docks, shall be not less than 85 feet where no parking of trailers along the property line is intended, or 100 feet when trailers are so parked, and 60 feet where no pickup trucks are parked.
- (7) Driveways shall be kept open at all times so that there will be no necessity for maneuvering upon entering or leaving the property.
- (8) A 5-to-1 ratio of land to building shall be observed. The dock area shall be twice the size of the combined floor area of the trucks.
- (9) All truck terminals shall be paved with two inches of asphaltic concrete over a 2-inch base of crushed rock.
- (10) All truck parking spaces shall be 12 feet wide and 20 percent longer than the trailer, with a maximum of 60 feet. There shall be three parking spaces for each berth.

(Code 1968, § 130.246)

Sec. 150.222. - Home occupation.

- (A) Definition. The term "home occupation" shall mean an occupation conducted in a dwelling by a member of the resident family where the clientele would be coming to the premises upon which such occupation is conducted. A home occupation shall be controlled and limited so as to not interfere with the principal use of the premises as a residence and so as to not adversely affect the residential character, use, or value of the adjacent area. This special use does not allow rummage, yard, porch or garage sales, or similar activity.
- (B) Zones in which permitted. A home occupation may be permitted in the F Farming Zone or in any residence zone.
- (C) Conditions. A home occupation shall be determined by and regulated by the following conditions:
  - (1) The operator of the home occupation shall remain a resident of the dwelling and no person other than a member of the resident family shall be employed in connection with the home occupation.
  - (2) The primary use of the dwelling shall remain residential and the home occupation use shall be clearly incidental and subordinate to the residential use.
  - (3) No accessory building or structure shall be used to house a home occupation.
  - (4) Not more than 25 percent of the floor area of the dwelling shall be used in the conduct of the home occupation.
  - (5) There shall be no change in the outside appearance of the dwelling or the premises or any visible evidence of the conduct of the home occupation other than one sign not exceeding one square foot in area, nonilluminated, and mounted flat against the wall of the building in accordance with the provisions regulating home occupation signs in § 150.212.
  - (6) No traffic shall be generated in greater volume than normally expected in a residential neighborhood. Any need for parking generated by the conduct of the home occupation shall be met off the street and not in the required front yard and in accordance with the provisions regulating parking in § 150.211.
  - (7) No equipment or process shall be used which creates noise, vibration, glare, fumes, odors or electrical interference detectable to the normal senses off the lot. In the case of electrical interference, no

equipment or process shall be used which creates visual or audible interference in any radio or television receivers, or causes fluctuations on line voltage, off the premises.

- (8) There shall be no visible display or storage of goods or commodities. No stock in trade or commodities, other than those prepared, produced or created on the premises, shall be sold on the premises.
- (9) The granting of a special use for a home occupation shall not transfer with ownership nor to another location.
- (10) A home occupation shall not be considered to include clairvoyance, fortune telling, or experimentation that may involve the use of chemicals or other substances which may create noises, odors, or hazards to health, safety, and welfare of the neighborhood. Neither shall a home occupation include hobby or curio shops, convalescing or nursing homes, tourist homes, and gun shops.

(Code 1968, § 130.247; amend. Ord. No. 67-83, 9-12-83; amend. Ord. No. 42-86, 8-4-86)

#### Sec. 150.223. - Seasonal work camps.

- (A) Definition. A "seasonal work camp" shall mean premises where a number of transient workers enjoy temporary quarters while they work for a salary during the harvesting of agricultural products.
- (B) Zones in which permitted. A seasonal work camp may be permitted in the F Farming Zone.
- (C) Conditions. A seasonal work camp may be permitted under the following conditions:
  - (1) The camp site shall be free from floodwaters.
  - (2) The camp shall be located off a major or secondary highway and not closer than ¼ mile to any residence zone, residential subdivision, town, school, church, or institution for human care. No camp shall be located on the watershed of a domestic or public water supply so as to create a pollution hazard. No camp structure shall be located within 100 feet of any barn or pen.
  - (3) An adequate and convenient water supply in line with the requirements of the state board of health shall be provided to meet all the needs of the residents. The water supply shall be capable of supplying a minimum of 35 gallons per person per day.
  - (4) Facilities for providing hot water for bathing, laundering, and dishwashing purposes shall be available.
  - (5) Public sewer systems shall be tapped into, whenever they are available. Where public sewer systems are not available, the most efficient sewage disposal recommended by the state board of health shall be used.
  - (6) All buildings shall meet minimum structural requirements of the building code. Floors shall be of wood or concrete construction. In all shelters, whether existing or new, no less than two rooms shall be provided for each family composed of husband and wife and one or more children. Except in housing of families, separate sleeping accommodations shall be provided for each sex.
  - (7) Each room designed or used for sleeping quarters shall have at least 38 square feet of floor space and 270 cubic feet of air space per person. Combined sleeping, cooking, and eating facilities shall have a minimum of 300 cubic feet of air space per occupant, and 40 square feet of floor space per occupant.
  - (8) The ceiling of each structure shall be not less than seven feet. Each room shall have a minimum of one window.
  - (9) Each habitable room shall be provided with one ceiling type light fixture and at least one separate floor or wall type electric outlet.
  - (10) Toilet facilities shall be in accordance with the requirements of the state board of health. The same shall

apply to screening, heating, washrooms, bathrooms, and laundries; cooking and eating facilities; garbage and other refuse disposals.

- (11) There shall be a permanent camp operator or supervisor who shall see to it that all health and functional regulations of the camp are being followed and complied with.

(Code 1968, § 130.248)

Sec. 150.224. - Private outdoor camp.

- (A) Definition. A "private outdoor camp" shall mean premises privately owned and operated as vacation sites, including facilities for camping trailers, mobile homes, and tents or similar appurtenances. The camps shall not allow permanent living or occupancy.
- (B) Zone in which permitted. A private outdoor camp may be permitted in the F Farming Zone.
- (C) Conditions. Any person, group, or corporation desiring to establish a private outdoor camp shall make an application for the use with the board, and shall submit, together with the application, the following data:
- (1) A complete plan of the property, showing its exact boundaries, acreage, topography, existing buildings and other structures, existing streams and watercourses, existing wooded area, location of campgrounds and their capacity, location of picnic areas, trails, or any other similar feature;
  - (2) A statement, preferably from the county soil and water conservation district board, attesting to the types of soils prevalent in the area and their suitability for a private outdoor camp. Two soil tests per acre may be required by the board to determine percolation ability with particular emphasis on locations where camping trailers, mobile homes, tents, or similar appurtenances may be parked;
  - (3) A statement, from the county board of health as to the nature and extent of sanitary facilities which may be necessary for the operation of a private outdoor camp;
  - (4) A statement from authoritative sources of the availability of water on the premises, with supporting facts; and
  - (5) A statement of the financial capability of the applicant to establish, maintain, and operate the camp in accordance with existing requirements.
- (D) Standards. A private outdoor camp may be permitted under the following conditions:
- (1) The camp site shall be not less than 20 acres in area;
  - (2) The camp site shall be a naturally attractive area with wooded surroundings;
  - (3) The camp shall be in the immediate proximity of a major or secondary highway and at least one-half mile from any extensive residential development;
  - (4) The camp site shall be well-drained, accessible on an adequate access road not less than 20 feet in width, and capable of safe passage even during extreme weather conditions;
  - (5) While parked, no camping trailer, mobile home, tent, or similar appurtenances shall be closer than 15 feet to one another; and
  - (6) Unless provisions are made for sanitary sewer facilities, no private outdoor camp shall be permitted within one-half mile of any major body of water used as a source of water supply by residents of the city.

(Code 1968, § 130.249)

Sec. 150.225. - Group housing.

- (A) Definition. A single unit dwelling occupied by four or more unrelated individuals sharing a common kitchen and other common living areas.
- (B) Zones in which permitted. Group housing may be permitted in the R-5 residence zone.
- (C) Conditions. Group housing may be permitted under the following conditions:
  - (1) A minimum of 250 square feet of floor area shall be provided for each occupant.
  - (2) One off-street parking space shall be provided for every two occupants. Such parking shall meet the performance standards as set forth in section 150.211.

(Ord. No. 67-83, 9-12-83)

Sec. 150.226. - Nursery/day care centers.

- (A) Definition. Any residence or institution operated for the purpose of providing care and maintenance to children separated from their parent, guardian, or custodian. This section does not apply to an individual who provides child care in his residence to five or fewer children at any time, excluding relatives of the individual.
- (B) Zones in which permitted. Nursery/day care centers may be permitted in the F farming zone and the R-1 through R-4 residence zones.
- (C) Conditions. Nursery/day care centers may be permitted under the following conditions.
  - (1) All provisions of state statutes pertaining to licensing requirements of nursery/day care centers shall be complied with.
  - (2) Off-street parking shall be provided in accordance with section 150.211 of this Code.
  - (3) All signage giving reference to nursery/day care centers within a residence zone shall meet the specifications of a ground sign as set forth in section 150.211(E)(1) except that no sign shall be illuminated. In addition, faces or panels of such sign may not exceed a maximum of 12 square feet in total. The owner may substitute using a ground sign by placing a sign, not to exceed a total of 12 square feet, flat against the wall of the structure housing the nursery/day care center facility.

(Ord. No. 67-83, 9-12-83)

Sec. 150.227. - Multi-unit development.

- (A) Definition. A multi-unit development shall mean residential development consisting of 25, or more, units where the intended development will be designed under one site plan.
- (B) Zones in which permitted. A multi-unit development may be permitted in the R-5 residence zone.
- (C) Purpose. The purpose of a multi-unit development is to provide for a site plan review of larger residential developments to promote future growth in accordance with the comprehensive plan. The site plan review is to ensure new developments are furnished with adequate facilities and services, such as utilities, access roads, ingress and egress to minimize traffic congestion, and drainage; to ensure that adjacent areas are not affected in a substantially adverse manner; and to generally carry out the purpose of this Code.
- (D) Procedure. An application for a multi-unit development shall be filed with the board of zoning appeals under the established rules and procedures for a special use request as specified by this Code. The application shall include the following items:
  - (1) Location and size of the area involved.

- (2) Density of land use.
  - (3) Location, function, ownership, and manner of maintenance of common open space.
  - (4) Use, approximate height, bulk, and location of buildings and other structures.
  - (5) Feasibility of proposals for the disposition of sanitary and storm water.
  - (6) Covenants, grants, and easements to be placed on the use of the land and buildings.
  - (7) Provisions for parking of vehicles and the location and width of proposed streets.
  - (8) Relationship of proposed streets to streets in the proximity of the development.
  - (9) Schedule of construction and a written statement of how the development would be consistent with residential growth.
- (E) Standards and conditions. In considering an application for a multi-unit development, the board may impose conditions to carry out the intent of this section and this Code. These conditions may include, but are not limited to, the following type of provisions:
- (1) Off-street parking and loading areas.
  - (2) Refuse and service areas.
  - (3) Special screening and buffering with reference to type, dimensions, and character of same.
  - (4) Signs and proposed exterior lighting with reference to glare, traffic safety, economic effect and compatibility and harmony with adjacent properties.
  - (5) Additional setback distances, yards, and other open space with reference to areas, as needed, to be set aside for open recreational or landscaped areas at a ratio of 100 square feet per unit.
  - (6) General compatibility with adjoining properties, with reference to site development standards designed for mutual protection and environmental harmony.

(Ord. No. 67-83, 9-12-83)

Sec. 150.228. - Vegetative composting/mulching facility.

- (A) Definition. A vegetative composting/mulching facility shall mean an operation allowing for the biological treatment process by which micro-organisms decompose the organic component of vegetative matter and other types of organic material to create compost. Vegetative matter shall mean any yard or landscaping waste, including leaves, grass, brush, limbs, and branches resulting from commercial, industrial, and agricultural operations or from community activities. For the purpose of this section, a vegetative composting/mulching facility shall not include an operation conducted at a person's residence or farm for vegetative matter and other types of organic material that are generated by the person's activities and stored, treated or disposed of at the person's residence or farm; nor shall this section apply to the uniform spreading of vegetative matter over agricultural fields, whether generated on-site or off-site.
- (B) Zones in which permitted. A vegetative composting facility may be permitted in the F farming zone subject to the determination of the Delaware-Muncie Metropolitan Board of Zoning Appeals.
- (C) Application. In addition to the information required on the standard application for appeal, the following information shall be supplied and may be indicated on the standard application map where applicable if it is of adequate size and scale:
- (1) Topographic mapping showing two-foot contours.

- (2) One hundred-year flood line, if applicable.
- (3) Regulated drains and open waterways within 1,000 feet, if applicable.
- (4) Wetland areas, if applicable, as designated by the National Wetland Inventory Maps for Delaware County.
- (5) Existing residences within 600 feet of the site.
- (6) Existing wells within 600 feet.
- (7) Soils mapping for the site.
- (8) Water table levels for the site.
- (9) The proposed location of the facility on the property including all appurtenant features which shall be considered a part of the facility.
- (10) The proposed point of access and type of construction of the access road.
- (11) A description of compost management procedures to be implemented at the facility including controls for dust, odors, and noise.
- (12) A description of the methods proposed for collecting, removing, and disposing of unwanted and noncompostable materials received at the facility.
- (13) A description of the composting facility that indicates the area to be served by the composting operation.
- (14) A description of the proposed final use of composted materials.
- (15) An estimate of the volume of materials that will be processed annually by the composting facility.
- (16) A description of surface water drainage control and leachate management procedures to be implemented at the composting facility.

The plan commission or the board of zoning appeals may require additional information as deemed necessary to determine compliance with the standards set forth herein.

- (D) Standards: Any proposed vegetative composting facility shall meet the following standards and shall continue to meet such standards throughout the life of the operation:
- (1) The facility shall be registered with the Indiana Department of Environmental Management (IDEM).
  - (2) There shall be a minimum distance of 600 feet from the boundary of the facility operation to any existing residence, hospital or institution for human care.
  - (3) There shall be a minimum distance of 200 feet from the boundary of the facility operation to any surface water body which is not a part of the composting facility.
  - (4) There shall be a minimum distance of 600 feet from the boundary of the facility operation to any public water supply well or private water supply well unless the well is controlled by the owner/operator or is used solely for monitoring ground water quality.
  - (5) The facility shall not be located in a floodway as shown on the Floodway Maps for the City of Muncie, Indiana nor in a wetland as shown on the National Wetland Inventory Maps or as determined by the soil conservation service. The facility shall not be located inside the boundary of any 100-year floodplain as shown on the FIRM maps for Delaware County, Indiana, unless protection from the 100-year flood is provided. This standard shall not apply to a facility operated in conjunction with a publicly owned works permitted under IC 13-7-10-2.
  - (6) The lowest surface area of the facility shall be at least five feet from a water table or provide adequate controls to prevent ground or surface water contamination.
  - (7) The composition and design of the surface area used for composting shall adequately control runoff through



the use of ditches, dikes, berms or swales and shall be designed to allow drainage of surface waters away from the compost with no ponding of water between windrows and to allow heavy equipment operation without creating ponding of water and to allow heavy equipment operation during inclement weather with minimal dust and erosion generation.

- (8) The slope of the composting and curing areas shall be graded and maintained at no less than two percent and no greater than six percent.
- (9) That there is a management plan for leachate that may be generated by the composting facility showing that leachate will be prevented from entering surface and ground waters such as direct discharge to an approved treatment facility or leachate conveyance and storage structures. Any leachate that is collected must be disposed of in accordance with the rules promulgated under IC 13-7.
- (10) That a contingency plan is presented detailing emergency equipment, procedures, notification and cleanup for fire, equipment failure and temporary cessation of operations.
- (11) That only vegetative matter is accepted and that any matter received that is unsuitable for composting must be stored in enclosed, leakproof containers maintained on-site for this purpose and disposed of within one week receipt and in accordance with the Indiana Solid Waste Rule (329 IAC 2). Yard waste must be removed from containers and bags.
- (12) That adequate plans for the control of dust, noise, vectors and odors shall be presented and the facility shall be managed in such a manner that these items are so controlled.
  - (a) The facility must be operated in such a manner that fugitive dust does not leave the site in violation of 326 IAC 6-4.
- (13) Access roads shall be maintained in such a manner that allows for smooth passage of loaded vehicles during inclement weather with minimal dust and erosion generation.
- (14) For windrow composting, windrows must be constructed parallel to the line of the slope on the site and must be at least 50 feet in from the boundary of the facility operation (which may not be the property boundary). The windrow construction and turning frequency must enable predominately aerobic composting conditions to be maintained throughout the production of compost using the following guidelines:
  - (a) If grass clippings are incorporated into windrows, the initial formation of a windrow must be no greater than six feet high and 14 feet wide.
  - (b) For windrows containing grass clippings, the turning frequency shall be determined by temperature, and whenever the internal pile temperature exceeds 130 degrees Fahrenheit, the windrow shall be turned within one week.
  - (c) Regardless of temperature, windrows shall be turned at a minimum frequency of once per week from April 1st to September 15th of each year.
  - (d) Materials received for composting between April 1st and September 15th of each year must be placed in windrows within four days of its receipt.
- (15) A grass buffer area at least 25 feet in width shall be located at the perimeter of the site immediately adjacent to the facility boundaries for controlling erosion.
- (16) If any nuisance or pollution conditions are created, immediate corrective action will be taken by the owner/operator.
- (17) Fencing may be required at the discretion of the board of zoning appeals based upon recommendations from

the plan commission and upon consideration of the individual characteristics of the site and proposed facility development.

- (18) Copies of the annual report required by the Indiana Department of Environmental Management shall be forwarded to the plan commission office before February 1st of each year.
- (19) The method of disposal of compost, as set forth in the original application, may be limited by conditions imposed by the board of zoning appeals.

The board of zoning appeals may require surety, in a manner satisfactory to the City of Muncie, that the facility will be operated and closed as set forth herein.

(E) Closure of a vegetative composting/mulching facility. If and when an operator of a composting facility declares the facility closed, the following procedure shall be followed:

- (1) Written notice of the anticipated date to cease operation shall be forwarded to the plan commission, the Delaware County health department, and the City of Muncie Zoning Administrator not less than 60 days prior to closure.
- (2) Not later than ten days after closure, the operator shall thoroughly clean all facilities, equipment and areas on the site as follows:
  - (a) All compost shall be removed from the site.
  - (b) All containers, equipment, machines, floors, facility surfaces that were in contact with compost and that are not to be removed shall be washed or otherwise subjected to procedures that substantially reduce or eliminate any remaining constituents derived from the compost.
  - (c) When a leachate system has been used, any leachate remaining on the site shall be removed and disposed of properly and the leachate collection system shall be thoroughly flushed of all materials derived from the composting activity.
- (3) Not later than 180 days after closure, the owner or operator shall install signage stating, in letters not less than three inches high, that the facility is closed and such signage shall be posted in such a manner as to be easily visible at all access points from the public roadway and shall be maintained in legible condition for not less than one year after closure. The signage text shall read:

"THIS FACILITY IS CLOSED FOR ALL COMPOSTING ACTIVITIES AND ALL RECEIPT OF WASTE MATERIALS".
- (4) If a leachate collection system has been used, the owner or operator shall, within 180 days after closure, modify, remove or seal the system as necessary to prevent discharges from the system to surface or ground water.

(Ord. No. 21-93, § 5, 7-12-93)

Sec. 150.229. - Reserved.

## DIVISION 28. - ADMINISTRATION

Sec. 150.230. - General.

The purpose of this chapter is to promote and protect the public health, safety, morals, comfort, and general welfare of the people of the city. Associated with this purpose is the establishment of an effective administrative system to fulfill the objectives of good, sound zoning. The system should, among other things, expeditiously handle day-by-day matters concerning the citizens of the city and county with utmost care, courtesy, and exacting ability; protect the right of appeal from any decision of an administrative officer; deal fairly with deliberate or accidental infractions of this chapter; and through its function, create a climate as may deserve the respect of the community and the confidence of its citizens.

(Code 1968, § 130.250)

Sec. 150.231. - Administrative offices.

The administration of this chapter shall rest with three offices of local government, namely:

- (A) The administrative zoning officer;
- (B) The Dela-Muncie Metropolitan Plan Commission;
- (C) The Delaware-Muncie Metropolitan Board of Zoning Appeals.

(Code 1968, § 130.251)

Sec. 150.232. - Administrative zoning officer.

- (A) Appointment. There shall be an administrative zoning officer who shall be the enforcement officer of this chapter. He shall be appointed by the mayor of the city. The administrative zoning officer may be the building commissioner of the city.
- (B) Qualifications. The administrative zoning officer shall be a person of proven responsibility and knowledgeable in zoning administration and practice. He shall enforce the provisions of this chapter to their literal meaning and shall not try to exercise independent discretion that may violate it. He shall not permit the violation of any of the provisions of this chapter just because he considers it unduly severe as applied to specific cases, inasmuch as this chapter provides the necessary remedies. He shall not refuse to issue a permit for the construction of a building or structure or for the use of land on the basis of what he considers to be lack of wisdom in any zoning provision. He shall use the powers of his position to encourage compliance and advise citizens how such compliance can be achieved without unnecessary hardship.
- (C) Duties. In addition to other administrative duties assigned to him periodically by the mayor of the city, the administrative zoning officer shall perform the following duties:
  - (1) Issue all zoning permits and certificates of occupancy;
  - (2) Conduct inspections of buildings, structures, and uses of land to determine compliance with the provisions of this chapter;
  - (3) Maintain accurate records, including, but not limited to, maps, amendments, variations, conditional uses, and applications;
  - (4) Receive and file applications for permits and forward details of any refusal to issue a permit to the board;
  - (5) Revoke certificates of occupancy or zoning permits when violations of the provisions of this chapter are discovered by him; and
  - (6) Initiate court action as may be deemed necessary to prevent or abate violations of the provisions of this chapter, report all violations for prosecution to the proper legal authority, by sign or cause to be signed all

complaints to local courts prepared by the proper legal authority.

- (D) Inspections. The administrative zoning officer may, after giving at least 48 hours' notice to the proper person, examine premises to investigate possible violations. He shall state the nature of the violation to the owner or resident and give reasons for the inspection prior to obtaining entry into the premises.
- (E) Zoning permit.
- (1) No zoning permit pertaining to the use of land or building shall be issued by the administrative zoning officer unless the application for the permit has been examined and approved by the officer. Any zoning permit issued in conflict with the provisions of this chapter shall be cause for revocation. This application for a zoning permit shall include the following data:
    - (a) Location of the proposed structure, including street name, house or lot number, and zone;
    - (b) Name of the owner of the property, type of work proposed, and estimated cost of the work;
    - (c) Use proposed for the building or structure, area of lot and dimensions of same, size of front, side, and rear yards;
    - (d) Number of families that will occupy the building, height and number of stories of the building or structure, and number, size, and type of any accessory building; and
    - (e) Sketch of the proposed layout of the lot, and affidavit attesting to the accuracy of the application.
  - (2) Within two days after an application for a zoning permit is filed, the administrative zoning officer shall examine the application and shall advise the applicant or his agent as to whether or not the building, structure, or use thereof complies with the provisions of this chapter. If he finds the data in order, the administrative zoning officer shall issue the zoning permit. If he denies the permit, he shall inform the applicant of his findings and shall instruct him as to the applicant's right of appeal. He shall acquaint the applicant thoroughly with all current procedures to effect such an appeal. One copy of the application, together with the plans, shall be returned to the applicant after the administrative zoning officer shall have marked the copy either as approved or rejected, attesting to same by his signature on the copy. The original copy of the application, similarly marked, shall be retained by the administrative zoning officer as a part of the office's permanent record.
- (F) Certificate of occupancy. No new building or improvement shall be occupied, or land use started, unless and until the applicant shall have applied for in writing, and received a certificate of occupancy from the administrative zoning officer. The certificate shall be issued after the premises have been thoroughly inspected by the officer and found to be in full compliance with the provisions of this chapter.
- (G) Fees.
- (1) Applicants filing for changes in zoning, appeals, or review of shopping center plans shall be required to pay a filing fee in accordance with the following schedule:
    - (a) Changes in zoning .....\$100.00
    - (b) Appeals from decision of zoning administrator .....100.00
    - (c) Appeals for a variance .....100.00
    - (d) Appeals for a special use to allow mineral extractions, salvage yards, refuse disposal sites, and planned unit developments .....200.00
    - (e) Appeals for a special use other than those listed above .....100.00
    - (f) Review of shopping center plans .....200.00

(2) Fees required to cover the processing of zoning changes or appeals as well as fees for the processing of shopping plans shall be paid to the county auditor and shall be credited to the budget of the commission. Zoning permit fees shall be paid to the administrative zoning officer of the city as the jurisdictional case may be.

(H) Remedies. The commission, the board, or any designated enforcement official may institute a suit for injunction or damages in the county circuit court, the city court, or a court of competent jurisdiction, to prevent an individual or a governmental unit from violating the provisions of this chapter. These bodies may also institute a suit for mandatory injunction directing an individual or governmental unit to remove a structure erected in violation of the provisions of this chapter.

(Code 1968, § 130.252; Ord. No. 732-81, 10-5-81; Ord. No. 74-88, 12-15-88)

Sec. 150.233. - Metropolitan plan commission.

(A) General. The metropolitan plan commission shall be Delaware-Muncie Metropolitan Plan Commission, created under the provisions of IC 18-7-3-1 et seq. It is not intended by this chapter to abrogate, annul, or dismiss the commission, but the same shall continue as currently organized.

(B) Zoning amendments. From time to time and as conditions change, the provisions of this chapter may be amended, supplemented, or changed. Application for changes in zone may be initiated by the commission, or by owners of 50 percent or more of the area involved, in a petition, or by the common council of the city. Any proposed ordinance for amendment not originating from action of the commission shall be referred to it for consideration and report before final action is taken by the common council of the city.

(C) Filing.

(1) Any person seeking a change in zone shall make application for the change with the commission in forms prepared for the purpose. The commission may set the number of copies to be submitted and shall adjust each and every application to its regular schedule. The commission shall hold a public hearing on the proposed change in zone or amendment, giving public notice in at least two county newspapers of general circulation. The notice shall state the date and time of the hearing, the description of the change, and the exact location of the property involved. The notice shall appear in the newspapers at least ten days prior to the date of the public hearing.

(2) The proponent of a zone change shall cause the notice of public hearing to be published in the newspapers and shall bear the expense involved in so doing. He shall also submit a complete list of all surrounding property owners within a 300-foot radius of the property, with the necessary postage to cause the mailing of notices to the owners; except where a 300-foot radius would include only the immediately abutting properties, irrespective of public ways, the owners of the property adjoining the immediately abutting properties, in an east, west, north, and south direction, shall also be notified.

(D) Public hearing. The proponent of a zone change may appear in person, by agent, or by attorney. He shall be given proper consideration. All public hearings and all meetings of the commission shall be open to the general public. Opponents to a proposed change in zone shall be given adequate time to voice their opinions.

(E) Disposition. The final disposition of a proposed change in zone shall be in the form of a motion, duly adopted, favorably or unfavorably recommending the change; or specifically setting forth modifications, variations or conditions. The commission's action shall be forwarded to the common council of the city for final action.

(F) Basis for the decision. In making a decision on a proposed zoning change or amendment thereto, the commission shall substantially determine the following, that the:

- (1) Change in zone will not adversely affect the values of surrounding property;
- (2) Proposed use is the best and most adequate use of the property;
- (3) Proposed change in zone does not constitute spot zoning; the owner of the property in question is not being favored over surrounding property owners;
- (4) Owner can comply with all the requirements of this chapter;
- (5) Traffic congestion will not be unnecessarily increased;
- (6) Owner is not speculating on land values; and
- (7) Proposed changes are in line with good zoning practice.

(Code 1968, § 130.253; Ord. No. 11-88, 4-11-88)

Sec. 150.234. - Metropolitan board of zoning appeals.

- (A) General. The board shall be the Delaware-Muncie Metropolitan Board of Zoning Appeals created under the provisions of IC 18-7-3-11. It is not intended by this chapter to abrogate, annul, or dismiss the board as constituted at the time of the enactment of this chapter.
- (B) Appeals. All matters brought before the board shall be known as appeals. There shall be three types of appeals, namely:
  - (1) From the review of an order, requirement, or decision of the administrative zoning officer. This shall include any interpretation rendered by the officer, which an applicant for a permit may deem questionable, or the refusal of the officer to issue a zoning permit;
  - (2) In which a person is requesting a special use under the terms of this chapter; and
  - (3) Requesting variances from the terms of this chapter when it is claimed that the literal enforcement of the provisions of this chapter may cause undue hardship.
- (C) Hearings.
  - (1) All appeals shall be subject to public hearing. Prior to any public hearing an appeal shall be filed with the board on forms supplied by it and in full compliance with established schedules and procedures. The board shall give notice of the hearing in at least two newspapers of general circulation in the county, at least ten days in advance of the hearing. The appellant shall cause the notice of public hearing to be published as required and shall bear the expense involved in so doing. He shall submit a complete list of all property owners within a 300-foot radius of the property, with the necessary postage to satisfy the mailing of notices to the owners; and, where a 300-foot radius would include only the immediately abutting properties, irrespective of public ways, the owners of the properties adjoining the immediately abutting properties, in an east, west, north, and south direction, shall also be notified.
  - (2) Applications for appeal shall be accompanied by a certificate from the administrative zoning officer stating the reasons for the appeal, the date on which he refused to issue the permit, and all other pertinent information. All hearings and meetings of the board shall be open to the general public. The applicant may appear in his own behalf or by an authorized agent or attorney.
- (D) Disposition.
  - (1) The board shall keep minutes of its meetings and hearings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating that fact. Should the applicant fail to appear at the hearing or to appoint an agent or attorney to represent him, the board shall dismiss the case.

(2) Decisions of the board shall be made within 30 days of the time of the hearing and shall be entered in the minutes. The decision shall include the reasons, the summary of evidence introduced, and the findings of fact made by the board. When a variance is granted, the record shall state in detail any exceptional difficulty and unnecessary hardship upon which the appeal was based. The board's decision may reverse, affirm, wholly or partly, the ruling of the administrative zoning officer, and shall be final unless judicial review is sought by the applicant.

(E) Vote. The concurring vote of the majority of the members of the board shall be necessary to grant an appeal. Failure of a motion to receive a majority shall constitute a denial of the appeal.

Decisions of the board shall be available for inspection during normal office hours.

(F) Withdrawal. An applicant may, in writing, withdraw his appeal at any time prior to the hearing or he may do so verbally at the hearing.

(G) Time limitation. An appeal shall not be taken after 15 days have lapsed from the time of a zoning permit or a certificate of occupancy where denied by the administrative zoning officer. If an appeal is granted by the board, all necessary permits shall be obtained within 90 days, and construction shall be completed within six months from the time of the board's action, unless otherwise directed by the board.

(H) Hearing. No second hearing shall be entertained by the board on a case ruled upon by it, unless new facts and evidence are submitted which, in the board's judgment, materially change the case. A plea for the second hearing shall be requested in writing to the board. The board shall determine prior to scheduling a second hearing if the facts and evidence do exist. Change in ownership of the property affected by an appeal shall be insufficient reason for hearing. Should the board, at a regularly scheduled meeting, decide that there are substantial grounds for a second hearing and it is fully satisfied that new evidence has been submitted, the applicant shall be advised in writing of the board's ruling and will then be entitled to refile for rehearing in conformance with established schedules and procedures. The proper legal notices shall be published and all interested parties shall be duly notified.

(I) Advice. No informal request for advice, or moot questions, shall be considered by the board. Any advice, opinion, or information given by a board member shall not be binding on the board.

(J) Proof for a variance. It shall be incumbent upon an applicant to conclusively prove at the public hearing that, if he is compelled to meet the provisions of this chapter, he cannot secure reasonable use of his property; that the hardship claimed by him results from the application of the provisions of this chapter; that the hardship claimed is suffered by his property directly, and not merely by other properties; that the hardship claimed is not the result of the applicant's own actions; that the granting of the variance will not be contrary to the planning goals of the city.

(K) Judicial review. Each decision of the board of zoning appeals is subject to review by certiorari. Each person aggrieved by a decision of the board of zoning appeals may present, to the circuit or superior court of Delaware County, a verified petition setting forth that the decision is illegal in whole or in part and specifying the grounds of the illegality. The person shall present the petition to the court within 30 days after the date of that decision of the board of zoning appeals.

(Code 1968, § 130.254; Ord. No. 11-88, 4-11-88; Ord. No. 10-90, 5-14-90)

## DIVISION 29. - DEFINITIONS

### Sec. 150.240. - General; terms and meanings.

(A) For purposes of this chapter, the phrase "used for" shall include "arranged for," "designed for," "intended for," and "occupied for."

(B) Terms and meanings. For the purpose of this chapter the following words and phrases shall have the following meanings ascribed to them respectively:

*Accessory dwelling.* A special use allowed in the R-3 and R-4 residence zones, when approved by the board of zoning appeals, consisting of a second dwelling unit which is accessory to the principal dwelling unit, at least 300 square feet in area and provided with additional off-street parking spaces as required.

*Accessory use or structure.* A use or structure which is incidental and commonly associated with the principal use of the lot, operated and maintained under the same ownership and on the same lot as the principal use and, in residence zones, erected after or in conjunction with the erection/operation of the principal use in a clearly subordinate manner in terms of height, area, and bulk (see § 150.23 for accessory use or structure regulations).

*Advertising, outdoor.* Any device or means of identification, description, or illustration which is mobile or affixed to or erected upon a property, tract of land, a building, or a structure which directs attention to a product, place, activity, service, institution, or business (see § 150.212 for outdoor advertising regulations).

*Adult bookstore.* An establishment having as a preponderance of its stock in trade or its dollar volume in trade, books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records or other forms of visual or audio representations which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specialized anatomical areas.

*Adult cabaret.* A nightclub, bar, theater, restaurant or similar establishment which frequently features live performances by topless or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar entertainers, where such performances are distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas or which regularly feature films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons.

*Adult drive-in theater.* An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration, to persons in motor vehicles or on outdoor seats in which a preponderance of the total presentation time is devoted to the showing of materials distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

*Adult entertainment business.* An adult bookstore, adult motion picture theater, adult mini motion picture theater, adult motion picture arcade, adult cabaret, adult drive-in theater, adult live entertainment arcade or adult service establishment.

*Adult live entertainment arcade.* Any building or structure which contains or is used for commercial entertainment where the patron directly or indirectly is charged a fee to view from an enclosed or screened area or booth a series of live dance routines, strip performances or other gyrational choreography which performances are distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas.



*Adult mini motion picture theater.* An enclosed building with a capacity of more than five but less than 50 persons, used for presenting films, motion pictures, video cassettes, slides or similar photographic reproductions in which a preponderance of the total presentation time is devoted to the showing of materials which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

*Adult motel.* A hotel, motel or similar establishment offering public accommodations for any form of consideration which provides patrons, upon request, with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.

*Adult motion picture arcade.* Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

*Adult motion picture theater.* An enclosed building with a capacity of 50 or more persons used for presenting films, motion pictures, video cassettes, slides or similar photographic reproductions in which a preponderance of the total presentation time is devoted to showing of materials which are 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 service establishment.* Any building, premises, structure or other facility, or any part thereof under common ownership or control which provides a preponderance of services involving specified sexual activities or display of specified anatomical areas.

*Airport.* The area of land or water which is used or intended for use for the landing and taking off of aircraft, and any appurtenant areas which are used, intended for use, for airport buildings or airport facilities or rights-of-way.

*Alley.* A public way other than a street designed as a secondary means of access to abutting land and primarily used for vehicular access to the side and rear of such land and/or access for utilities and other services.

*Anatomical exposure.* The exposure of any human genital region, buttocks, female breasts, pubic areas, or any other part of the human anatomy, described as specified anatomical areas, designed to convey or express an erotic message. See also "specified anatomical areas."

*Apartment.* A room or suite of rooms arranged, designed, used, or intended to be used as a single housekeeping unit.

*Apartment house.* A building other than a duplex residence in which there are three or more dwelling units.

*Block.* A lineal measurement on and along a street which approximates 330 feet and which, under an ideal grid system of street layout, would be the distance from one intersecting street to the next intersecting street.

*Board.* The Delaware-Muncie Metropolitan Board of Zoning Appeals.

*Boarding house.* A residence in which table board or sleeping accommodations, or both, are provided, for compensation, for three or more, but not to exceed 15, persons. A "boarding house" shall be synonymous with "lodging house."

*Breezeway.* A roofed structure with open sides connecting one building and another building where the area cannot be heated for year-round use as living quarters.

*Buffer.* Screening that lessens the impact of one use on an adjacent use.

*Buildable area.* The net lot area remaining after deducting the required front, side, rear setbacks from the gross area of a lot or parcel of land of record.

*Building.* A roofed structure for the shelter, support, enclosure, or protection of persons, animals, or property; including all other structures of every kind, regardless of the similarity of buildings.

*Building, detached.* A building having no structural connection with another building.

*Building, front.* The wall of a building most nearly parallel with a street adjacent and the front line of the lot on which the principal use is conducted and/or the wall of a building containing the entrance to the building; when a building is to be located on the corner lot, the owner shall, for the purpose of this chapter, have the privilege of selecting which street shall be used to determine the front line of the lot, provided that such choice will not be injurious to the existing or future development of adjacent properties as determined by the administrative zoning officer and that such choice will not be contrary to the Uniform House Numbering Ordinance as determined by the plan commission.

*Building line.* The line establishing the minimum permitted distance on a lot between the front line of a building and the street right-of-way line; could be used interchangeably with "front setback line."

*Building, principal.* A building constituting the principal use of the lot.

*Business office.* An office used in the conduct of a business offering or selling a service such as, but not limited to, offices for real estate, insurance, brokers and consultants, and where the service does not involve the use of delivery trucks or other commercial vehicles or equipment.

*Camp, public.* Any area or tract of land used or designed to accommodate two or more automobile house trailers, mobile homes, cabins, tents, or other camping outfits, but not intended for permanent year-round occupancy.

*Cemetery.* Land used for the burial of the dead, including crematories and mausoleums.

*Charitable institutions.* A group, organization, or not-for-profit corporation organized and operated to provide care, help, relief, and assistance to those in need and not for the pecuniary gain of its trustees, directors, incorporators, or members. A not-for-profit corporation would be one where the articles of incorporation are on file with the secretary of state. Other groups and organizations would be on file with the consumer protection division of the office of the attorney general.

*Child care centers.* One of the special uses listed in this chapter consisting of any residence or institution operated for the purpose of providing care and maintenance to more than five children separated from their parent, guardian, or custodian, excluding relatives of the person operating the care center.

*Church.* A permanently located building commonly used for religious worship, fully enclosed with walls and having a roof (canvas or fabric excluded), and including accessory buildings housing facilities commonly associated with such religious worship.

*Clinic.* An establishment where patients are admitted for special study and treatment by two or more licensed physicians and their professional associates, practicing medicine together.

*Club, private.* Buildings and facilities owned or operated by a corporation, association, or person for a social, educational, or recreational purpose, but not for profit which inures to any individual and not primarily to render a service which is customarily carried on as a business. The affairs and management of a private club are conducted by a board of directors,

an executive committee or a similar body chosen by the members at an annual meeting. The serving of food and the sale of alcoholic beverages to members and their guests shall be permitted, provided it is secondary and incidental to the promotion of a common objective by the organization.

*Collector.* A roadway, so designated by the Official Thoroughfare Plan, intended to collect and distribute local traffic to primary and secondary arterials; its primary function involves both traffic movement and access to abutting properties; the right-of-way is 60 feet.

*Commission.* The Delaware-Muncie Metropolitan Plan Commission.

*Comprehensive plan.* An overall development plan consisting of the Zoning Ordinance, the Subdivision Ordinance, the Flood Plain Management Ordinance, the Official Thoroughfare Plan, the Final Land Use Plan, the Uniform House Numbering Ordinance, and like ordinances governing and directing planning and zoning in the county and the city. Also known as the Master Plan.

*Condominium.* A dwelling unit which is usually part of a building containing two or more dwelling units where such units may be individually owned and the land may be under group ownership.

*Country club.* A type of private club.

*Density.* A term indicating the number of dwelling units per acre for an area, which is determined by dividing the square footage of an acre (43,560 square feet) by the minimum amount of lot area allowed in the appropriate zone.

*Development standards.* The requirements set forth in this chapter governing the development of a property such as maximums and minimums for height, area, bulk, setbacks, parking, and accessory structures or uses.

*Dormitory.* A building arranged and used for the housing of individuals, with common toilet and bath facilities and not having individual cooking facilities.

*Dwelling.* A building or portion thereof used primarily as a place of abode for one or more human beings, but not including hotels, lodging houses, boarding houses, tourist homes, or motels.

*Dwelling, attached.* A dwelling which is joined to another dwelling at one or more sides by party walls.

*Dwelling, detached.* A dwelling which is entirely surrounded by open space on the same lot.

*Dwelling, multiple-family.* A building or portion thereof containing three or more dwelling units with no more than one family per dwelling unit.

*Dwelling, single-family.* A building containing one dwelling unit for one family.

*Dwelling, two-family.* A building containing with no more than one family per dwelling unit two dwelling units.

*Dwelling, unit.* One or more rooms arranged, designed, or used as living quarters for one family containing cooking, bathing, and sleeping facilities which serve only such room or rooms with no through access to a room or rooms similarly arranged, designed, or used; the term "housekeeping unit" shall denote dwelling unit.

*Establishing an adult entertainment business.* Any of the following: the opening or commencement of any such business as a new business; the conversion of an existing business, whether or not an adult entertainment business, to any of the adult entertainment businesses defined herein; the addition of any of the adult entertainment businesses defined herein to any other existing adult entertainment business; or the relocation of any such business.

*Expressway.* A roadway, so designated by the official thoroughfare plan, intended for high-speed, high-volume continuous traffic with controlled access; its function is traffic movement; the right-of-way is 150 feet.

*Family.* One or more persons living as a single housekeeping unit, as distinguished from a group occupying a hotel, club, nursing home, fraternity, sorority house, boarding house or dormitory.

*Floor area.*

- (a) When used to determine compliance with the minimum floor area requirements for a residence, it shall mean the sum of the horizontal areas of the several floors of the residence measured from the exterior faces of the exterior walls or from the center line of common walls separating residences, excluding carports, garages, breezeways, or open porches.
- (b) When used to determine lot coverage, it shall mean the horizontal area of the ground floor of a building measured from the exterior faces of the exterior walls of such building; and
- (c) When used to determine the number of off-street parking spaces required for nonresidential uses, buildings and structures, it shall mean the sum of the horizontal areas of the several floors of the building measured from the interior faces of the interior walls.

*Fraternity.* A dwelling or dwelling unit maintained exclusively for fraternity members and their guests or visitors and affiliated with an academic or professional college, university, or other institution of higher learning.

*Front setback.* The distance required, as set forth in each zone, from the front lot line to the closest point of the wall of the building or to the closest part of a structure placed on a lot.

*Front setback line.* A line which establishes the front setback area of a lot, generally parallel to and generally equidistant from the street right-of-way line; also, front building line.

*Frontage.* All property fronting on one side of a street between two intersecting streets, measured along the street right-of-way.

*Garage, community.* Two or more private garages.

*"Garage, private.* A compartment within or attached to a residence, or any building located on land on which a residence is located, designed, arranged, used, or intended to be used for the storage of the private passenger automobiles of the occupants of the residence.

*Garage, public.* Any building other than a private garage or a community garage designed, arranged, used, or intended to be used for the storage of motor vehicles other than trucks, tractors, truck trailers, and commercial vehicles exceeding two-ton capacity.

*Green belt.* An area of land with softscaped treatment consisting of natural vegetative material such as greenery, plants, grass and trees.

*Gross floor area (GFA).* The interior floor area of buildings and structures used to determine off-street parking spaces.

*Group housing.* A term used to describe a type of special use as listed in this chapter referring to a situation where one dwelling unit may be used to house four or more persons unrelated by blood, marriage or adoption when approved by the board of zoning appeals (see § 150.225 for specific regulations).

*Health center.* A convalescent home, nursing home, rest home, institution for human care, or health resort.

*Height, building or structure.* The vertical distance from the average established curb grade in front of the lot or from the average finished grade, at the building line, if higher, to the top of the highest point of the building or structure.

*Home occupation.* A special use. It is an occupation conducted in a dwelling by a member of the resident family. This use permits clientele to come to the business but limits and controls such activity to that which does not interfere with the principal use of the premises as a residence, nor adversely affect the residential character, use, or value of the adjacent area. This special use does not allow rummage, yard, porch, or garage sales or similar activity.

*Hotel.* A building containing rooms intended or designed to be used, or which are used, rented, hired out to be occupied, or which are occupied for sleeping purposes by guests, and where general kitchen and dining room facilities are provided within the building or in an accessory building.

*Improvements.* Any work done, or any facility, structure, or building placed, on or off of a property involving proposed development such as streets, sidewalks, sewers, utility transmission facilities, storm drains and flood control, monuments, landscaping, screening and any other work or facility required by ordinance.

*Institution, educational.* A public, parochial, charitable, or nonprofit college, university, other than trade or business school, including instructional and recreational uses with or without living quarters, dining rooms, restaurant, heating plants, and other incidental facilities for students, teachers, and employees.

*Junk.* Scrap metals and their alloys, bones, used materials and products such as rags, cloth, rubber, rope, tin foil, bottles, lumber, wastepaper, boxes, crates, old tools, machinery, fixtures, and appliances with negligible remaining utility, and other goods uneconomical to repair or unusable.

*Junkyard.* A salvage yard. The purchase or storage of used furniture, household equipment, and used cars in operable condition with current state vehicle license plates or current registration, are not included.

*Kennel.* The use of land or buildings for the purpose of selling, breeding, boarding, or training animals other than farm animals; or the keeping of four or more dogs over four months old, of six or more cats over four months old, or more than five dogs and cats.

*Landbank.* A process whereby land is set aside as green space and reserved for a future use.

*Local street.* A roadway, so designated by the official thoroughfare plan, intended for local traffic within neighborhoods; its primary function is to provide access to abutting properties; the right-of-way is 50 feet.

*Lot.* A parcel, property, plot, tract of land, or like term used to designate a particular piece of land.

*Lot, area.* The area of a horizontal plan bounded by the front, side, and rear lot lines of a lot, but not including any area occupied by dedicated alleys, streets, or recorded lakes or rivers.

*Lot, corner.* A lot fronting on two or more streets at their intersection.

*Lot coverage.* The portion of the lot area which is covered by principal buildings and accessory buildings.

*Lot, depth.* The mean horizontal distance measured from the front lot line to the rear lot line.

*Lot, interior.* A lot other than a corner lot.

*Lot line.* The property lines bounding a lot.

- (a) *Front.* The lot line separating a lot from a street; in the case of a corner lot, the owner shall have the privilege of selecting which street shall be used to determine the front lot line, provided that such choice will not be

injurious to the existing or future development of adjacent properties as determined by the administrative zoning officer and that such choice will not be contrary to the Uniform House Numbering Ordinance as determined by the plan commission.

(b) *Rear*. The lot line which is opposite and most distant from the front lot line.

(c) *Side*. Any lot line not a front line or a rear line; where the lot is on a corner, the side lot line separating a lot from a street shall be called the side street lot line.

*Lot of record*. A parcel of land designated as a lot on a plat or subdivision recorded or registered pursuant to the statutory provisions; a single tract of land which, at the time of filing for an improvement location permit or a building or zoning permit, is designated by its owner or developer as a tract to be used, developed, or built upon as a unit under single ownership and is so recorded in the county office of the recorder.

*Lot width*. The mean horizontal distance between the side lot lines measured at right angles to the depth.

*Manufactured home*. A dwelling unit fabricated on or after June 15, 1976, in an off-site manufacturing facility for installation or assembly at the building site, bearing a seal certifying that it is built in compliance with Federal Manufactured Housing Construction and Safety Standards Code or Indiana Public Law 360, Acts of 1971, as promulgated by the state fire prevention and building safety commission; also refers to modular homes.

*Maps*. All official zone maps made a part of this chapter.

*Massage*. Any method of pressure on or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the human body specified anatomical areas with the hands or with the aid of any mechanical electrical apparatus or appliances with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointment, or other such similar preparations commonly used in the practice of massage, under such circumstances that it is reasonably expected that the person to whom the treatment is provided or some third person on his behalf will pay money or give any other consideration or any gratuity therefore. However, massage as used in this ordinance shall not apply to the activity of any person who is registered or licensed by the United States Government or any agency thereof, by the State of Indiana or any agency thereof, by Delaware County or any agency thereof, by any city or town within Delaware County or any agency thereof, or registered or licensed by any statute or ordinance of the United States, State of Indiana, Delaware County or any city or town in Delaware County, while such person so registered or licensed is performing the services for which the registration or license was issued and during the period of time said registration or license is in effect.

*Massage establishment*. Any establishment having a source of income or compensation derived from the practice of massage as herein defined and which has a fixed place of business where any person, firm, association, or corporation engages in or carries on any of the activities as defined in a massage.

*Mobile home*. A transportable dwelling unit larger than eight feet in body width and longer than 32 feet in body length and designed to be used as a year-round dwelling unit, built prior to June 15, 1976.

*Mobile home park*. An area of land upon which two or more manufactured homes or mobile homes are harbored for the purpose of being occupied as principal residences and which includes all real and personal property used in the operation of the park. This includes subdivided lots which are leased, owned, or otherwise contracted or where the lots are at least 3,000 square feet in area but not necessarily of sufficient size to meet the required lot area for single-family dwellings in a residence zone.

*Motel.* A building or group of buildings in which lodging is provided and offered to the public, for compensation, and catering primarily to the traveling public.

*Nonconforming adult use.* Any building, structure or land lawfully occupied by an adult entertainment business or lawfully situated at August 7, 1989, which does not conform after August 7, 1989, with the regulations of this chapter.

*Nonconforming building or structure.*

- (a) *Lawful.* A building or structure which does not comply with the development standards of this chapter and which was established prior to November 5, 1973, and is still in existence (see § 150.24 for regulations).
- (b) *Unlawful.* A building or structure which does not comply with the development standards of this chapter and which was established on or after November 5, 1973 (see § 150.11 for regulations).

*Nonconforming use.*

- (a) *Lawful.* A use of land, buildings, or structures which does not comply with the usage provisions of the zone in which such use is located and which was established prior to November 5, 1973, and which has not been, at any time, discontinued for one year or longer (see § 150.24 for regulations).
- (b) *Unlawful.* A use of land, buildings, or structures which does not comply with the usage provisions of this zone in which such use is located and which was established on or after November 5, 1973 (see § 150.11 for regulations).

*Nursing home.* A facility providing human care and service for the aged, convalescent, chronically ill, or incurable and in which three or more persons are received, kept, and provided with such care and service for compensation; similar terms include convalescent home, rest home, and health care center.

*Official thoroughfare plan.* A development plan for the roadway system which classifies the various roads, establishes right-of-ways and projects traffic patterns by volume, population and trip generation.

*Open porch.* A porch open on three sides, except for wire screening. A porch shall not be considered open if enclosed on the three sides in a manner which would allow the porch area to be heated and used as year-round living quarters. This open concept shall apply to patios, balconies, breezeways, and like extensions off of a principal building.

*Owner.* A person who owns a lot by virtue of his name being on the Muncie deed to the property with the deed being duly recorded in the county office of the recorder or a person who is a contract purchaser of a property; or a person who has entered into a long term lease agreement such as an 89-year lease.

*Parking lot.* A parcel of land devoted to parking spaces for four or more motor vehicles, for compensation or otherwise, having an all-weather dust-free surface, enclosed or unenclosed connected to a street and providing satisfactory ingress and egress for customers.

*Parking, space.* A parking space for one vehicle consisting of a minimum 162 square feet in area.

*Planned unit development.* One of the special uses listed in this chapter; a term used to denote a type of development which is under one design plan where the standard setbacks, lot area, and lot dimensions may be waived in favor of a design plan emphasizing aesthetics, open space, and efficient use of land through innovations in type, design, and layout of dwellings. A planned unit development (PUD) may consist of detached dwelling units, duplexes, townhouses, clusters of units, patio homes, garden apartments, zero lot line units, and so on, and may be a mixture of the various types of units.

*Primary arterial.* A roadway, so designated by the official thoroughfare plan, intended for high-volume through traffic; its primary function is traffic movement achieved through turn lanes, channelization and medians; the right-of-way is 100 feet.

*Principal use.* The primary use of a property, building or structure in terms of being foremost in financial worth or scope of operation such as the dwelling unit on a residentially zoned lot, the selling of grocery items in a retail store containing video games, or the assembly plant of a manufacturing operation.

*Professional office.* An office used in the conduct of a profession or vocation requiring training in the liberal arts or the sciences and/or advanced study in a specialized field such as, but not limited to, a doctor, lawyer, engineer, dentist, or surveyor.

*Projection.* A structure which projects out from the main wall of a building and which is an architectural feature not connected to the structural support and make-up of the building; for example, a canopy or a balcony is an architectural feature, and a bay window or chimney is a part of a supporting wall.

*Public building.* Any structure, edifice, or building, regardless of location, held, used or controlled for public purposes by any department or branch of government, state, county, or municipal, without reference to the ownership of the building or of the realty upon which it is situated.

*Public Land.* Any real estate in which any governmental organization or entity has a legal, or equitable, interest. This term shall not include any public streets, highways, roads or alleys since these terms are included in the definition of "street" and "alley".

*PUD.* A planned unit development.

*Recreational vehicle.* Any portable vehicular structure not built to the national manufactured housing construction and safety standards code, designed to provide temporary living quarters for recreational, camping or travel use, including but not limited to travel trailers, collapsible trailers, truck campers, motor homes, and multi-use vans; they are intended for temporary residential uses and should be occupied only in RV parks.

*Religious institution.* A church, chapel, temple, synagogue, convent, seminary, monastery, nunnery, rectory, parsonage, parish house, or similar facilities for the conduct of religious worship.

*Rummage sale.* A type of accessory use consisting of the selling, by the owner, not to exceed two times per calendar year in each time not to exceed seven successive days in duration, of tangible personal property. The term shall be synonymous with garage sale, yard sale and similar terms.

*Salvage yard.* One of the special uses listed in this chapter and consisting of an area where waste paper, rags, or discarded or salvaged materials are bought, sold, exchanged, baled, packed, disassembled or handled; a salvage yard shall include auto wrecking yard, dismantling of machinery, house wrecking yard, used lumber yard, and places or yards for the storage of salvaged house wrecking and structural steel materials and equipment; the term shall be synonymous with junk yard (see § 150.218 for specific regulations).

*Screening.* A buffer consisting of either an earth berm, a masonry wall, a wooden fence, a stucco wall, a chain-link type metal fence using durable permanently affixed slats to create a substantially opaque surface, a dense evergreen hedge that will grow to the required height and density within two growing seasons, or any combination of these materials which will effectively block visibility.

*Secondary arterial.* A roadway, so designated by the official thoroughfare plan, intended for high volume through and local traffic; its primary function is traffic movement; the right-of-way is 80 feet.

*Services involving specified sexual activities or display of specified anatomical areas.* As used in "adult service establishment" any combination of two or more of the following activities: the sale or display of books, magazines,



periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records or other forms of visual or audio representations which are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; the presentation of films, motion pictures, video cassettes, slides, or similar photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons: the operation of coin or slug operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image producing devices to show images to five or fewer persons per machine at any one time and where the images, so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas; live performances by topless and or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar entertainers, where such performances are distinguished or characterized by an emphasis on specified sexual activities, or specified anatomical areas; the operation of a massage establishment.

*Sexual activities.* Sexual intercourse or deviate sexual conduct, real or simulated, exhibition of the uncovered genitals of a person in the context of masturbation or other sexual activities, provocative, erotic, or suggestive dance which is intended to convey an erotic message. See also "specified sexual activities."

*Sign.* Any outdoor sign, display, notice, bulletin, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designated, intended or used to advertise or inform.

*Special use.* A type of use which is listed under the various residence zones as being allowed when approved by the Delaware-Muncie metropolitan board of zoning appeals; also, one of the uses listed under §§ 150.215 through 150.227, which gives the general procedure for filing with the board of zoning appeals, consisting of mineral extraction, salvage yard, refuse disposal site, planned unit development, truck terminals, home occupation, seasonal work camps, private outdoor camps, group housing, care centers and multi-unit developments. Some special uses are seen as being potentially compatible with the principal uses permitted in a zone and some special uses are of a sufficient intensity, with a potentially adverse impact on surrounding uses, as such that they must be approved through a public hearing process before the board of zoning appeals.

*Specified anatomical areas.* Any of the following: less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areolae; or human male genitals in a discernibly turgid state, even if completely and opaquely covered.

*Specified sexual activities.* Any of the following: human genitals in a state of sexual stimulation or arousal: acts of human masturbation, sexual intercourse or sodomy: fondling or other erotic touchings of human genitals; pubic regions, buttocks or female breasts; flagellation or torture in the context of a sexual relationship; masochism, erotic or sexually oriented torture, beating or the infliction of pain; erotic touching, fondling or other such contact with an animal by a human being; or human excretion, urination, menstruation, vaginal or anal irritation as part of or in connection with any of the activities set forth above.

*Story.* That portion of a building included between the surface of any floor and the surface of the floor next above it; or if there be no floor above it, the space between any floor and the ceiling next above it. A basement shall be counted as a story for height measurement if the vertical distance between the ceiling and the average level of the adjoining ground is more than five feet, or if used for dwelling or business purposes.

*Street.* A public right-of-way not less than 50 feet in width unless otherwise required in the official thoroughfare plan for the city; the right-of-way established in a recorded plat to provide the principal means of access to abutting property; a public right-of-way open to the general public.

*Townhouse.* A dwelling unit which usually consists of two stories and is usually attached to like dwelling units by common walls.

*Yard.* A space on the same lot with a main building, open, unoccupied, and unobstructed by structures.

*Yard, corner side.* The side yard fronting on the street which intersects the street running on and along the front lot line.

*Yard, front.* An open, unoccupied space on the same lot with a building, extending the full width of the lot and situated between the street right-of-way line and the front line of the building projected to the side lines of the lot.

*Yard, rear.* A yard extending across the full width of the lot between the rear of the main building and the rear lot line, the depth of which is the least distance between the rear lot line and the rear of the main building.

*Yard, side.* A yard between the main building and the side lot line, extending from the front yard to the rear yard, the width of which is measured horizontally at 90 degrees with the side lot line.

*Zero lot line.* A term referring to a type of development where the principal buildings are not subject to a side setback; the buildings might be offset to one side where one side wall abuts the side lot line and the other side wall is set back from the other side lot line or one building might share common walls with another building.

(Code 1968, §§ 130.260, 130.261; Ord. No. 41-86, 8-4-86; Ord. No. 40-85, 4-7-86; Ord. No. 42-86, 8-4-86; Ord. No. 74-88, 12-15-88; Ord. No. 40-89, 8-7-89; Ord. No. 12-95, §§ 4, 5, 5-8-95; Ord. No. 89-95, § 1, 11-3-95; Ord. No. 90-95, § 1, 11-5-95)

## CHAPTER 151. - SUBDIVISION REGULATIONS

Secs. 151.20—151.24. - Reserved.

### DIVISION 1. - DEFINITIONS

Sec. 151.01. - Definitions.

For the purpose of this chapter the following words and phrases shall have the following meanings ascribed to them respectively.

*Commission.* The metropolitan plan commission created in § 34.01 of this code.

*Cul-de-sac.* A short street having one end open to traffic and being permanently terminated by a vehicular turnaround, usually a circle.

*Easement.* A grant or dedication by a property owner of the use of a parcel of land for specified purposes, including, but not limited to, street rights-of-way, utility easements, and easements of access.

*Lot.* A portion of a subdivision, or any other tract of land intended as a unit for transfer of ownership.

*Master plan.* The complete plan, or any of its parts, for the development of the city, when adopted as provided by law.

*Plat.* A map or drawing showing a subdivision or resubdivision of land, including easements, which the subdivider submits for approval, and intends to record in final form.

*Plat, final.* The map or drawing prepared by a registered land surveyor or engineer on which the subdivider's plan of subdivision, set forth in accordance with the requirements of this chapter, is presented for secondary approval and which, if approved, may be submitted to the Delaware County Recorder for recording in the Book of Plats. The term "final plat" shall be synonymous with "secondary plat."

*Plat, preliminary.* The drawing or drawings prepared by a registered land surveyor or engineer indicating the proposed manner of layout of a subdivision which meets all conditions of this chapter and is submitted to the Plan Commission for primary approval. The term "preliminary plat" shall be synonymous with "primary plat."

*Primary approval.* An approval, or approval with conditions imposed, granted to a preliminary subdivision plat by the Plan Commission after having determined in a public hearing that the subdivision complies with the standards prescribed in this chapter and which is the approval necessary to begin the process of developing the subdivision.

*Secondary approval.* A second and last stage of approval granted to a final subdivision plat found to be in conformance with the terms of the primary approval and the requirements of this chapter including the requirements dealing with the installation and completion of all required improvements which is the approval necessary to allow the designated officials to sign the plat and to allow submission of the plat to the Delaware County Recorder for recording.

*Street.* A right-of-way, dedicated to the public use, or, in certain instances, restricted for private use.

- (1) *Major street.* A street shown on the major street plan, a part of the master plan.
- (2) *Minor street.* A street intended primarily as access to abutting properties.
- (3) *Secondary street.* A street for collecting traffic from several minor streets to a major street.

*Subdivision.*

- (1) The division of land into two or more tracts, sites, or parcels of five acres or less in area, including the resubdivision of any existing lot, or of an entire subdivision. However, neither the sale or exchange of small parcels of land to or between adjoining property owners, nor the sale of a part of adjoining lots within a platted subdivision where the sale or exchange does not create additional lots or building sites, shall be considered as a subdivision of land;
- (2) The establishment or dedication of a road, highway, street, alley, or public easement through a tract of land, regardless of area.
- (3) The division or partition of land into lots or parcels under the MHR Mobile Home Residence Zone requirements or the Planned Unit Development requirements shall not be considered a subdivision for the purpose of this chapter; however, where any Planned Unit Development or MHR development involves the division or allocation of land for the opening, widening, or extension of a public street, such street shall be constructed and designed in accordance with the standards set forth in this chapter. Nothing shall prevent an owner or developer from electing to subdivide lots under the provisions of this chapter in the MHR Mobile Home Residence Zone or a Planned Unit Development.

*Territorial jurisdiction.* The incorporated area within the limits of the city, and the contiguous unincorporated area within the jurisdiction of the commission, as provided by law.

(Code 1968, § 131.01)

(Ord. No. 75-85, 1-6-86; Am. Ord. No. 46-90, 12-10-90)

Secs. 151.02—151.04. - Reserved.

## DIVISION 2. - CONTROL AND PROCEDURE

### Sec. 151.05. - Plat must be approved before recording.

Any person who may lay out a subdivision of any lot or lands within the city or its territorial jurisdiction, shall, prior to the sale of any lots in the subdivision, cause to be recorded in the office of the county recorder a correct plat of the subdivision. No plat or replat of any subdivision of land, or creation, opening, or dedication of a street or public easement within the city or its territorial jurisdiction, shall be eligible for recording until it shall have been approved by the commission, and the approval entered in writing on the plat. Any plat, lot, or tract not so approved shall be subject to the provisions of § 151.60 of this chapter.

(Code 1968, § 131.05)

### Sec. 151.06. - Confer with commission.

Each subdivider of land should confer with the plan director or the city engineer before preparing the preliminary plat, in order to become thoroughly familiar with any ordinances and the master plan proposals affecting the territory in which the proposed subdivision lies.

(Code 1968, § 131.06)

### Sec. 151.07. - Preliminary plat to be approved.

A preliminary plat and an application for a certificate shall first be submitted to the plan commission for its consideration, as hereinafter provided. The design and layout of all subdivisions shall conform to the requirements of §§ 151.10 through 151.19 of this chapter. The subdivider shall submit a preliminary plat to the commission prepared in accordance with specifications of §§ 151.25 through 151.28 of this chapter.

(Code 1968, § 131.07)

### Sec. 151.08. - Requisites for final plat approval.

Following approval of the preliminary plat by the commission, the subdivider shall comply with the requirements of § 151.31 of this chapter before the final plat can be approved. The final plat shall conform to the requirements of §§ 151.45 through 151.47 of this chapter.

(Code 1968, § 131.08)

### Sec. 151.09. - Basis for approval.

In determining whether the plat shall be approved, the Commission shall be satisfied that:

- (A) Public facilities and services have been installed and will be of sufficient capacity to serve the proposed subdivision.
- (B) That subdivision streets have been properly coordinated with existing and planned streets and highways.

(C) That all lots and parcels of land in the subdivision meet the width and area requirements as contained in the cur ordinance.

(D) That the provisions of the master plan including the Official Thoroughfare Plan have been carried out.

(E) That the subdivision layout is conducive to improve traffic safety and circulation.

(Ord. No. 46-90, 12-10-90)

### DIVISION 3. - DESIGN

#### Sec. 151.10. - Unsuitable land.

No land shall be subdivided for residential use if the land shall be considered by the commission to be unsuitable for residential use for any of the following reasons:

(A) Flooding;

(B) Improper drainage;

(C) Objectionable earth or rock formation;

(D) Objectionable topography; or

(E) Any other condition harmful to the health and safety of possible residents and the community as a whole.

(Code 1968, § 131.15)

#### Sec. 151.11. - Relation to adjoining street system.

The arrangement of streets in new subdivisions shall make provision for the continuation of the existing streets in adjoining areas (or their proper projection where adjoining land is not subdivided) insofar as they may be deemed necessary for public requirements. The width of the streets in new subdivisions shall not be less than the minimum widths established herein. The street and alley arrangements shall not be such as to cause hardship to owners of adjoining property in platting their own land and providing convenient access to it. Intersections of more than two streets shall be avoided. Street jogs with center-line offsets of less than 125 feet shall be avoided. The angle of intersection between minor streets and major streets shall not vary by more than 30 from a right angle. Streets obviously in alignment with existing streets shall bear the names of the existing streets. Proposed street names that are in conflict with existing street names shall not be approved. When a residential subdivision borders an existing major road shown on the Official Thoroughfare Plan for realignment or larger width, the subdivider shall dedicate the right-of-way but shall not be required to improve the road. Nothing in this section shall be construed as preventing improvement requirements on existing roads under an access control ordinance as implemented by the city or county engineer.

(Code 1968, § 131.16; Am. Ord. No. 46-90, 12-10-90)

#### Sec. 151.12. - Street and alley widths.

(A) The location and widths of major streets shall conform to the location and widths designated on the major street plan.

(B) Secondary streets shall have a width of not less than 60 feet.

(C) The minimum width for minor streets shall be 50 feet, except that, in cases where the topography or special

conditions make a street of less width more suitable, the commission may waive the above requirements. When a street adjoins unsubdivided property, a half street, at least 30 feet in width, shall be dedicated; and whenever the property being subdivided adjoins a half street, the remainder of the street shall be dedicated.

- (D) Alleys shall not be provided in a residential block. Alleys are required in the rear of all business lots unless other adequate provisions are made for service and deliveries, and shall be at least 20 feet wide. No dead end alleys or any sharp changes in their alignment shall be permitted.
- (E) Courts, cul-de-sacs, or other street spaces may be provided if proper access is given to all lots from a dedicated street or court. All permanent cul-de-sac streets shall terminate in a dedicated street space having a minimum radius of 50 feet, or other satisfactory means for turning vehicles. Courts and cul-de-sac streets shall not exceed 700 feet in length and shall be not less right angle. Streets obviously in alignment with existing streets shall bear the names of the existing streets. Proposed street names that are in conflict with existing street names shall not be approved.

(Code 1968, § 131.16)

#### Sec. 151.12. - Street and alley widths.

- (A) The location and widths of major streets shall conform to the location and widths designated on the major street plan.
- (B) Secondary streets shall have a width of not less than 60 feet.
- (C) The minimum width for minor streets shall be 50 feet, except that, in cases where the topography or special conditions make a street of less width more suitable, the commission may waive the above requirements. When a street adjoins unsubdivided property, a half street, at least 30 feet in width, shall be dedicated; and whenever the property being subdivided adjoins a half street, the remainder of the street shall be dedicated.
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- (E) Courts, cul-de-sacs, or other street spaces may be provided if proper access is given to all lots from a dedicated street or court. All permanent cul-de-sac streets shall terminate in a dedicated street space having a minimum radius of 50 feet, or other satisfactory means for turning vehicles. Courts and cul-de-sac streets shall not exceed 700 feet in length and shall be not less than 40 feet in width.

(Code 1968, § 131.17)

#### Sec. 151.13. - Easements.

Easements of at least six feet in width shall be dedicated on each side of all rear lot lines and, where necessary, along side lot lines, for poles, wires, conduits, storm and sanitary sewers, surface drain, gas, water, or other utilities. Easements of greater width may be required along or across lots where necessary for the extension of main sewers or other utilities or where both water and sewer lines are located in the same easement. No sharp changes in alignment of easements shall be permitted.

(Code 1968, § 131.18)

#### Sec. 151.14. - Blocks.

No block shall be longer than 1,400 feet. The number of intersecting streets along major streets shall be kept to a minimum and, wherever practicable, blocks along the major streets should not be less than 1,000 feet in length. Where blocks are over 750 feet in length, a crosswalk with a right-of-way of at least ten feet in width may be required near the center of the block.

(Code 1968, § 131.19)

Sec. 151.15. - Lots.

- (A) The lot arrangement and design shall be such that all lots will provide satisfactory and desirable building sites properly related to topography and to the character of surrounding developments.
- (B) All side lines of lots shall be at right angles to straight street lines and radial to curved street lines except where a variation of this rule will provide a better street and lot layout. Lots with double frontage shall be avoided.
- (C) No lot shall have a depth of less than 100 feet nor should the depth be in excess of three times the width of the lot. No lot shall have an area or width less than that required by any applicable zoning ordinance.
- (D) Corner lots shall have a width sufficient to permit the establishment of front building lines along both the adjoining streets.
- (E) Lots at major street intersections and at acute angle intersections of less than 75 shall have a radius of 25 feet at the street corner. On corner lots a chord may be substituted for the circular arc.

(Code 1968, § 131.20)

Sec. 151.16. - Maintenance of improvements outside corporate limits.

Where a subdivision outside the corporate limits contains sewers, sewage treatment plants, water supply systems, park areas, or other physical facilities necessary or desirable for the welfare of the area, which are of common use or benefit to the lot owners, and which the city or county does not desire to, or can not, maintain, provision shall be made, by agreements made a part of the plat restrictions acceptable to the commission, for the proper and continuous maintenance, replacement, and supervision of the facilities by the lot owners in the subdivision, or by a public utility established in accordance with Chapter 313 of the Acts of 1957 and amendments thereto.

(Code 1968, § 131.21)

Sec. 151.17. - Parks, school sites, etc.

In subdividing property, due consideration shall be given to the designation of suitable sites for schools, parks, playgrounds, and other public areas, so as to conform as nearly as possible to the recommendations of the commission in its master plan of the city. The areas should be indicated on the preliminary plan in order that it may be determined when and in what manner they will be acquired by the city or other public agency. The commission may require the sites to be reserved for a period of not less than one nor more than three years.

(Code 1968, § 131.22)

Sec. 151.18. - Dedications along streams.

Whenever any stream or important drainage course is located in any area which is being subdivided, the subdivider shall dedicate and convey an adequate drainage right-of-way, as determined by the city engineer or county surveyor, along each side of the stream, for the purpose of widening, deepening, sloping, improving, or protecting the stream, and the drainage right-of-way shall be dedicated and conveyed to the city or other appropriate public agency.

(Code 1968, § 131.23)

Sec. 151.19. - Exceptions in neighborhood unit developments.

(A) Whenever a subdivision is developed as a modern neighborhood unit wherein adequate park area is provided, through traffic is adequately cared for, and the majority of the minor streets are of the cul-de-sac type, the commission may vary the requirements of §§ 151.12 through 151.15 of this chapter, in order to allow the subdivider more freedom in the arrangement of the streets and lots but at the same time protect the convenience, health, and safety of the future residents of the subdivision, as well as the general welfare of the entire community. In no case, however, shall the lot area per family requirement be less than is required in any applicable zoning ordinance.

(Code 1968, § 131.24)

(B) Commercial and Industrial Subdivisions. If a proposed subdivision includes land zoned for commercial or industrial use, the subdivider shall demonstrate to the satisfaction of the Commission that the street, parcel and block pattern proposed is adapted to the uses anticipated and takes into account all uses in the vicinity. The following standards shall apply:

- (1) Industrial parcels shall be suitable in area and dimensions to the types of industrial development anticipated.
- (2) Street right-of-way and pavement for proposed and existing streets shall be adequate to accommodate the type and volume of traffic anticipated to be generated.
- (3) Special requirements may be imposed with respect to design and construction of proposed existing streets, curbs, gutters and sidewalks.
- (4) Special requirements may be imposed with respect to the installation of public utilities such as water, sewer, storm drainage, etc.
- (5) Adjacent residential areas shall be protected from potential nuisance from commercial or industrial uses in the subdivision including additional depth in lots backing up to the residential development and the use of buffer strips, properly landscaped, for shielding purposes.

(Am. Ord. No. 46-90, 12-10-90)

Secs. 151.20—151.24. - Reserved.

DIVISION 4. - PRELIMINARY PLAT AND IMPROVEMENTS

Sec. 151.25. - Procedure.



It is recommended that before the preliminary plat is submitted for approval, the developer should present to the planning director or the city engineer a sketch plan on a topographic map, showing the proposed layout of streets, lots, and other features in relation to existing conditions and proposed development. The sketch shall also indicate the proposed utilities and street improvements. The planning director or city engineer may submit the sketch plan and their recommendations to the plan commission for approval.

(Code 1968, § 131.30)

Sec. 151.26. - Preliminary plat, where filed, exception.

Five copies of a preliminary plat shall be submitted to the planning director or city engineer at least ten days before the regular meeting of the plan commission.

The preliminary plat shall be at a scale of not more than one inch equals 100 feet. Plats containing four lots or less and no new streets or easements may be exempted from the provisions of §§ 151.25 through 151.28 of this chapter, upon application to the commission.

(Code 1968, § 131.31)

Sec. 151.27. - Contents of preliminary plat.

The preliminary plat shall show:

- (A) The location of the present property lines and section lines, streets, buildings, water courses, and other existing features within the area to be subdivided, and similar information regarding land immediately adjacent thereto;
- (B) The proposed location and width of streets, alleys, lots, building lines, and easements;
- (C) The title under which the proposed subdivision is to be recorded and the name of the engineer, or the registered land surveyor, and the subdivider platting the tract;
- (D) Contours referred to the sea level datum with intervals of two feet or less, shall be required;
- (E) The north point, scale, and date;
- (F) Site data including total acres, number of lots, typical lot dimensions and area, lineal feet in streets, acres in streets, parks, and similar public or semipublic areas; and
- (G) Sketch plans and supporting data setting out the suggested grades or profiles of the streets, the proposed grades and facilities for all required improvements, and the subdivider's proposal to the city for accomplishing their installation in accordance with §§ 151.30 through 151.39 of this chapter. Data regarding all existing sanitary and storm sewers, water mains, culverts, and other underground structures within the tract or on streets immediately abutting thereto; as well as the location and size of the nearest water main and sewer outlet shall be submitted in conjunction with the preliminary plat.

(Code 1968, § 131.32)

Sec. 151.28. - Approval of preliminary plat.

If the commission shall find that the preliminary plat satisfies the requirements of §§ 151.10 through 151.19 of this chapter, and can conform to all other requirements of this chapter, it shall approve the plat. One copy of the approved plat, together with a copy of any comments of the commission, shall be given to the city engineer, one shall be retained by the commission, and one copy and the findings shall be given the person offering the proposed plat, together with a certificate of preliminary approval. The other copies of the preliminary plat shall be given to the public officials, agencies, or utility companies as may be concerned with any phase of improvement in the subdivision. The certificate or approval shall include a statement that the approval is valid for a period of two years unless extended by the plan commission.

(Code 1968, § 131.33)

Sec. 151.29. - Reserved.

DIVISION 5. - IMPROVEMENTS AND REQUIREMENTS

Sec. 151.30. - Authority to proceed with final plat and working drawings.

Receipt by the subdivider of a copy of the approved preliminary plat shall constitute authority for the subdivider to proceed with final plans and specifications for the installation of the required improvements and preparation of the final plat. Prior to the construction of any of the required improvements, the subdivider shall submit final plans and specifications therefor to the board of public works and safety. If the board of public works and safety shall find the plans and specifications to be in accordance with applicable policies and standards of the city, it shall authorize construction and certify the authorization to the commission. When the subdivision is located within the unincorporated area of Delaware County, the board of county commissioners shall replace the function of the board of public works and safety.

(Code 1968, § 131.40)

Sec. 151.31. - Requirements for approval of final plat.

No final plat of any subdivision shall be approved unless:

- (A) A certificate of the board of public works and safety has been filed with the commission that the improvements listed hereinafter have been installed prior to the approval, and proper record drawings of the installations are filed with the city engineer; or
- (B) A certificate of the board of public works and safety has been filed with the commission that a complete set of plans and specifications for the improvements listed hereinafter has been filed with the board of public works and safety and that the plans and specifications are in accordance with the applicable policies and standards of §§ 151.30 through 151.41 of this chapter, and a bond to insure the installation of the improvements as shown by the plans and specifications filed with the board of public works and safety for the subdivision has been filed, which shall:
  - (1) Run to the city;
  - (2) Be in an amount determined by the board of public works and safety, subject to the approval of the commission, to be sufficient to complete the improvements and installations in compliance with this chapter;

(3) Be with surety satisfactory to the board of public works and safety, subject to approval of the commission; ar

(4) Specify the time for the completion of the improvements, that time not to exceed two years.

(C) Where the subdivision is located beyond the corporate limits, the board of county commissioners would exercise the same authority as the board of public works and safety.

(Code 1968, § 131.41)

#### Sec. 151.32. - Installation of part of improvements.

The owner of a tract may prepare and secure approval of a preliminary plat for the entire tract and may install the required improvements in only a portion of the tract, but the improvements in any portion of the area for which a final plat is approved for recording must be installed or provision made for their installation. However, any water mains, storm sewers, trunk sewers, and any sewage treatment plants shall be designed to serve the entire tract to be subdivided.

(Code 1968, § 131.42)

#### Sec. 151.33. - Monuments and markers.

(A) Monuments shall be of concrete with a diameter of not less than six inches, and 36 inches long, with a copper dowel  $\frac{3}{8}$  of an inch in diameter, at least 2- $\frac{1}{2}$  inches in length, imbedded so that the top of the dowel shall be not more than  $\frac{1}{4}$  of an inch above the surface and at the approximate center of the monument.

(B) Monuments shall be set so that the top is level with the established grade adjoining it, and placed so that the marked point on the metal center shall coincide exactly with the intersection of street property lines (or street center lines), and the intersection of all angles in the boundary line and at the beginning and ending of all curves along streets on the inside street lines.

(C) Lot corners not marked by concrete monuments as required above, shall be marked by galvanized or wrought iron pipe, or iron or steel bars at least two feet in length and not less than  $\frac{5}{8}$  of an inch in diameter, the top of the pipe or bar to be set level with the established grade of the ground adjoining it.

(D) Any other types of monuments and markers must be approved by the city engineer.

(Code 1968, § 131.43)

#### Sec. 151.34. - Streets and alleys, paving.

(A) Streets and alleys shall be graded, surfaced, and improved to dimensions required by this chapter or other ordinances of the city. Streets and alleys shall be paved with asphaltic concrete, cement concrete, or other approved material, in accordance with the standards of the board of public works and safety then applicable.

(B) Streets shall be paved to a width of 27 feet back-to-back between curbs; alleys to a width of 12 feet, except that where the subdivision is located beyond the corporate limits and contains lots with an area of not less than 15,000 square feet and a width of not less than 100 feet at the building line, the pavement need not exceed 16 feet in width.

(C) Where the subdivision is located beyond the corporate limits, the board of county commissioners shall exercise the same authority as the board of public works and safety.

(Code 1968, § 131.44)

Sec. 151.35. - Curb and gutter.

- (A) Except as indicated in § 151.34 of this chapter, curbs shall be constructed along all streets in accordance with the standards of the board of public works and safety then applicable.
- (B) Where the subdivision is located beyond the corporate limits, the board of county commissioners shall exercise the same authority as the board of public works and safety.

(Code 1968, § 131.45)

Sec. 151.36. - Sanitary sewers.

- (A) Wherever it shall be unlawful by city ordinance or state statute to construct or maintain any privy, privy vault, cesspool, septic tank, or any receptacle for human excrement on any lot within a subdivision, the subdivider shall provide a sanitary sewer system which connects to an established public sanitary sewer system, or provide a separate treatment plant. The sewer system shall be adequate for the needs of the subdivision.
- (B) The commission may require the subdivider to provide sanitary sewers under this section that are larger than would be necessary to meet the needs of the subdivision; provided, that the board of public works and safety shall enter into the contracts or make the provisions as are provided for by law with the subdivider to compensate him for the cost of requirements in excess of the needs of his subdivision. The board of public works and safety is further empowered to charge future subdividers, corporations, or persons, as provided for by law, for future connections to the facilities required by this section, in a proportionate amount of the extra cost of the facility, based upon the area then being subdivided or developed. Where the subdivision is located beyond the corporate limits, the board of county commissioners shall exercise the same authority as the board of public works and safety.
- (C) Wherever it is not unlawful by city ordinance or state statute to construct or maintain any privy, privy vault, cesspool, septic tank, or other method of treatment of human excrement, the commission may, in its discretion, allow the subdivider to provide a disposal system comprised of septic tanks with absorption systems, in lieu of a sanitary sewer system connected to the city sanitary sewer system.
- (D) Any system of septic tanks with absorption fields within the jurisdiction area of the commission and outside the corporate area of the city, shall conform to the Sanitation Ordinance of Delaware County, Indiana, Ordinance No. S-1, January 28, 1957. The subdivider shall provide the commission with a statement from the county sanitarian, stating that, based on percolation tests, the proposed septic tank system can and will conform to the sanitation ordinance. Any proposed subdivision not accompanied by such a statement shall not be approved by the commission.
- (E) In addition, the commission may require the subdivider to provide a sanitary sewer system which connects to a private disposal plant or to the city sanitary sewer system, rather than the septic tank system. The subdivider shall furnish the commission with percolation tests and any other data the commission may require in this respect.
- (F) All systems described in this section shall be subject to the approval of the board of public works and safety, and meet the minimum requirements of the state board of health.

(Code 1968, § 131.46)

Sec. 151.37. - Storm sewers.

- (A) The subdivider shall provide a storm water sewer system adequate for the present needs of the subdivision. As a

minimum, the systems shall be adequate for the most intense rainfall expected in a 2-year period, and adequacy shall be computed according to the rational formula method. Whenever a drainage channel is located within the subdivision, the developer shall clear and so improve the channel that it will accommodate the future storm water flow of the drainage area. Approval of engineering specifications and drawings shall rest with the commission, upon recommendation by the city engineer.

- (B) The commission may require the subdivider to provide, under the provisions of this section, storm water sewers that are larger than would be necessary to meet the present needs of the subdivision; provided, that the board of public works and safety shall enter into the contracts or make those provisions as are provided for by law, and with the subdivider, to compensate him for the cost of requirements in excess of the present needs of his subdivision. The board of public works and safety is further empowered to charge future subdividers, corporations, or persons, as provided by law, for future connections to the facilities required by this section, in a proportionate amount of the extra cost of the facility, based upon the area then being subdivided or developed.
- (C) Where the subdivision is located beyond the corporate limits, the board of county commissioners shall exercise the same authority as the board of public works and safety.

(Code 1968, § 131.47)

#### Sec. 151.38. - Water.

The subdivider shall provide the subdivision with a complete water supply system which shall be connected with and become a part of a public water supply system. However, the commission may, in its discretion, permit a private water supply for each lot to be installed in accordance with the minimum requirements of the state board of health, where the subdivision is located more than 200 feet from a public water supply system.

(Code 1968, § 131.48)

#### Sec. 151.39. - Street signs.

The subdivider shall provide the subdivision with standard city street signs at the intersections of all streets. The number and location of the signs shall be subject to the approval of the city engineer.

(Code 1968, § 131.49)

#### Sec. 151.40. - Sidewalks.

- (A) Sidewalks not less than four feet in width shall be provided whenever a subdivision:
  - (1) Shall encompass or abut a major or secondary street. The subdivider shall provide sidewalks on whichever side of the street abuts the subdivision, with both sides of the street falling within the subdivision;
  - (2) Or any part of a subdivision is within 900 feet of an existing or planned school site. The subdivider shall provide sidewalks on one side of the streets within the subdivision for 900 feet immediately adjacent to the school site.
- (B) Sidewalks shall be constructed in accordance with the standards of the board of public works and safety then applicable.
- (C) Where the subdivision is located beyond the corporate limits, the county commissioner shall exercise the same authority as the board of public works and safety.

(Code 1968, § 131.50)

Sec. 151.41. - Annexation.

Whenever the area of the proposed subdivision is contiguous to the corporate limits of the city, the commission may require, as a condition of approval of the subdivision, that an application for annexation of the subdivision shall be filed with the city council.

(Code 1968, § 131.51)

Secs. 151.42—151.44. - Reserved.

DIVISION 6. - FINAL PLAT

Sec. 151.45. - Final plat.

- (A) The final plat on tracing cloth or mylar and five prints thereof together with copies of any deed restrictions, where the restrictions are too lengthy to be shown on the plat, shall be submitted to the city planning director or city engineer not less than ten days before the regular meeting of the plan commission. The final plat shall be drawn to a scale of not more than 100 feet to the inch, from an accurate survey, and on one or more sheets whose dimensions shall be 17 inches by 21 inches. If more than two sheets are required, an index sheet of the same dimensions shall be filed, showing the entire subdivision on one sheet and the component areas on other sheets.
- (B) When the final plat conforms to the approved preliminary plat, and the requirements of §§ 151.25 through 151.39 of this chapter have been accomplished, the commission shall hold a hearing thereon. Thereafter, if the commission approves the plat, certification thereof shall be endorsed on the final plat by the chairman and secretary of the commission.

(Code 1968, § 131.55)

Sec. 151.46. - Information required.

The final plat and accompanying documents shall show:

- (A) The boundary lines of the area being subdivided, with accurate distance, and angles. The correct legal description of the property being subdivided shall be shown on the plat, or on an accompanying certificate.
- (B) The lines of all proposed streets and alleys, with their widths and the names of all streets.
- (C) The accurate outline of any portions of the property intended to be dedicated or granted for public use.
- (D) The line of departure of one street from another.
- (E) The lines of all adjoining property and the lines of adjoining streets and alleys, with their widths and the names of all streets.
- (F) All lot lines, together with an identification of all lots.
- (G) Minimum building lines shall be shown on the plat, when in excess of the yard requirements of the zoning regulations.
- (H) The location of all easements provided for public uses, services, or utilities.

- (I) All dimensions, both linear and angular, necessary for locating the boundaries of the subdivision, lots, streets, all easements, and other areas for public or private use. Linear dimensions are to be given to the nearest 1/100 of a foot.
- (J) The radii, arcs or chords, points of tangency, and center angles for all curvilinear streets, and radii for rounded corners.
- (K) The location of all survey monuments and their descriptions.
- (L) The name of the subdivision and the scale of the plat (both graphic and written), the points of the compass, and the name of the owner or subdivider.
- (M) The certificate of a registered engineer or land surveyor, attesting the accuracy of the survey and the correct location of all monuments shown.
- (N) The owner's declaration of ownership, and dedication for public use, of streets, alleys, drainageways and other easements, parks or other open spaces, as well as all private restrictions and trusteeships and their periods of existence.
- (O) Calculations showing the error of linear closure shall in no case be greater than one in 10,000, and there shall be no error in the angular closure.
- (P) A receipt or certificate showing that there are no unpaid taxes or assessments upon any part of the area within the subdivision.

(Code 1968, § 131.56)

Sec. 151.47. - Approved plat filed with recorder of deeds.

After the approval of the final plat by the commission, the plat shall be recorded in the office of the county auditor and recorder within six months, and, if not so filed, the plat shall have no validity and shall not be recorded without reapproval.

(Code 1968, § 131.57)

Secs. 151.48, 151.49. - Reserved.

## DIVISION 7. - FEES

Sec. 151.50. - Fees paid by subdivider.

To cover the cost of checking preliminary and final plats and of checking plans and specifications as well as inspecting the installation of required improvements, the subdivider shall pay the fee required in the following sections. The fees shall be paid to the city treasurer, to be credited to the general fund, after the amount thereof has been approved by the plan director or the city engineer. In the event that a county department or county official shall be responsible for inspecting any of the improvements located in subdivisions lying beyond the corporate limits, the city treasurer may pay the sum as may be approved by the city engineer to the county treasurer for reimbursement for the inspection.

(Code 1968, § 131.65)

Sec. 151.51. - Fees for preliminary and final plats.

The fees for checking preliminary and final plats containing not more than 100 lots shall be \$0.50 per lot, and the minimum fee shall be \$10. The fee for each lot exceeding 100 shall be \$0.25 per lot. These fees shall be paid separately for checking each of the plats.

(Code 1968, § 131.66)

Secs. 151.52—151.54. - Reserved.

#### DIVISION 8. - EXCEPTIONS AND VARIATIONS

Sec. 151.55. - Modification of requirements.

Whenever the tract to be subdivided is of an unusual size or shape or is surrounded by a development or conditions so unusual that the strict application of the requirements contained in this chapter would result in real difficulties or substantial hardship or injustice, the commission may vary or modify the requirements so that the subdivider may develop his property in a reasonable manner, but so that at the same time the public welfare and interests of the city and surrounding area are protected and the general intent and spirit of this chapter preserved.

(Code 1968, § 131.70)

Secs. 151.56—151.59. - Reserved.

#### DIVISION 9. - CONFORMITY TO MASTER PLAN

Sec. 151.60. - Improvement location permit.

A structure shall not be located, and an improvement location permit shall not be issued for a structure, on lands within the city or the jurisdictional territory of the commission, unless the structure and its location conform to the master plan and this chapter. Any street or easement within a subdivision that has not been approved as required herein shall not be accepted by the board of public works and safety, nor shall any funds be expended by the agency for the improvement or maintenance of the streets or easements.

(Code 1968, § 131.75)

Secs. 151.61—151.64. - Reserved.

#### DIVISION 10. - CHANGES AND AMENDMENTS

Sec. 151.65. - Changes and amendments.

Any regulations or provisions of this chapter may be changed and amended from time to time by the common council. However, the changes or amendments shall not become effective until after study and report by the plan commission, and until after a public hearing has been held, public notice of which shall have been given in a newspaper of general circulation



at least 15 days prior to the hearing.

(Code 1968, § 131.80)

## CHAPTER 152. - BUILDING CODE

### DIVISION 1. - GENERAL PROVISIONS

#### Sec. 152.01. - Title; purpose; scope.

- (A) *Title.* This chapter, and all ordinances supplemental or amendatory hereto, shall be known as the "Building Code of the City of Muncie, Indiana," may be cited as such, and will be referred to herein as "this code."
- (B) *Purpose.* The purpose of this code is to provide minimum standards for the protection of life, limb, health, environment, public safety, and welfare, and for the conservation of energy in the design and construction of buildings and structures.
- (C) *Scope.* The provisions of this code apply to the construction, alterations, repair, use, occupancy, maintenance and additions to all buildings and structures, other than industrialized building systems or mobile structures certified under IC 22-15-4, in the city.

(Ord. No. 26-85, 7-1-85; amend. Ord. No. 16-88, 5-9-88)

#### Sec. 152.02. - Adoption of regulations by reference.

- (A) Building rules of the Indiana Fire Prevention and Building Safety Commission as set out in the following Articles of Title 675 of the Indiana Administrative Code are hereby incorporated by reference in this code, and shall include later amendments to those Articles as the same are published in the Indiana Register or the Indiana Administrative Code with effective dates as fixed therein:

- (1) Article 13-Building Codes.

- (a) Fire and Building Safety Standards.
  - (b) Indiana Building Code.
  - (c) Indiana Building Code Standards.
  - (d) Indiana Handicapped Accessibility Code.

- (2) Article 14-One- and Two-Family Dwelling Codes.

- (a) Council of American Building Officials One- and Two-Family Dwelling Code.
  - (b) CABO One- and Two-Family Dwelling Code; Amendments.
  - (c) Standard for Permanent Installation of Manufactured Homes.

- (3) Article 16-Plumbing Codes.

Indiana Plumbing Code.

- (4) Article 17-Electrical Codes.

- (a) Indiana Electrical Code.
  - (b) Safety Code for Health Care Facilities.

(5) Article 18-Mechanical Codes.

Indiana Mechanical Code.

(6) Article 19-Energy Conservation Codes.

(a) Indiana Energy Conservation Code.

(b) Modifications to the Model Energy Code.

(7) Article 20-Swimming Pool Codes.

Indiana Swimming Pool Code.

(B) Copies of this code, and rules, regulations, and codes adopted herein by reference are on file as required by law in the office of the building director of the city, 300 N. High Street, Muncie, Indiana.

(Ord. No. 26-85, 7-1-85; amend. Ord. No. 61-86, 11-10-86; amend. Ord. No. 16-88, 5-9-83; Ord. No. 1-09, § 1, 3-2-09)

Sec. 152.03. - Effective date.

This code shall be in full force and effect from and after its adoption, approval by the State Fire Prevention and Building Safety Commission.

(Ord. No. 61-86, 11-10-86)

Sec. 152.04. - Reserved.

## DIVISION 2. - ADMINISTRATION

Sec. 152.05. - Powers and duties of building director.

The building director is authorized and directed to administer and enforce all of the provisions of this code. Whenever in the building regulations, it is provided that anything must be done to the approval of or subject to the direction the building director or any other officer of the city, this shall be construed to give the officer only the discretion of determining whether the rules and standards established by this code have been complied with. No such provision shall be construed as giving any officer discretionary powers as to what the regulations, codes, or standards shall be, or power to require conditions not prescribed by ordinances or to enforce the provisions of this code or ordinances in an arbitrary or discriminatory manner.

(Ord. No. 26-85, 7-1-85)

Sec. 152.06. - Right of entry.

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

(Ord. No. 26-85, 7-1-85)

Sec. 152.07. - Stop order.

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

(Ord. No. 26-85, 7-1-85; Ord. No. 2-09, § 1, 3-2-09)

**Cross reference—** Penalty, § 152.999.

Sec. 152.08. - Certificate of occupancy.

No certificate of occupancy for any building or structure erected, altered, or repaired after the adoption of this code shall be issued unless the building or structure was erected, altered, or repaired in compliance with the provisions of this code.

(Ord. No. 26-85, 7-1-85)

Sec. 152.09. - Standards.

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.

(Ord. No. 26-85, 7-1-85)

Secs. 152.10—152.14. - Reserved.

DIVISION 3. - UNSAFE BUILDINGS

Sec. 152.15. - Unsafe building law.

(A) *Establishment*. Under the provisions of IC 35-7-9-3 there is established the Muncie Unsafe Building Law.

(B) *Definitions*. The definitions as stated in IC 36-7-9-2 are amended and the following definitions shall apply in the enforcement of this section. Words in the singular include the plural and words in the plural include the singular.

*Building*. Includes *structure* and shall be construed as if followed by the words "or part thereof".

*Department*. The building department shall be the "department" as set out in IC 36-7-9-2 and shall have the powers and duties of the "department" as set out in IC 36-7-9-1 through IC 36-7-9-28 in addition to the powers and duties enumerated in this code and municipal ordinances of the city.

*Enforcement authority*. The building director shall be the "enforcement authority" within the meaning of IC 36-7-9-2 and shall have the powers and duties of the "enforcement authority" as set out in IC 36-7-9-1 through IC 36-7-9-28 in addition to the powers and duties enumerated in this Code and the municipal ordinances of the city.

*Substantial property interest*. Any right in real property that may be affected in a substantial way by actions authorized by this section including a fee interest, a life estate interest, a future interest, a present possessory interest, or an equitable interest of a contract purchaser. The interest reflected by a deed, lease, license, mortgage, land sale contract, or lien is not a "substantial property interest" unless the deed, lease, license, mortgage, land sale contract, lien, or evidence of it is:

- (1) Recorded in the office of the county recorder; or
- (2) The subject of a written information that is received by the building director and includes the name and address of the holder of the interest described.

*Unsafe building hearing authority.* There shall be created a five-member "unsafe building hearing authority" to be appointed by the mayor and serve during his term of office. This hearing authority shall consist of the historic preservation officer, a member of the common council of the city, and three private citizens who are residents of the corporate limits of the city, and it shall be the hearing authority within the meaning of IC 36-7-9-2 and shall have the powers and duties of the hearing authority as set out in IC 36-7-9-1 through IC 36-7-9-28 in addition to the powers and duties enumerated in this Code and the municipal ordinances of the city.

(C) (1) *Adoption of state law.* I.C. 36-7-9-1, 36-7-9-3 through 36-7-9-10, 36-7-9-11, and 36-7-9-12 as modified herein, and 36-7-9-13 through 36-7-9-28 are adopted by reference as the Muncie Unsafe Building Law together with any and all amendments thereto that are made following this date. All proceedings in the city for inspection, repair, and removal of unsafe buildings shall be governed by this law and the provisions of this section.

(2) *Vacant structures.*

- (a) In Muncie there exists a large number of unoccupied structures that are not maintained and that constitute a hazard to public health, safety and welfare.
- (b) Vacant structures often become dilapidated because the structures are not maintained and repaired by the owners or persons in control of the structures.
- (c) Vacant structures attract children, become harborage for vermin, serve as temporary abodes for vagrants and criminals, and are likely to be damaged by vandals or set ablaze by arsonists.
- (d) Unkept grounds surrounding vacant structures invite dumping of garbage, trash, and other debris.
- (e) Many vacant structures are situated on narrow city lots and in close proximity to neighboring structures, thereby increasing the risk of conflagration and spread of insect and rodent infestation.
- (f) Vacant, deteriorated structures contribute to blight, cause a decrease in property values, and discourage neighbors from making improvements to properties.
- (g) Structures that remain boarded up for an extended period of time also exert a blighting influence and contribute to the decline of the neighborhood by decreasing property values, discouraging persons from moving into the neighborhood, and encouraging persons to move out of the neighborhood.
- (h) Vacant structures often continue to deteriorate to the point that demolition of the structure is required, thereby decreasing available housing in a community and further contributing to the decline of the neighborhood.
- (i) The blighting influence of vacant, deteriorated structures adversely affects the tax revenues of local government.
- (j) The city finds that vacant, deteriorated structures create a serious and substantial problem in urban areas and are public nuisances.
- (k) In recognition of the problems created in the community by vacant structures the city finds that vigorous and disciplined action should be taken to ensure proper maintenance and repair standards set forth in section 152.15(H) and all remedies and penalties associated with violations thereof, shall and do apply to vacant structures.

(3) *Abatement of vacant and abandoned structures.*

- (a) Adoption of state law. I.C. 36-7-36-1 as modified herein, and 36-7-36-2 through 36-7-36-10 are adopted by reference and incorporated herein together with any and all amendments hereto that are made following this date. All provisions of this law that apply to vacant and/or abandoned buildings shall be governed by this law and the provisions of this section.
- (b) Definition of abandoned structure amended. as used in this chapter, "abandoned structure" means any of the following:

1. Commercial real property or a vacant structure on commercial real property that is used or was previously used for industrial or commercial purposes, and:
  - a. That the owner of the property or structure has declared in writing to be abandoned; or
  - b. For which the owner of the property or structure has been given a written order by an enforcement authority to rehabilitate or demolish, and the owner:
    - (i) Has not applied for a permit to rehabilitate or demolish the property or structure; or
    - (ii) Applied for and was granted a permit, but rehabilitation or demolition work has not commenced on the property or structure within thirty (30) days after the date the permit was granted; or
    - (iii) Applied for and was granted a permit, and work began, but was not completed prior to the expiration of the permit and an application for a subsequent permit has not been submitted.
2. Real property that has not been used for a legal purpose for at least six consecutive months and:
  - a. In the judgment of an enforcement authority, is in need of completion, rehabilitation, or repair, and completion, rehabilitation, or repair work has not taken place on the property for at least six (6) consecutive months;
  - b. On which at least one installment of property taxes and/or an assessment for a civil penalty or penalties issued by a hearing authority is delinquent; or
  - c. That has been declared a public nuisance by a hearing authority.
3. Real property that has been declared in writing to be abandoned by the owner, including an estate or a trust that possesses the property.
4. Vacant real property on which a municipal lien has remained unpaid for at least one year.

- (D) *Nuisances.* All buildings or portions thereof within this city which are determined, after inspection by the building director or his agent acting in his behalf, to be unsafe as defined in this section are declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedures specified in the unsafe building law.
- (E) *Authorization of building director.* The building director for the city is authorized to administer and proceed under the provisions of this law in ordering the repair or removal of any buildings found to be unsafe as defined by state law adopted herein and the definition as set forth herein.
- (F) *Decision; appeal.* Whenever in the building regulations of the city or the unsafe building law it is provided that anything must be done to the approval or subject to the direction of the building director, or any other officer acting for and on behalf of the building director, this shall be construed to give the officer the discretion of determining whether the rules and standards established by this chapter have been complied with. Any aggrieved party may request the unsafe building hearing authority to review the action of the building director.
- (G) *Definition of unsafe building amended.* The definition of an unsafe building contained in IC 36-7-9-4 is supplemented to provide minimum standards for building condition or maintenance in the city by adding the following definitions: Any building or structure which has any or all the conditions or defects hereinafter

described shall be deemed to be an unsafe building, provided that such 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 stress in any materials, member, or portion thereof, due to all dead and live loads, is more than one and one-half times the working stress or stresses allowed for new buildings or similar structure, purpose, or location.
- (3) Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before the catastrophe and is less than the minimum requirements for new buildings of similar structure, purpose, or location.
- (4) 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.
- (5) 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 into 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.
- (6) 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.
- (7) Whenever the building or structure, or any portion thereof, because of dilapidation, deterioration, or decay; faulty construction; the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; the deterioration, decay, or inadequacy of its foundation; or any other cause is likely to partially or completely collapse.
- (8) Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.
- (9) Whenever the exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.
- (10) Whenever the building or structure, exclusive of foundation, shows 33 percent or more damage or deterioration of its supporting member or members, or 50 percent damage or deterioration of its nonsupporting members, enclosing or outside walls or covering.
- (11) Whenever the building or structure has been so damaged by fire, wind, earthquake, or flood or has become so dilapidated or deteriorated as to become an attractive nuisance to children; or freely accessible to persons for the purpose of committing unlawful acts.
- (12) Whenever any building or structure has been constructed, exists, or is maintained in violation of any specific requirements or prohibition applicable to the building or structure provided by the building regulations of the city, or of any law or ordinance of this state or city relating to the condition, location, or structure of buildings.
- (13) Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinance 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-resistant qualities or characteristics, or weather-

resistant qualities or characteristics required by law in the case of a newly constructed building or like area, height, and occupancy in the same location.

- (14) Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangements, inadequate light, air, or sanitation facilities, or otherwise, is determined by the building director to be unsanitary, unfit for human habitation, or in such a condition that is likely to cause sickness or disease.
- (15) Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of fire-resistant construction, faulty electric wiring, gas connections, or heating apparatus, or other cause is determined by the building director to be a fire hazard.
- (16) 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 such building or portion thereof an attractive nuisance or hazard to the public.
- (H) *Standards.* All work for the reconstruction, alteration, repair, or demolition of buildings and other structures shall be performed in a good workmanlike manner according to the accepted standards and practices in the trade. The provisions of the rules and regulations pertaining to construction, plumbing, electrical, mechanical, and one- and two-family dwellings, promulgated by the state administrative building council, shall be considered standard acceptable practice for all matters covered by this section by the building director of the city.
- (I) *Building director.* In any instance where the word "director" is used in the provisions of the Indiana Code as adopted herein the same shall be construed to apply to the building director for the city.
- (J) *Unsafe building fund.* An unsafe building fund is established, currently known as the Clearance Fund Account 96 of Community Development. This is in accordance with the provisions of IC 36-7-9-14 and pursuant to the provisions contained therein, any balance remaining at the end of the fiscal year shall be carried over in the fund for the following year and does not revert to the general fund.
- (K) *Contractors.* In any instance where the words "contractor" or "contractor licensed and qualified under law" are used in IC 36-7-9-11, IC 36-7-9-12 or any other sections of the statute, as adopted herein, requirements are modified in that any contractor approved by the building director may perform any work that is required in complying with the orders of the building director.
- (L) *Violation; penalty.* No person, firm, or corporation, whether as owner, lessee, sub-lessee, or occupant, shall erect, construct, enlarge, alter, repair, move, improve, remove, demolish, equip, use, occupy, or maintain any building or premises, or cause or permit the same to be done contrary to or in violation of the provisions of this section or any order by the building director. Any person violating the provisions of this section or the provisions of the Indiana Code as adopted herein shall commit a separate violation for each day that such violation continues and shall be subject to a penalty of not more than \$2,500.00 for each violation, subject to execution as by law provided.

(Ord. No. 962-82, 1-10-83; Ord. No. 29-84, 6-11-84; Ord. No. 10-85, 4-1-85; Ord. No. 17-87, 8-3-87; Ord. No. 36-90, 9-10-90; Ord. No. 42-91, 12-9-91; Ord. No. 3-09, § 1, 3-2-09; Ord. No. 55-09, § 1, 11-2-09)

Sec. 152.16. - Vacant and abandoned structures.

(A) *Definitions.* For the purposes of this chapter, the following definitions shall apply:

*Abandoned structure* means any of the following:

- (1) Commercial real property or a vacant structure on commercial real property that was previously used for industrial commercial purposes and that has not been used for a legal purpose for at least six months, and:
  - (a) That the owner of the property or structure has declared in writing to be abandoned; or
  - (b) For which the owner of the property or structure has been given a written order by an enforcement authority to rehabilitate or demolish, and the owner:
    - (i) Has not applied for a permit to rehabilitate or demolish the property or structure; or
    - (ii) Applied for and was granted a permit, but rehabilitation or demolition work has not commenced on the property or structure within 30 days after the date the permit was granted.
- (2) Real property that has not been used for a legal purpose for at least six consecutive months and:
  - (a) In the judgment of an enforcement authority, is in need of completion, rehabilitation, or repair, and completion, rehabilitation, or repair work has not taken place on the property for at least six consecutive months;
  - (b) On which at least one installment of property taxes is delinquent; or
  - (c) That has been declared a public nuisance by a hearing authority.
- (3) Real property that has been declared in writing to be abandoned by the owner, including an estate or a trust that possesses the property.
- (4) Vacant real property on which a municipal lien has remained unpaid for at least one year.
- (5) Real estate that a court has determined to be abandoned under IC 32-30-10.6.

*City* means the City of Muncie, Indiana.

*Enforcement authority* means the Muncie Building Commissioner's office.

*Municipal Code* means the Code of Ordinances of the City of Muncie.

*Owner* means any person who, alone, jointly, or severally with others, shall have title to any building or dwelling unit with or without accompanying actual possession thereof.

*Owner's representative* means a person hired by the owner to represent and/or advocate on the owner's behalf.

*Person* means any entity including any of the following: individual, firm, corporation, association, partnership, or limited liability corporation/company. References in the masculine gender include the feminine and the neuter, in the present tense includes the future, and the singular includes the plural.

*Property* means the real property upon which a vacant structure and/or abandoned structure is located.

*Property manager* means an individual or entity responsible for the day-to-day functioning of a piece of real estate.

*Vacant structure* means a structure or building that is not being occupied by an owner, tenant, or others authorized by the owner and is not adequately secured against unlawful entry.

*Vacant and/or abandoned structure* means a structure that satisfies the definition of abandoned structure and/or vacant structure set forth herein.

(B) *Continuing maintenance mandatory and voluntary registration.*

- (1) Upon locating a building that is deemed to be a vacant and/or abandoned structure, the enforcement authority may issue to the building owner an order to register and/or for continuing maintenance pursuant to the Unsafe Building Act, IC 36-7-9 (if the building satisfies the criteria of an unsafe building), as it may be



amended from time to time, or pursuant to similar authority granted by state statute, this code or other statutes, ordinances, and regulations.

- (2) The enforcement authority may order the owner of a structure that is a vacant and/or abandoned structure to register the structure with the enforcement authority.
  - (3) The owner of a structure that is unoccupied but does not meet the definition of a vacant structure or abandoned structure, may voluntarily register the structure with the enforcement authority, so as to notify city officials of the property manager and exchange other information pertinent to the condition of the structure.
  - (4) The owner of a property that has been deemed to be a vacant and/or abandoned structure may, within 30 days from receiving notice of such a determination, challenge the determination in writing with the unsafe building hearing authority or, in the case of a vacant structure, adequately secure the structure from unlawful entry.
  - (5) In determining that a structure is a vacant structure, the enforcement authority may rely upon the lack of water, electric or wastewater utility service. Any maintenance order issued by the enforcement authority may be challenged or enforced by the unsafe building hearing authority.
  - (6) The owner of a property that has been determined to be a vacant and/or abandoned structure is required to secure the property from unlawful entry in accordance with subsection (B)(2) below within 30 days of receiving notice from the enforcement authority that the property has been determined to be a vacant and/or abandoned structure, unless the owner challenges the determination in accordance with subsection (B)(4) above. In the event of a challenge that is denied by the unsafe building hearing authority, the owner shall board and secure the property within ten days of the denial.
    - (a) If the owner fails to secure the property from unlawful entry within the time provided above, the enforcement authority may cause the property to be secured with the owner being invoiced for the costs incurred by the enforcement authority, including administrative costs incurred by the enforcement authority.
    - (b) If the owner fails to pay the invoice described above within the time provided, the enforcement authority may obtain a lien against the property in the amount of the unpaid invoice. The lien shall be included on the property tax invoice for the property and collected in the same manner as property taxes are collected. The lien will be released upon payment of the full amount of the invoice by filing a release with the Delaware County Recorder's Office.
- (C) *Registration of buildings and structures.* The owner of a structure that is a vacant and/or abandoned structure shall register the structure with the enforcement authority upon receipt of an order for registration. The registration shall be renewed annually for each year that the structure is a vacant and/or abandoned structure. Registration shall be on a form provided by the enforcement authority, shall be verified under penalties of perjury, and shall include the following:
- (1) Street address of the affected property;
  - (2) The name(s), mailing address(es) and telephone(s) of the owner(s) or entities which hold any ownership interest, land contract, mortgage, or other lien interest in the property, and all beneficiaries of any land trust which owns the property.
  - (3) Copy of the most recently executed deed used to transfer title to the property and the most recently prepared Indiana Sales Disclosure Form, if available to the owner.

- (4) Property manager's information, if applicable, including the name, mailing address, location address, if different mailing address, and telephone.
- (5) Name of any insurance company providing insurance coverage for the vacant and/or abandoned structure, including the representing agent's name, address and telephone number.
- (6) If the vacant and/or abandoned structure is not in compliance with the maintenance standards of this chapter at the time of registration, the registration shall include a written plan to bring the property into compliance with the maintenance standard of this chapter.
  - (a) The schedule shall not exceed ten days unless it is demonstrated to the enforcement authority that additional time is necessary to avoid undue hardship to the owner due to the quantity of work required.
  - (b) The owner's request for additional time shall be supported by relevant documentation, including, but not limited to, bids, quotes for the work, and the owner's financial statement, based upon a financial disclosure statement.
  - (c) The owner's schedule and plan does not relieve the owner of any order issued pursuant to the unsafe building ordinance, or compliance with the minimum housing standards ordinance or minimum standards for non-residential properties ordinance.
  - (d) The enforcement authority's receipt of the plan does not constitute approval of the owner's plan or of any violation of property maintenance ordinances.
- (7) The owner is responsible for providing an updated registration form to the enforcement authority within ten business days of any change in ownership or any information contained on the registration form.
- (8) Failure of the owner to provide updated information within ten business days of any change in the registration is a violation of this chapter.

(D) *Standards for maintenance.*

- (1) The owner or property manager of the vacant and/or abandoned structure shall ensure that the property is regularly inspected and secured against unlawful entry, that the property is cleaned, and vegetation is mowed. Records of inspections shall be provided to the enforcement authority upon request.
- (2) Door and window openings of all vacant structures and/or abandoned structures shall be secured against unlawful entry by the use of locks designed for such use, or the use of boarding. If boarding is used to secure the structure, the following standard shall be met:
  - (a) Windows shall be framed by standard two-inch by four-inch lumber secured with plywood to the frame using six seven-inch lag bolts into king studs in all corners and in the center of the vertical boards. Plywood shall be a minimum of four-ply rated for exterior exposure, no less than one-half inch in thickness and attached with tamper proof screws, no less than three inches in length and spaced no more than eight inches on-center.
  - (b) Doors may be secured against unlawful entry using locks designed to prevent unlawful entry or by framing nominal two-inch by four-inch lumber secured with plywood to the frame using six seven-inch lag bolts into king studs in all corners and in the center of the vertical boards. Plywood shall be a minimum of four-ply rated for exterior exposure, no less than one-half inch in thickness and attached with tamper proof screws, no less than three inches in length and spaced no more than eight inches on-center.
  - (c) The enforcement authority may approve alternative methods to secure windows or doors, upon the owner presenting the following information:

- (i) Type of material to be use;
  - (ii) Thickness of material;
  - (iii) Method that will be used to attach the material to the building or structure.
- (3) Boarding of a vacant structure and/or abandoned structure is to be considered temporary and not a long-term method of securing the building or structure. After one year of boarding as the method of securing against unlawful entry, the owner of a vacant structure and/or abandoned structure shall utilize locks, install appropriate windows and/or doors, or provide an alternative method of security approved by the enforcement authority.
- (4) Boarding used to secure doors and/or windows for more than 30 days shall be surface coated with an exterior grade paint matching the exterior of the structure to reduce the blighting effect of the structure. The failure to comply with the maintenance standards shall be considered a violation of this chapter.

(E) *Registration fee.*

- (1) The owner of any vacant and/or abandoned structure shall pay the registration fees set forth below to the City of Muncie through the enforcement authority. The registration shall be renewed annually until such time that the structure is no longer declared to be a vacant and/or abandoned structure.
- (2) Owners who voluntarily register an unoccupied structure that does not satisfy the definition of vacant structure or abandoned structure, are not required to pay a registration fee.
- (3) Registration fees for a vacant and/or abandoned structure shall be as follows:
  - (a) The owner of a vacant and/or abandoned structure ordered to register by the enforcement authority that registers within the time provided in the order shall pay a \$100.00 registration fee. The registration fee shall increase to \$300.00 if the owner does not register within the time provided in the order. The registration fee shall increase to \$500.00 if the owner does not register within 60 days after the expiration of the time provided in the order. If the owner does not register within 120 days after the expiration of the time provided in the order, the matter shall be referred to the unsafe building hearing authority.
  - (b) The owner of a previously registered vacant and/or abandoned structure that voluntarily renews a registration before May 10 of each year that a renewal registration is required will not incur a registration fee. In the event the owner fails to renew a registration by May 10 of each year, the renewal fee shall be as follows:
    - (i) \$100.00 if renewed between May 11 and June 9;
    - (ii) \$300.00 if renewed between June 10 and July 9; and
    - (iii) \$500.00 if renewed between July 10 and September 7.If the registration is not renewed by September 7, the matter shall be referred to the unsafe building hearing authority.
  - (c) If the city is forced to initiate legal action to enforce the registration requirement of this chapter, the registration fee shall be \$1,000.00.
  - (d) The registration fee set forth herein shall be in addition to any penalty assessed pursuant to subsection (H) for a violation of this chapter.

(F) *Property manager.*

- (1) The owner of a vacant and/or abandoned structure shall identify a property manager as part of the

registration required by this chapter.

- (2) If the property manager is an individual, he/she shall reside in the State of Indiana.
- (3) If the property manager is a corporation, limited liability company, partnership, or other organization, it shall have a principal office located in the State of Indiana.
- (4) The property manager shall be readily available to be contacted by the city and promptly respond to emergency conditions that exist with respect to the vacant and/or abandoned structure.
- (5) The failure to make the property manager available as required is a separate violation of this chapter.

(G) *Exemptions.*

- (1) The unsafe building hearing authority may grant an exception for properties to register if:
  - (a) The property is the subject of an open probate estate; or
  - (b) The property has suffered extensive fire or catastrophic damage within the past 90 days.
- (2) Any exemption granted under this section shall be for a specific period of time, not to exceed six months.
- (3) Exemption from the registration requirement shall not constitute approval of any violation of this chapter, or any other applicable ordinance or law.

- (H) *Penalty.* An owner of property that violates any provision of this chapter is subject to a civil penalty of not more than \$5,000.00 in addition to all other legal remedies available to the city.

(Ord. No. 42-21, § 2, 10-4-21; Ord. No. 4-22, §§ 1—4, 2-7-22; Ord. No. 4-23, § 1, 3-6-23)

Secs. 152.17—152.24. - Reserved.

#### DIVISION 4. - VIOLATIONS AND ENFORCEMENT

##### Sec. 152.25. - Violations.

It shall be unlawful for any person, firm, or corporation, whether as owner, lessee, sub-lessee, or occupant, to erect, construct, enlarge, alter, repair, improve, remove, convert, demolish, equip, use, occupy, or maintain any building or structure, other than fences, in the city or cause or permit the same to be done, contrary to or in violation of the provisions of this Code.

(Ord. No. 26-85, 7-1-85)

##### Sec. 152.26. - Right of appeal.

All persons shall have the right to appeal any order of the building commissioner first through the Delaware-Muncie Metropolitan Board of Zoning Appeals, and then to the State Fire Prevention and Building Safety Commission in accordance with the provisions of IC 22-13-2-7 and IC 4-21.5-3-7.

(Ord. No. 26-85, 7-1-85; Ord. No. 16-88, 5-9-88)

##### Sec. 152.27. - Legal proceedings.

The building director shall in the name of the city bring actions in the Circuit or Superior Courts of Delaware County, Indiana, for mandatory and injunctive relief in the enforcement of and to secure compliance with any order or orders made by the building director, and any such action for mandatory or injunctive relief may be joined with an action to recover the penalties provided for in this code.

(Ord. No. 26-85, 7-1-85)

Secs. 152.28, 152.29. - Reserved.

#### DIVISION 5. - PERMITS

Sec. 152.30. - Permit required.

A permit shall be obtained before beginning construction, alteration, or repair of any building or structure, using forms furnished by the building director. All permits shall be issued by the building director, and all the fees provided for herein shall be paid to the city.

(Ord. No. 26-85, 7-1-85; Ord. No. 2-09, § 2, 3-2-09)

**Cross reference—** Penalty, § 152.999.

Sec. 152.31. - Application for permits.

No permits shall be issued for the foregoing purposes, unless the application for such permit is accompanied by a plat or sketch of the proposed location showing lot boundaries, and by plans and specifications showing the work to be done. All plans for building construction under the authority of the State Fire Prevention and Building Safety Commission must also be filed with the commission. No local permits shall be issued hereunder until a copy of a release for construction from the State Building Commissioner is received by the local building commissioner.

(Ord. No. 26-85, 7-1-85; Ord. No. 2-09, § 3, 3-2-09)

**Cross reference—** Penalty, § 152.999.

Sec. 152.32. - Compliance with other regulations.

All work done under any permit issued hereunder shall be in full compliance with all other ordinances pertaining thereto, and in addition to the fees for permits hereinafter provided for, there shall be paid the fees prescribed in the ordinances.

(Ord. No. 26-85, 7-1-85; Ord. No. 2-09, § 4, 3-2-09)

**Cross reference—** Penalty, § 152.999.

Sec. 152.33. - Review of application.

Prior to the issuance of any building permit hereunder, the building director, or his duly authorized representative, shall:

- (A) Review all building permit applications to determine full compliance with the provisions of this Code.

- (B) Review all building permit applications for new construction or substantial improvements to determine whether building sites will be reasonably safe from flooding.
- (C) Review building permit applications for major repairs within the flood plain 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.
- (D) Review building permit applications for new construction or substantial improvements within the flood plain area having special flood hazards to assure that the proposed construction (including prefabricated and mobile homes):
  - (1) Is protected against flood damage.
  - (2) Is designed (or modified) and anchored to prevent flotation, collapse, or lateral movement of the structure, and flood damage.
  - (3) Uses of construction methods and practices that will minimize flood damage.

(Ord. No. 26-85, 7-1-85)

#### Sec. 152.34. - Issuance of permit.

Permits required by section 152.30 shall be issued upon prior payment of inspection fees according to the schedule set forth in section 152.35. The placard issued by the building director must be posted on the front of the property, such that the placard is visible from the street, upon receipt. Failure to display the placard will result in a minimum \$50.00 fine pursuant to section 152.999.

(Ord. No. 26-85, 7-1-85; Ord. No. 4-09, § 1, 3-2-09)

#### Sec. 152.35. - Permit fees.

##### (A) *Building permits.*

- (1) Plan review:
  - (a) Any residential application submitted plan review fee .....\$25.00
  - (b) Any commercial application submitted plan review fee .....75.00
  - (c) Any inquiry of information on a property for code violations, use and zoning or occupancy certificate requests must be done in writing, review fee .....35.00
- (2) Fee schedule: The schedule for permits, inspections, and certificates of occupancy shall be as follows:
  - (a) New construction:
    - 1. One- and two-family dwelling—\$200.00.
    - 2. Three or more family dwelling, commercial, institutional, industrial, school or church structure—minimum \$200.00 plus \$0.15 per square foot.
    - 3. Private residential garages, carports and accessory buildings and structures (attached or detached)—\$50.00.
    - 4. Installation of modular or manufactured home on a permanent foundation—\$100.00.
  - (b) Replace, alter, addition or repair:
    - 1. Residential—\$75.00 minimum plus \$0.10 per square foot.

2. Commercial—\$100.00 minimum plus \$0.13 per square foot.
- (c) Moving (Residential and commercial):
  1. Any building or structure—\$100.00.
- (d) Demolition:
  1. Wrecking of one- and two-family dwelling—\$50.00.
  2. Wrecking of three or more family dwelling, institutional, commercial, industrial, school or church building—\$100.00 minimum up to 5,000 square feet, plus \$10.00 per each additional 1,000 square foot.
  3. Wrecking of private residential garage or other accessory building or structure—\$30.00.
- (e) Swimming pools. Swimming pools must meet requirements as set forth in section 150.214.
  1. Public swimming pool—\$100.00.
  2. Other swimming pools:
    - In ground—\$100.00.
    - Above ground—\$50.00.

Plus an inspection fee of \$25.00 on either type of pool.
- (f) Temporary structures.
  1. Temporary commercial mobile unit—\$100.00 (per year).
  2. Residential temporary structure—\$50.00 (per year).
  3. Tents (with or without sides)—\$50.00.
- (g) Fuel service stations. Minimum \$50.00 up to 1,000 square feet. Figure at \$3.50 per 100 square feet. Square footage of canopy over pumps is to be included in gross square footage of structure.
  - 1 to 12 pumps .....\$300.00
  - 12 to 20 pumps .....500.00
  - Over 20 pumps, each .....50.00
- (h) Mineral extraction: \$500.00 minimum plus \$50.00 per acre with an annual inspection fee of \$100.00.
- (i) Mobile home parks: \$600.00 minimum plus \$75.00 per lot.
- (j) Salvage yards: \$2,000.00 minimum plus \$500.00 per acre with an annual inspection fee of \$750.00 which is due by June 1 of each year.
- (k) Penalty: An additional fee will be assessed and added to the cost of a permit when construction, demolition or installation work commences prior to the issuance of a permit.
  - 1st offense—\$100.00.
  - 2nd offense—\$200.00.
  - 3rd offense—Subject to penalties outlined in section 152.999.

If the building commissioner's office is not notified for required inspections the contractor will be assessed a fee of \$50.00.

(l) Occupancy permit.

1. One- and two-family residence—\$25.00 per unit.
2. Multi-family, school, churches, all commercial and industrial - 0 to 5,000 square feet - \$75.00 plus \$1.00 for each additional 100 square feet.

(B) *Plumbing permits.* Applications for installation and inspection of plumbing permits shall be as follows:

(1) New construction:

- (a) One- and two-family dwelling—\$50.00 plus \$25.00 inspection fee.
- (b) Three or more family dwelling, commercial, institutional, school, church or industrial building or structure—\$2.00 per \$1,000.00 of actual plumbing cost—minimum \$50.00 plus \$25.00 inspection fee.
- (c) New water heater—\$25.00 plus \$25.00 inspection fee.

(2) Replace, alter, addition or repair:

- (a) Extension or repair of plumbing system within any existing building or structure \$2.00 per \$1,000.00 of actual plumbing cost—minimum of \$50.00 plus \$25.00 inspection fee.

(3) Plumbers registration fee—New registration—\$150.00.

Annual renewal—\$100.00.

Registrations expire January 1 of every year.

Plumbing contractors must have a state master plumber license on file to become registered locally. Local registration must be current before a permit will be issued to a plumbing contractor.

(4) Penalty. An additional fee will be assessed and added to the cost of a permit when construction, demolition or installation work commences prior to the issuance of a permit.

1st offense—\$100.00.

2nd offense—\$200.00.

3rd offense—Subject to penalties outlined in section 152.999.

If the building commissioner's office is not notified for required inspections the contractor will be assessed a fee of \$50.00.

(C) *Electrical permits.* Applications for installation and inspection or re-inspection of electrical permits shall be as follows:

(1) New construction.

- (a) Temporary service—\$25.00.
- (b) New one- and two-family dwelling—\$50.00 plus \$25.00 inspection fee.
- (c) Multi-family—Three or more family dwelling \$2.00 per \$1,000.00 of actual electrical cost plus \$5.00 per meter—minimum of \$50.00 plus \$25.00 inspection fee.
- (d) Commercial, institutional, school, church or industrial building or structure—\$2.00 per \$1,000.00 of actual electrical cost—Minimum of \$50.00 plus \$25.00 inspection fee.

(2) Replace, alter, addition or repair.

- (a) One- and two-family dwelling—Change of service or wiring for additional circuits—\$25.00 plus \$25.00



inspection fee.

- (b) Three or more family dwelling—\$2.00 per \$1,000.00 of actual electrical cost plus \$5.00 per meter—minimum of \$50.00 plus \$25.00 inspection fee.
- (c) Commercial, institutional, school, church or industrial building or structure—\$2.00 per \$1,000.00 of actual electrical cost—Minimum of \$50.00 plus \$25.00 inspection fee.

(3) Complete rewire.

- (a) One- and two-family dwelling—\$50.00 plus \$25.00 inspection fee.
- (b) Three or more family dwelling—\$2.00 per \$1,000.00 of actual electrical cost plus \$5.00 per meter—minimum of \$50.00 plus \$25.00 inspection fee.
- (c) Commercial, institutional, school, church or industrial building or structure—\$2.00 per \$1,000.00 of actual electrical cost—Minimum of \$50.00 plus \$25.00 inspection fee.

(4) License.

New registration .....\$150.00

Renewal .....\$100.00

Electrical license expires January 1 of every year.

Electrical contractors must have a local electrician license on file before work permit is issued.

- (5) Penalty. An additional fee will be assessed and added to the cost of a permit when construction, demolition, or installation work commences prior to the issuance of a permit.

1st offense—\$100.00.

2nd offense—\$200.00.

3rd offense—Subject to penalties outlined in section 152.999.

If the building commissioner's office is not notified for required inspections the contractor will be assessed a fee of \$50.00.

- (D) *Heating and ventilating permits.* Applications for installation and inspection of heating and ventilating permits shall be as follows.

(1) New construction.

- (a) One- and two-family dwelling—\$50.00 plus \$25.00 inspection fee.
- (b) Three or more family dwelling, commercial, institutional, school, church or industrial building or structure—\$2.00 per \$1,000.00 of actual heating and air conditioning cost—Minimum \$50.00 plus \$25.00 inspection fee (per unit).
- (c) Geothermal underground loop—\$25.00 per installation.

(2) Extension, repair or alteration.

- (a) Within an existing three or more family dwelling, commercial, institutional, school, church or industrial building or structure—\$2.00 per \$1,000.00 of actual heating and air conditioning cost—minimum of \$50.00 plus \$25.00 inspection fee (per unit).
- (b) One- and two-family dwelling (furnace)—\$25.00 plus \$25.00 inspection fee.

- (c) One- and two-family dwelling (air conditioning)—\$25.00 plus \$25.00 inspection fee.
- (d) One- and two-family dwelling (combination furnace and air conditioning unit or heat pump) \$50.00 plus \$25.00 inspection fee.
- (3) Installation, alteration, extension or replacement of air handling equipment for the removal of smoke and grease-laden vapors from cooking equipment—\$25.00 plus \$25.00 inspection fee (per unit).
- (4) License:
  - New license (all classifications) .....\$150.00
  - Annual renewal .....\$100.00
  - HVAC license expires January 1 of every year.
  - HVAC contractors must have a local license on file before work permit is issued.
- (5) Penalty. An inspection fee shall be assessed and added to the cost of a permit when construction, demolition, or installation work commences prior to the issuance of a permit.
  - 1st offense—\$100.00.
  - 2nd offense—\$200.00.
  - 3rd offense—Subject to penalties outlined in section 152.999.

If the building commissioner's office is not notified for required inspections the contractor will be assessed a fee of \$50.00.

(E) *Fire suppression.*

- (1) Installation, alteration, extension or replacement of a fire extinguishing system within a building, structure or premises—\$2.00 per \$1,000.00 of actual cost—Minimum \$50.00 plus \$25.00 inspection fee.
- (2) Installation, alteration, extension or replacement of a fire alarm system within a building, structure or premises—\$2.00 per \$1,000.00 of actual cost—Minimum \$50.00 plus \$25.00 inspection fee.
- (3) Registration.
  - Contractors must supply liability insurance of \$500,000.00 and a \$5,000.00 bond.
  - Contractors must be locally registered through the building commissioner's office.
  - New license .....\$150.00
  - Annual renewal .....\$100.00
  - Registration will expire January 1 of every year
- (4) Penalty. An inspection fee shall be assessed and added to the cost of a permit when construction, demolition, or installation work commences prior to the issuance of a permit.
  - 1st offense—\$100.00.
  - 2nd offense—\$200.00.
  - 3rd offense—Subject to penalties outlined in section 152.99.

If the building commissioner's office is not notified of required inspections the contractor will be assessed a fee of \$50.00.

- (F) Any time a new tenant moves into a commercial lease space or takes over a commercial building, the tenant is required to obtain a certificate of occupancy. The purpose is to ensure that the proposed business is allowed in that zone and that the building meets requirements of the current zoning and city ordinance. Once the required inspections are approved, the City of Muncie will issue a certificate of occupancy to the tenant. the business cannot operate without a certificate of occupancy.

The fee for this permit is \$50.00.

*Building inspections:* Check building, electrical, plumbing and mechanical work to ensure that all aspects meet the minimum code requirements.

*Fire marshal:* Checks exit signs and safety requirements required by the fire code.

*Code enforcement:* Checks for handicap signage, parking, dumpster screen, etc.

It is the responsibility of the applicant to re-schedule inspections.

(1968 Code, § 132.46; Ord. No. 287-77, 7-13-77; Ord. No. 26-83, 5-9-83; Ord. No. 75-85, 1-6-86; Ord. No. 47-02, 11-4-02; Ord. No. 20-09, § 1, 3-2-09; Ord. No. 18-11, §§ 1—4, 8-1-11; Ord. No. 43-13, §§ 1, 2, 12-2-13; Ord. No. 16-14, § 1, 7-7-14)

#### Sec. 152.36 - Environmental impact.

- (A) If an application for a permit required under section 152.30 herein is sought for a facility, operation, or use that requires any of the following to be obtained from, or be filed with the Indiana Department of Environmental Management or its designee, the applicant shall provide the Building Commissioner with the materials that the applicant, or its representative, was or will be required to file with IDEM or its designee describing the potential environmental impact of the facility, operation and/or use:
- (1) Minor Source Operating Permit (MSOP) (Air Permit).
  - (2) Federally Enforceable State Operating Air Permit (FESOP) (Air Permit).
  - (3) Title V Operating Permit (TVOP) (Air Permit).
  - (4) Initial National Pollution Discharge Elimination System Permit (NPDES) (Water Permit).
  - (5) Underground Storage Tank Initial Registration.
- (B) The building commissioner shall provide the environmental impact committee with the materials required by subsection (A) within three days of its receipt.
- (C) The environmental impact committee and/or common council will not have the authority to grant or deny a permit required by section 152.30. The notice to the environmental impact committee is intended to facilitate public notice of certain proposed facilities, operations or uses in the City of Muncie.
- (D) The requirement of subsection (A) shall not apply if an applicant previously provided the required information to the environmental impact committee as part of a request for a tax abatement or other financial assistance from the city.

(Ord. No. 31-21, § 2, 8-2-21)

Secs. 152.37—152.39. - Reserved.

## DIVISION 6. - INSPECTION

### Sec. 152.40. - Inspections.

After the issuance of any building permit hereunder, the building director shall make, or shall cause to be made, such inspections of the work being done under the permit as are necessary to insure full compliance with the provisions of this code and the terms of the permit.

(Ord. No. 26-85, 7-1-85; Ord. No. 5-09, § 1, 3-2-09)

### Secs. 152.41—152.44. - Reserved.

## DIVISION 7. - DEMOLITION OF BUILDINGS

### Sec. 152.45. - Permit for demolition of buildings.

- (A) Prior to the demolition or removal of any building or structure, an application for a permit shall be made to the building director, containing a statement of the facts in relation thereto, and stating the location and ownership of the building to be demolished. After issuance of a demolition permit by the building director, the permittee shall give 24 hours' notice to the building director before the demolition of any building or structure commences. (See section 152.35 of this Chapter for wrecking permit fee).
- (B) Every application for demolition permit shall be accompanied by a \$5,000.00 surety bond by permittee issued to the city.

(1968 Code, § 132.55; Ord. No. 6-09, § 1, 3-2-09)

### Sec. 152.46. - Safety measures and cleanup.

- (A) In demolishing any structure or part thereof, story after story consecutively shall be completely removed. No material shall be placed upon a floor of any building in the course of demolition; the brick, timbers and other parts of the story shall be lowered to the ground immediately upon displacement. The demolition debris must be kept wet enough to prevent dust from emanating from the site. It is the contractor's responsibility to make arrangements with the water company for water from hydrants or another source.
- (B) When any building has been wrecked, the person, firm or corporation who has wrecked the same shall immediately clear the property and adjacent streets and alleys of all rubbish, refuse, and loose material resulting from the wrecking. The basement or foundation walls must be completely removed and the basement floor cracked sufficiently to allow water to drain through. If the building is on a slab, the slab should be completely removed. All steps, sidewalks, driveways and retaining walls on the property must be removed. Hard fill may not be used for fill in the bottom of the hole. Fill shall be a suitable compactable fill such as pit run, back run, gravel or compactable clay material. The building director's office must inspect the excavated site prior to any fill being installed on the site in a basement or crawlspace or following removal of a slab. At the time the inspection is conducted, all debris and dumpsters must be removed from the site. The site shall be covered with topsoil and lot

graded to conform to existing elevations on adjacent properties. The graded site shall not drain onto adjacent properties nor shall water pool on the site. Seed and saw must also be placed on the lot. All conditions must be met prior to requesting final inspection.

- (C) Penalty. One inspection of the excavated site will be conducted and one final inspection will be conducted free of charge. A fee of \$125.00 will be imposed for each additional inspection that is required due to uncompleted work.

(1968 Code, § 132.56; Ord. No. 7-09, 3-2-09)

Secs. 152.47—152.64. - Reserved.

## DIVISION 8. - FIRE ZONES

### Sec. 152.65. - Fire zones.

For the purpose of the building ruler and regulations incorporated in this code, there are established fire zones within the city limits, as follows:

- (A) Fire zone 1. All the areas within the city limits which are zoned: CB Central Business; and MT Major Trading, under the terms of the city comprehensive zoning ordinances-1973, and all amendments thereto.
- (B) Fire zone 2. All the areas within the city limits which are zoned: BL Limited Business; BC Community Business; and BV Variety Business, under the terms of the city comprehensive zoning ordinances-1973, and all amendments thereto.
- (C) Fire zone 3. All the remaining areas within the city limits which are not classified in the zone classifications listed above in fire zones 1 and 2, under the terms of the city comprehensive zoning ordinances-1973, and all amendments thereto.

(Code 1968, § 132.75; amend. Ord. No. 247-76, 12-6-76)

### Sec. 152.66. - Commercial, industrial, apartments, and public buildings fire limits.

There is specifically incorporated by reference the Uniform Building Code promulgated by the Administrative Building Council of Indiana, governing restriction in fire zones for industrial, apartments, and public buildings, and all amendments thereto. The fire zone regulations so incorporated by reference shall be supplemental to local and state regulations and the zoning ordinances of the city.

(Code 1968, § 132.76; amend. Ord. No. 247-76, 12-6-76)

### Sec. 152.67. - One- or two-family dwellings, fire limits.

All the regulations governing commercial, industrial, apartments, and public buildings as set forth in § 152.66 of this chapter shall also apply to one- and two-family dwellings when the dwellings are constructed, altered, or moved within fire zones 1 and 2 designated in § 152.65 of this chapter.

(Code 1968, § 132.77)

Secs. 152.68, 152.69. - Reserved.

## DIVISION 9. - RESIDENTIAL BUILDING CODE GENERAL PROVISIONS

### Sec. 152.70. - Definitions.

For purposes of §§ 152.70 through 150.132 the following words and phrases shall have the following meanings ascribed to them respectively.

*Apartment.* One or more rooms arranged for the use of one or more individuals living together as a single housekeeping unit, with cooking, living, sanitary, and sleeping facilities.

*Approved.* (As to materials and types of construction.) Approval by the building commissioner as the result of investigations and tests conducted by him, or by reason of accepted principles of tests by national authorities or technical or scientific organizations.

*Approved agency.* An established and recognized agency regularly engaged in conducting tests or furnishing inspection services, when the agency has been approved by the building commissioner.

*Building commissioner.* The officer or other designated authority, or his duly authorized representative, charged with the administration and enforcement of this code.

*Dead load.* The weight of all permanent construction including walls, floors, roofs, partitions, stairways, and fixed service equipment.

*Felt.* A fabric saturated with bitumen weighing up to 15 pounds per 108 square feet used as an underlayment or sheeting paper. Not commonly acceptable as flashing.

*Fire-resistance rating.* The time in hours that the material or construction will withstand the standard fire exposure as determined by a fire test made in conformity with the "Standard Methods of Fire Tests of Building Construction and Materials." See NBFU Building Code 55.

*Hollow masonry unit.* A masonry unit whose net cross-sectional area in any plane parallel to the bearing surface is less than 75 percent of its gross cross-sectional area measured in the same plane.

*Solid masonry unit.* A masonry unit whose net cross-sectional area in every plane parallel to the bearing surface is 75 percent or more of its gross cross-sectional area measured in the same plane.

(Code 1968, § 132.81)

*Veneer.* A facing of brick, stone, concrete, tile, metal, or similar material attached to a wall for the purpose of providing ornamentation, protection, or insulation, but not counted as adding strength to the wall.

(Code 1968, § 132.83)

#### *Walls.*

- (1) *Bearing wall.* A wall which supports any vertical load in addition to its own weight.
- (2) *Cavity wall.* A wall built of masonry units or plain concrete or a combination of these materials, so arranged as to provide an air space within the wall, one in which the inner and outer wythes of the wall are tied together with metal ties.
- (3) *Faced wall.* A wall in which the masonry facing and backing are of different materials and are so bonded as to

exert a common reaction under load.

(4) *Foundation wall*. A wall below the floor nearest grade serving as a support for a wall, pier, column, or other structural part of a building.

(5) *Nonbearing wall*. A wall which supports no vertical load other than its own weight.

(Code 1968, §§ 132.80, 132.81, 132.83)

Sec. 152.71. - Occupancy of structure.

No residential, duplex, or row house can be occupied for habitual use until all constructions conditions required by this code have been fully complied with and certified by the building commissioner.

(Code 1968, § 132.82)

Secs. 152.72—152.134. - Reserved.

## DIVISION 10. - MOVING BUILDINGS

Sec. 152.135. - Application for permit required; contents of application.

Any person desiring to remove any building or structure from the place where it is located in the city shall file with the building commissioner of the city a written application for a permit describing:

- (A) The present location of the building or structure and the place where it is to be moved, if such place is within a radius of four miles of the city.
- (B) The proposed route of moving over the streets of the city.

(Code 1968, § 132.145)

Sec. 152.136. - Amount and payment of permit fees.

At the time of filing an application for a permit to move a building or structure as provided in section 152.135 of this chapter, the applicant shall pay to the office of the building commissioner an application fee of \$100.00 for the benefit of the general fund of the city. However, if the area of the building or structure to be moved does not exceed 400 square feet, then the application fee shall be \$10.00.

(Code 1968, § 132.146; Ord. No. 8-09, 3-2-09)

Sec. 152.137. - Agreement of applicant to be filed with application.

The applicant described in § 152.135 of this chapter shall also file with the application a written agreement, duly executed, providing that, if the permit is granted, the applicant will:

- (A) Promptly remove the building in a careful and prudent manner, and not permit the same to remain upon the streets in the city longer than reasonably necessary.
- (B) Upon completion of the removal, if within four miles of the corporate limits of the city, promptly complete the remodeling of the building in conformity with the provisions of all applicable sections of this code, or other

ordinances of the city then in force.

- (C) Pay all damages of every kind and character occasioned to the city, any public utility, and any other person as a result of the moving.

(Code 1968, § 132.147)

Sec. 152.138. - Examination of building to be moved.

Upon the filing of the application required by section 152.135 of this chapter, the building commissioner and the city engineer shall immediately proceed to determine:

- (A) Whether or not the economic life of the building is more than 50 percent exhausted.
- (B) The approximate extent, nature, and amount of damage to the streets, alleys, and other public improvements over the proposed route of moving.
- (C) Whether or not the neighborhood into which it is proposed to move the building is a neighborhood in which are located buildings of the same size, type, age, and character as the building to be moved.
- (D) Whether or not the building when completed in the new location will violate any of the provisions of this code, or other ordinances of the city.

(Code 1968, § 132.148; Ord. No. 9-09, 3-2-09)

Sec. 152.139. - Notice and hearing for determination by board of zoning appeals.

If the city engineer and building commissioner shall disagree in any of the matters to be determined as provided in § 152.137 of this chapter, they shall submit the matter to the board of zoning appeals of the city, and the board of zoning appeals shall thereupon determine the matter after holding a public hearing at the expense of the applicant, giving notice of the hearing as provided by the zoning code.

(Code 1968, § 132.149)

Sec. 152.140. - Notification to public utilities to file estimate of damages.

- (A) The building commissioner shall upon determination as hereinafter provided, notify all public utilities affected by the proposed moving of any building or structure, and request that they furnish, within 48 hours of the notice, an estimate of the expense and damage which will be suffered by the utilities in the event the moving takes place.
- (B) The notice shall be given only in case the building director and the city engineer shall determine, or, in event of their disagreement, in case the board of zoning appeals shall determine that:
  - (1) More than 50 percent of the economic life of the building is not exhausted.
  - (2) The moving will not cause irreparable damage to the streets, alleys, and other public improvements along the route of moving.
  - (3) The neighborhood into which it is proposed to move the building has located therein buildings of the same age, type, and character as the building to be moved.
  - (4) The building when completed will not violate the provisions of this code, or other ordinances of the city.

(Code 1968, § 132.150)



Sec. 152.141. - Notice to applicant that permit will be issued upon posting of bond and deposit to cover damages.

Upon expiration of the 48-hour period provided for in the preceding section, the building director shall notify the applicant that a moving permit will be granted upon the applicant's:

- (A) Filing with the city controller a bond payable to the city and any person who may be damaged by the moving, in the penal sum of \$5,000.00, conditioned that applicant will cause to be performed the agreement filed with the application, and pay all damages, public or private, occasioned by the moving, including expenses of collection and attorney's fees, without relief from valuation of appraisement laws.
- (B) Paying to the office of the city controller for the use of the city and persons entitled thereto the estimated amount of such damages.

(Code 1968, § 132.151)

Sec. 152.142. - Issuance or refusal of permit.

No permit required by §§ 152.135 through 152.145 of this code shall be granted if any of the matters set out in § 152.138 of this chapter are determined in the negative; otherwise, the permit shall be issued upon performance of the conditions set out in § 152.140 of this chapter.

(Code 1968, § 132.152)

Sec. 152.143. - Notice of completion of moving.

Within two weeks after completion of the moving, the applicant shall file with the building director notice thereof, and the city engineer, on behalf of the city and any other person affected thereby, shall file with the building director an itemized and verified statement of the cost, expense, and damage incurred on account of the moving. The building director shall thereupon approve so much of the claims as in his judgment shall be deemed just and reasonable, and if there be sufficient money on deposit with the city controller, shall direct the city controller to pay the claims to the persons entitled thereto. If the sum on deposit is insufficient, the same shall be prorated, and the applicant shall be notified by the building director of the deficiency, and it shall be the duty of the applicant to pay the deficiency. Four weeks after the filing of notice of completion of the moving, if any of the deposit remains unclaimed, the head of the department of finance shall refund the same.

(Code 1968, § 132.153)

Sec. 152.144. - Moving building without permit; leaving building in street for unreasonable time; failure to complete building after moving.

It shall be unlawful to:

- (A) Remove any building or structure of any kind or character whatsoever located within the city without first obtaining the permit provided for by §§ 152.135 through 152.145 of this chapter.
- (B) Leave any building or structure upon the public streets of the city for an unreasonable time, or fail to immediately complete the building in conformity with the provisions of this code, or other ordinances of the city then in force.

(Code 1968, § 132.154)

Sec. 152.145. - Injunctive relief against violation; recovery of costs.

Any violation of §§ 152.135 through 152.145 of this chapter may be restrained, enjoined, and prevented by injunctive relief at the suit of the building director or any other person, either in the name of the person or in the name of the city, and the party bringing the action, if successful, shall be entitled to recover all costs, expenses, and attorneys' fees incurred in connection with the prosecution of the suit.

(Code 1968, § 132.155)

Sec. 152.999. - Penalty.

If any person, firm, or corporation shall violate any of the provisions of this code, or shall do any act prohibited herein, or shall fail to perform any duty lawfully enjoined, within the time prescribed by the building director, or shall fail, neglect, or refuse to obey any lawful order given by the building director in connection with the provisions of this code, for each such violation, failure, or refusal, such person, firm, or corporation shall be fined in any sum not less than \$1.00 nor more than \$1,000.00. Each day of such unlawful activity as is prohibited by the first sentence of this section shall constitute a separate offense.

(Ord. No. 26-85, 7-1-85)

CHAPTER 153. - ELECTRIC CODE

DIVISION 1. - ELECTRIC CONTRACTORS

Sec. 153.01. - Definitions.

For purposes of this chapter the following words and phrases shall have the following meanings ascribed to them respectively.

- (A) *Electrician*. A person with a regular established place of business and who is engaged in the business of electrical contracting. That person, or if a firm or corporation, a member thereof, shall have passed an examination before the appointed electrical examiners, and shall have made a grade of 75, or better; in which case, he shall be granted a license which shall permit the person to engage in the installation, alteration, and repair of any electric wiring, devices, or appliances.
- (B) *Wiring*. The art and science of installing in buildings the wires, conduits, apparatus, fixtures, or other appliances for carrying or using electricity for light, heat, or power purposes.

(Code 1968, § 132.200; Ord. No. 11-09, § 1, 3-2-09)

Sec. 153.02. - Board of electrical examiners.

The board of electrical examiners shall be appointed by the mayor and shall be composed of a registered architect, the building commissioner and one master electrician.

(Code 1968, § 132.201; Ord. No. 12-09, § 1, 3-2-09)

Sec. 153.03. - Permit required; submission of plans and specifications.

Before any electrical work shall be commenced in any residence, building, or structure of any kind, or on any lot or premises in the city, plans and specifications thereof shall be filed with the building commissioner, and if such plans and specifications are approved by the building commissioner, then he shall endorse his approval thereon; or the building commissioner may be notified of the proposed installation of electricity by the property owner as above designated, and the commissioner shall approve of the method, plans and specifications of the owner, shall reduce the same to writing, and the building commissioner shall endorse approval thereon. After the approval of such plans and specifications and the methods of proposal, a permit to do such wiring work shall be obtained by a licensed and bonded electrical contractor from the building commissioner of the city.

(Code 1968, § 132.202; Ord. No. 13-09, § 1, 3-2-09)

Sec. 153.04. - Compliance with regulations prerequisite to issuance of permit.

No application for a permit to do electrical work in the city shall be approved by the building commissioner unless the person making such application agrees to do all work for which such permit is granted in accordance with the provisions of this chapter and the approval of the building commissioner.

(Code 1968, § 132.203)

Sec. 153.05. - Effect of approval of plans and specifications.

Approval of all plans and specifications by the building commissioner shall not guarantee any person that the approved plans and specifications are in exact accordance with this chapter, and no errors or omissions found later by the applicant or by the building commissioner shall be construed to permit any person to violate the provisions of this chapter, or other laws. Such errors or omissions shall be immediately rectified so that such plans and specifications conform with the provisions of this title, and other ordinances and laws of the city.

(Code 1968, § 132.204)

Sec. 153.06. - Permit fees.

The permit fees for the installation and inspection or reinspection of wiring shall be as set out in the building code of the city in §§ 152.01 through 152.144.

(Code 1968, § 132.205)

Sec. 153.07. - Revocation of permits; authority of building commissioner.

Should the building commissioner become convinced that the work called for in the wiring permit is not proceeding according to the plans and specifications upon which the permit was issued, it shall be his duty to notify, in writing, the owner of the property involved, or his agent, and the electrical contractor installing the work, that the work is being done in violation of the approval permit or this chapter, that such work shall be corrected to conform to the provisions of this section, and if such work is not corrected as required, the permit shall be revoked.

(Code 1968, § 132.206)

Sec. 153.08. - Notice of revocation.

The revocation of a wiring permit shall be by letter to the applicant at the address shown on the wiring permit application, or to the wiring concern installing the work, or in lieu thereof, the building commissioner or his authorized assistants may cause a tag, sticker, or notice of such revocation of a permit to be attached to the electrical work under construction or in the vicinity of such work.

(Code 1968, § 132.207)

Sec. 153.09. - Expiration of permits.

Every wiring permit shall expire by limitation if active work has not been commenced within two months of the date of issue.

(Code 1968, § 132.208)

Sec. 153.10. - Inspection of wiring; generally; duty of building commissioner.

The building commissioner, when notified that any electrical work is ready for inspection, shall examine the same and approve or reject all such work, or parts thereof. All work shall be left uncovered for examination until the inspection is made.

(Code 1968, § 132.209; Ord. No. 14-09, § 1, 3-2-09)

Sec. 153.11. - Notice to building commissioner and owner of property involved.

The electrician in charge shall notify the building commissioner, and also the owner of the property involved, or his authorized agent, by telephone or in writing, between the hours of 8:00 a.m. and 4:00 p.m., not less than eight work hours before the work is to be inspected or tested. It shall be the duty of the electrician, before giving the notification above, to make sure that the work will stand inspection. If the building commissioner finds that the work will not pass the inspection, the electrician shall be required to renotify as above, and to pay the sum of \$1.00 for each renotification or reinspection.

(Code 1968, § 132.210)

Sec. 153.12. - Adoption of rules and regulations; applicability to utilities and manufactures.

(A) The current National Electrical Code and Current International Building Code is accepted and adopted as the minimum requirements for the installation of all wiring within the city in the type of buildings set forth under section 153.03.

(B) This section shall not apply to public utilities or manufacturing companies, or their regularly employed electricians, while engaged in electrical maintenance on the property or equipment of such utility or manufacturing company.

(Code 1968, § 132.211; Ord. No. 15-09, § 1, 3-2-09)

Sec. 153.13. - License required; bond.

No person shall engage in or operate a business of wiring, heating, or air conditioning in the city without having first obtained a license to do so from the city controller. No license shall be issued until the applicant has filed with the city clerk

a bond in the sum of \$5,000.00, payable to the city, for the use and benefit of any person who shall suffer any damage because of any violation of this chapter or damage to the property owned by him. Such bond shall be executed by such person, together with a surety company authorized to do business in the state, or with two resident freeholders of the city, who shall own unencumbered real estate of at least twice the amount of such bond. Such bond shall be approved by the clerk of the city and such approval shall be endorsed thereon; and such bond shall be maintained so long as the person engages in the business of wiring in the city. A cash bond in the sum of \$5,000.00 may be accepted by the clerk in lieu of the bond herein provided.

(Code 1968, § 132.212; Am. Ord. No. 17-87, 8-3-87; Ord. No. 16-09, § 1, 3-2-09)

Sec. 153.14. - Record of licenses to be kept.

The city clerk shall keep a record of all persons licensed to engage in the electrical, heating, or air conditioning business in the city, together with the amount and date of their bonds and the sureties thereon.

(Code 1968, § 132.213; Am. Ord. No. 17-87, 8-3-87)

Sec. 153.15. - License fee; expiration of license; renewal.

- (A) The fee for a license to operate an electrical, heating, or air conditioning business or engage in wiring as an independent contractor in the city shall be at the rate of \$150.00 per annum payable at the time the application for the license is filed with the city controller. All licenses shall expire January 1 of each year and no license shall be issued for a longer period than one year, but such license may be renewed without reexamination. Any person holding a license who shall allow the same to lapse shall not be entitled to renew the same without examination, unless he renews the same within 30 days from the expiration of the license. No license shall be transferable and the license shall be conspicuously posted in the place of business for which it is issued. The renewal fee shall be \$100.00 per year.
- (B) All holders of a present contractor's license shall, 30 days before the expiration date of January 1 of each year, make application for renewal of such license before being granted the new master electrician's license, and the new master electrician's license shall state master electrician thereon.

(Code 1968, § 132.214; Am. Ord. No. 17-87, 8-3-87; Ord. No. 17-09, § 1, 3-2-09; Ord. No. 20-11, §§ 1, 2, 8-1-11)

Sec. 153.16. - Certificate and bond prerequisite to issuance of license.

- (A) The city controller shall not be entitled to issue a license as provided in this chapter until the applicant shall produce and show to the controller either his old license which has expired or a certificate from the board of electrical examiners that he has passed the examination successfully as provided in this chapter and also a certificate from the city clerk showing that a bond has been filed or a cash deposit made as provided in § 153.13.
- (B) In case any person properly applying to the city controller shall produce the required evidence that he is actively connected with any firm or corporation engaged in the electrical business in the city and shall request that such license be issued in the name of such firm or corporation, then the city controller is authorized to issue such license to the firm or corporation; provided that all parts of §§ 153.01 through 153.11 have been complied with. Any withdrawal of members of any firm must be reported immediately to the board of electrical examiners.

(Code 1968, § 132.215)

Secs. 153.17—153.19. - Reserved.

**Editor's note—** Ord. No. 10-09, § 1, adopted March 2, 2009, repealed former §§ 153.17—153.19 in their entirety which derived from the Code of 1968. Former § 153.17 pertained to examination of applicant for license. Former § 153.18 pertained to issuance of license; disposition of fee. Former § 153.19 pertained to failure to pass examination; reexamination.

Sec. 153.20. - Licenses for members or officers of firms.

No firm or corporation shall engage in or operate an electrical business in the city unless one member of such firm, or officer or agent of such corporation, has been licensed according to the provisions of this chapter and has had the license issued in the name of the firm or corporation as provided in § 153.16. A person requesting a license to be issued in the name of a firm or corporation shall file with the clerk of the city the names of all members of the firm or the name of the corporation. The examination and all provisions of this chapter relating thereto shall be binding on all members of the firm or corporation.

(Code 1968, § 132.219)

Sec. 153.21. - Reserved.

**Editor's note—** Ord. No. 10-09, § 1, adopted March 2, 2009, repealed former § 153.21 in its entirety which pertained to wiring standards and derived from the Code of 1968.

Sec. 153.22. - Violations of regulations.

No person shall have the occupation of electrician within the city, or do any electrical work for hire within the city, without first having complied with the provisions of this chapter. No such person shall fail to comply with any of the requirements of these sections, or assist in any violation of these sections.

(Code 1968, § 132.221)

Secs. 153.23—153.39. - Reserved.

## DIVISION 2. - HEATING AND COOLING CONTRACTORS

Sec. 153.40. - License required.

- (A) Licensure as a heating and cooling contractor of the appropriate type is required to install, modernize, replace, service or repair all or any part of a heating system, a cooling system, space heating equipment, space cooling equipment or refrigeration equipment.
- (B) Construction activity which this subchapter allows licensed heating and cooling contractors to carry out is hereafter referred to in this subchapter as "heating and cooling work."
- (C) A person not licensed under this subchapter who is employed by a licensed heating and cooling contractor may, however, accomplish heating and cooling work while working under the direction and control of a person who is a licensed heating and cooling contractor, but shall not otherwise enter into or offer to enter into a contractual

relationship to engage in the heating and cooling work. The scope of activity of such nonlicensed person shall not extend beyond that allowed by the license type of the licensed heating and cooling contractor providing direction and control over the nonlicensed person.

- (D) A person not licensed under this subchapter may, however, accomplish heating and cooling work in carrying out ordinary maintenance and repair if such work is accomplished by the person in the regular course of his sole, full-time employment by the owner of the premises where such ordinary maintenance and repair occurs. Persons, partnerships or corporations engaged in the business of service and repair, however, must be licensed under this subchapter.

(Ord. No. 74-89, 12-4-89)

Sec. 153.41. - Board of heating and cooling examiners.

A board of heating and cooling examiners (hereinafter in this subchapter referred to as the "board") shall consist of five members and shall be responsible for carrying out the provisions relative to licensure of heating and cooling contractors. The building commissioner, or his agent shall be a member of the board. The other four members of the board shall be appointed by the mayor for two year terms in such manner that two terms expire on January 1 of each year and the two other terms expires on January 1 of the next year. Three of the four members appointed by the mayor shall be persons to whom a license has been issued in accordance with this subchapter and the remaining appointed member shall be a person (not licensed under this subchapter) representing the public at large. Each of the appointed members shall be a resident of Delaware County. Members shall not receive compensation for serving on the board. Those members appointed by the mayor shall serve at his pleasure.

(Ord. No. 74-89, 12-4-89)

Sec. 153.42. - Organization of board.

- (A) The board shall meet annually in each January on a date specified for regular monthly meetings in offices of the building commissioner, or his agent, and elect a chairman and any other officers, who shall serve one year or until a successor is chosen, whichever is longer.
- (B) At its annual meeting each January, the board shall promulgate written policies and regulations concerning the administration of the written examination stated in § 153.47 and of the equivalent examination stated in § 153.49.

(Ord. No. 74-89, 12-4-89)

Sec. 153.43. - Meetings of board.

The board shall hold regular meetings once each month if there are one or more applications for license pending or other official business to come before the board. Special meetings may be called by the chairman or any three members upon giving written notice fixing the time and place of the meeting at least two days in advance of the special meeting. Three appointed members of the board shall constitute a quorum for the transaction of all business.

(Ord. No. 74-89, 12-4-89)

Sec. 153.44. - Record of proceedings.

The board shall keep a summary record of its proceedings.

(Ord. No. 74-89, 12-4-89)

Sec. 153.45. - Register of application.

The building commissioner, or his agent, shall maintain a register of all persons, partnerships and corporations which apply for licensure and persons who apply for renewal of licensure under this subchapter.

- (A) If the applicant is a person, the register shall show the date of application, the name of the applicant, the age, education, years of experience and other qualifications of the applicant, the addresses of the places of business and the residence of the applicant, the type of license for which application is made, whether the application is for an initial license or renewal of a license and whether the application was rejected or approved and date of such action.
- (B) If the applicant is a partnership, the register shall show the date of application, the name of the partnership, the addresses of its places of business, names of all partners and their respective residential addresses, the type of license for which application is made, and whether the application was rejected or approved and the date of such action.
- (C) If the applicant is a corporation, the register shall show the date of application, the name of the corporation, state of incorporation, addresses of its places of business, names of all officers and their respective residential addresses, the type of license for which application is made and whether the application was rejected and the date of such actions.

(Ord. No. 74-89, 12-4-89)

Sec. 153.46. - Qualifications for a person to be licensed as a heating and cooling contractor.

A person shall be entitled to receive one license of the appropriate type as a heating and cooling contractor (either initially or by renewal of a license) if the following requirements are met:

- (A) The person:
  - (1) Meets the written examination requirement stated in § 153.47, and the experience requirement stated in § 153.49; or
  - (2) Meets the equivalent examination requirement stated in § 153.49 and the experience requirement stated in § 153.49; or
  - (3) Meets the eligibility for renewal requirements stated in § 153.50; or
  - (4) Presently holds a license equivalent to the license described under § 153.56(B), below, but a license granted under this last provision shall have the limits of the license issued under § 153.56(B), and
- (B) The person does not presently have a license issued under this subchapter suspended nor has he had such a license revoked within a period of the preceding 730 days; and
- (C) The board has not, within the preceding 365 days, determined in accordance with § 153.61 that the person is not eligible for license renewal; and
- (D) The person has submitted an acceptable bond and certificates of insurance as required by §§ 153.54 and 153.55 unless this requirement is relieved because such person either meets the partnership or corporate agent status requirement stated in § 153.51 or such person meets the inspector status requirement stated in § 153.62; and



(E) The person has paid all specified fees.

Unless these requirements are met a person shall not be entitled to a heating and cooling contractor's license of the appropriate type.

(Ord. No. 74-89, 12-4-89)

Sec. 153.47. - Written examination.

The written examination requirement of § 153.46 is met by a person who demonstrates his understanding of the following subject matter areas by attaining a passing score on a written examination administered by the board relative to heating and cooling work for which such license of the applicable type is required:

- (A) General knowledge of the provisions of this subchapter and other relevant ordinances of the city; and
- (B) General knowledge of the rules and regulations of the administrative building council, state and federal agencies applicable in the city; and
- (C) Expert; knowledge about the proper, practical and safe methods of accomplishing heating and cooling work.
- (D) In the event a person fails to obtain a passing score on the written examination administered by a testing entity approved by the board, re-examination shall only be allowed pursuant to the written policies and regulations promulgated by the board.

(Ord. No. 74-89, 12-4-89; Ord. No. 18-09, § 1, 3-2-09)

Sec. 153.48. - Experience.

The experience requirement of § 153.46 is met by a person who has had at least five years of practical work experience pertaining to heating and cooling work or a combination of experience and school which totals five years.

(Ord. No. 74-89, 12-4-89)

Sec. 153.49. - Equivalent examination.

The equivalent examination requirement of § 153.46 is met by a person who demonstrates, either orally or in writing to the satisfaction of the board, his familiarity with this subchapter and presents evidence satisfactory to the board at one of its meetings that he currently practices the craft of a heating and cooling contractor and that he is presently licensed in good standing as a result of his successfully completing an examination administered by a licensure board for another state or another municipality which was then the equivalent in scope of subject matter and difficulty as the examination presently administered by the board for the applicable license type.

(Ord. No. 74-89, 12-4-89)

Sec. 153.50. - Eligibility for license renewal.

The eligibility for renewal requirement of § 153.46 is met by a person who:

- (A) Has held an unrevoked license of the same type under this subchapter within the preceding 730 days;
- (B) Has held an unrevoked license of the same type under this subchapter within the preceding 1,460 days (four years) and demonstrates to the satisfaction of the board that during at least two years of that period the

person has been actively engaged, in the city or elsewhere, in heating and cooling work.

(Ord. No. 74-89, 12-4-89)

Sec. 153.51. - Partnership or corporate agent status.

The partnership or corporate agent status requirement of § 153.46 is met by a person who:

- (A) Is a partner or employee of a partnership or an officer or employee of a corporation which is licensed under this subchapter; and
- (B) Does not make any use of his license as a heating and cooling contractor other than as an agent of the partnership or corporation.

Whenever such person has occasion to enter into a transaction or take action for which licensure under this subchapter is required, he shall clearly state the fact he is acting as agent for an identified partnership or corporation principal.

(Ord. No. 74-89, 12-4-89)

Sec. 153.52. - Inspector status.

The inspector status requirement of § 153.46 is met by a person who is employed by the city in a position in which she or he makes or supervises the making of inspections to determine compliance with building standards and procedures relating to heating and cooling work and the Uniform Mechanical Code (Article II) provisions of this subchapter. Such a person shall not use a license as a heating and cooling contractor other than with respect to his employment by the city. Licensure under this section terminates by operation of law when the person is no longer employed by the building commissioner and does not meet the requirements of §§ 153.46 and 153.55.

(Ord. No. 74-89, 12-4-89; Ord. No. 31-92, 8-3-92)

Sec. 153.53. - Qualifications for a partnership or corporation to be licensed as heating and cooling contractor.

A partnership or corporation shall be entitled to receive one license of the appropriate type as a heating and cooling contractor if the following requirements are met:

- (A) At least one general partner (who is a person) or employee of a partnership or at least one officer or employee of a corporation holds a license of the same type under this subchapter as that relative to which the partnership or corporation has made application, provided, however, that an unlicensed general partner or employee of a partnership or an unlicensed officer or employee of a corporation shall be deemed to fulfill the requirement of this division if such person is prevented from meeting the requirements of § 153.46 for licensure of the applicable type solely because the partnership or corporation of which he is a partner or employee or officer or employee is not licensed under this subchapter and such partner or employee or officer or employee has submitted an application for licensure so that the licenses of the partner or employee and corporation can be approved and issued simultaneously; and
- (B) The partnership or corporation does not presently have a license issued under this chapter suspended nor has it had such a license revoked within a period of the preceding 730 days; and
- (C) The board has not, within the preceding 365 days, determined in accordance with section 153.62 that the partnership or corporation is not eligible to receive a successor license; and

- (D) The partnership does not presently have a partner or the corporation does not presently have an officer who has under this subchapter presently suspended or who has had such a license revoked within the preceding 730 day determination made of ineligibility for license renewal within the preceding 365 days; and
- (E) The partnership does not presently have a partner or the corporation does not presently have an officer who, within the preceding 365 days, served as a partner in a partnership or officer in a corporation licensed under this subchapter at the time when actions related to policies or practices of the partnership or corporation occurred which provided the primary basis on which the license of the partnership or corporation was revoked, suspended more than one year or a determination made of ineligibility for receipt of a successor license; and
- (F) The partnership or corporation has submitted an acceptable bond and certificates of insurance as required by sections 153.54 and 153.55; and
- (G) The partnership or corporation has paid all specified fees.
- (H) Unless these requirements are met, a partnership or corporation shall not be entitled to a heating and cooling contractor's license of the appropriate type.

(Ord. No. 74-89, 12-4-89)

Sec. 153.54. - Bond.

- (A) Before a license is issued by the city to any person, partnership or corporation, the city controller shall require the applicant to file a surety bond in the amount of \$5,000.00. The bond shall be maintained in full force and effect for a period of not less than one year. The bond shall set forth the name, phone number and address of the agent representing the bonding company, and shall be:
  - (1) Issued by a surety authorized to do business in Indiana;
  - (2) Payable to the city or an unknown third party as obligee;
  - (3) Conditioned upon:
    - (a) Compliance with requirements set forth in this subchapter which must be met to retain licensure; and
    - (b) Prompt payment of all fees owed the city as set forth in this subchapter; and
    - (c) Prompt payment to the city for any loss or expense for damages to property of the city caused by any action of the contractor, his agents, employees, principals, subcontractors, materialmen or suppliers in violation of building standards and procedures while engaged in any heating and cooling work or any related construction activity; and
    - (d) Prompt payment to a person, partnership or corporation which is an unknown third party obligee for any:
      - 1. Losses arising out of violations,
      - 2. Expenses necessary to correct violations, and
      - 3. Court costs and attorney fees allowed by the court incurred in connection with the commencement and prosecution of a court action to recover such losses and expenses for violations of building standards and procedures caused by any action of the contractor, his agents, employees, principals, subcontractors, materialmen or suppliers while engaged in heating and cooling work or any related construction activity.

However, the surety is not responsible under the bond for losses or expenses arising out of negligent conduct or improper workmanship unless such conduct or improper workmanship violates requirements of building standards and procedures.

- (B) The city controller may accept in lieu of the surety bond a properly conditioned irrevocable letter of credit in the amount of \$5,000.00 if the city controller approves the obligor financial institution as being financially responsible and if the corporation counsel approves the letter of credit as affording the same protections to the city and an unknown third party as the protections afforded by the surety bond.
- (C) The obligation of the surety and financial institution relative to this bond or letter of credit is limited to \$5,000.00. A surety or financial institution may pay on the bond or disburse from the letter of credit to pay a claim in full at any time when that claim and pending claims (reflected by written notice to the surety or financial institution) together do not exceed the unpaid penalty of the bond or the undisbursed balance of the letter of credit. If written notice is received of claims which exceed the unpaid penalty of the bond or undisbursed balance of the letter of credit, the surety or financial institution shall prorate payment according to the amount of such claims.

(Ord. No. 74-89, 12-4-89)

#### Sec. 153.55. - Insurance.

The insurance requirements are met if the person, partnership or corporation secures insurance covering all heating and cooling work and any related construction activity accomplished by the licensee or under permits obtained by the licensee and thereafter maintains such insurance in full force and effect:

- (A) A public liability and property damage insurance policy assuring the licensee and naming the city as an "additional assured," and providing also for the payment of any liability imposed by law on such licensee or the city arising out of operations being performed by or on behalf of the licensee in the minimum amounts of \$500,000.00 for combined bodily injury and property damage coverage or \$500,000.00 for any occurrence relative to which there is injury or death to one or more persons and \$100,000.00 for any occurrence relative to which there is damage to property. A certificate of such policy shall be delivered to the building commissioner or his agent.
- (B) Worker's compensation insurance covering the personnel employed for death or injury arising out of operations being performed by or on behalf of the licensee. A certificate of such insurance shall be delivered to the building commissioner or his agent. This provision shall not apply if the licensee has no employees and gives appropriate notice to the building commissioner or his agent.

The insurance carrier shall give notice both to the licensee and the division of development services at least 15 days before such insurance is either cancelled or not renewed, and the certificate shall state this obligation.

(Ord. No. 74-89, 12-4-89)

#### Sec. 153.56. - Types of licenses.

There shall be four types of licenses approved by the board pursuant to this chapter. Heating and cooling work may be accomplished under these license types as follows:

- (A) The "heavy commercial (unrestricted)" license authorizes the holder thereof to perform all of the kinds of heating and cooling work without limitation.

(B) The "light commercial/residential" license authorizes the holder thereof to perform work on the following kinds:

- (1) Installation, modernization, replacement, service or repair of cooling systems of space cooling equipment, which system or equipment has a rated output not in excess of 600,000 BTU and does not include preassembled air-conditioning condensing units which exceed a rating of 25 tons under ARI standards; and
- (2) Installation, modernization, replacement, service or repair of heating systems of space heating equipment, which system or equipment has a rated BTU and which does not utilize a water boiler in which the rate pressure exceeds 30 pounds per square inch.

(C) The "refrigeration" license authorizes the holder thereof to perform installation, modernization, replacement, service or repair of refrigeration equipment.

(D) The "restricted commercial/residential" license authorizes the holder thereof to perform work on the following kinds

- (1) Installation, modernization, replacement, service or repair of cooling systems of space cooling equipment, which system or equipment has a rated output not in excess 300,000 BTU and does not include preassembled air-conditioning condensing units which exceed a rating of 5 tons under ARI standards.

(Ord. No. 74-89, 12-4-89; Ord. No. 46-21, § 1, 11-1-21)

Sec. 153.57. - Board's approval for licensure.

- (A) Approval for licensure of a person, partnership or corporation as a heating and cooling contractor of the appropriate type shall be in writing signed by a majority of the board. The board may, however, by resolution agreed to by a majority of the board, delegate to one of its officers or the building commissioner or his agent authority to approve applications for licensure or renewal of licensure on behalf of the board in instances where the applicant is a person whose eligibility for license renewal is established by § 153.50 or the applicant is a partnership or corporation.
- (B) Upon delivery of such approval, a heating and cooling contractor's license of the appropriate type shall be issued by the building commissioner or his agent for a period of one year. No license shall be issued by the building commissioner or his agent to any person, partnership or corporation as a heating and cooling contractor except as provided in this division.

(Ord. No. 74-89, 12-4-89)

Sec. 153.58. - License personal, not transferable.

No license issued under the provisions of this division shall be assigned or transferred.

(Ord. No. 74-89, 12-4-89)

Sec. 153.59. - Supervision by licensee.

All heating and cooling work shall be accomplished under the direction and control of either:

- (A) The licensed person who applied for the building permit; or
- (B) If the building permit has been transferred, the licensed person who is the applicant representing the transferee of the building; or

- (C) If the applicant for the building permit no longer is able or desires to continue his responsibilities or obligations as the applicant and the obtainer of the building permit is a partnership which has a licensed person as a partner or a corporation which has a licensed person as an officer who meets the requirements imposed by this subchapter to apply for a building permit in the first instance, such licensed partner or officer upon his notifying (using services) the commissioner of his assumption of the responsibilities and obligations of the applicant for the specified building permit.

The licensed person providing direction and control shall specify work processes and supervise the person or persons, accomplishing the heating and cooling work. Such licensed person or a competent person responsible to him must be present at the site when any significant heating and cooling work occurs.

(Ord. No. 74-89, 12-4-89)

Sec. 153.60. - Heating and cooling work on one's own property.

A person who both owns and possesses an improved or unimproved parcel of land may personally accomplish heating and cooling work for which a license is required by this subchapter, without having such a license, relative to a one-or two-family residential structure on such parcel, if:

- (A) The nonlicensed person obtains a building permit for the heating and cooling work, if required; and
- (B) In the instance of heating and cooling work for which a building permit is required which poses a substantial potential health or safety hazard as determined by the board or by the commissioner on behalf of the board (by making reference to standards issued by the board), the nonlicensed person has secured, after furnishing full plans and information, the board's written approval of the specified work; or
- (C) In the instance of heating and cooling work for which a building permit is required which if done improperly is not a substantial potential health or safety hazard (as determined by the board or by the commissioner on behalf of the board by making reference to standards issued by the board) the nonlicensed person has secured, after furnishing full plans and information approval in writing of the specified work from the building commissioner or his agent.

The determination by the board or the commissioner as to whether the nonlicensed person shall be allowed to accomplish heating and cooling work shall be made on the basis of whether the nonlicensed person possesses sufficient knowledge and technical skill to accomplish the work in accordance with building standards and procedures.

(Ord. No. 74-89, 12-4-89)

Sec. 153.61. - License suspension revocation or determination of ineligibility for renewal for a person.

The board may, under § 153.53, suspend the license of a person for a period of up to 730 days, revoke the license of a person, or determine on the basis of activities carried out while licensed that a person who is or has been licensed within the previous 365 days is ineligible for license renewal, if one of the following is shown:

- (A) The licensee made any materially false statement of fact either to the board or on his application for license or license renewal; or
- (B) The licensee acted fraudulently in the license examination; or
- (C) The licensee (but not including licensees who are exempt because of compliance with the requirements of §§ 153.51 or 153.52) failed to post and maintain the surety bond and insurance required by §§ 153.54 or 153.55; or

- (D) The licensee acted fraudulently, or with deceit, in his relationship with other personal partnerships, or corporations which he dealt in connection with heating and cooling work; or
- (E) Heating and cooling work for which the licensee was responsible as applicant for the permit or applicant representing the transferee of the permit was performed either incompetently or in such manner that it does not meet standards of reasonable workmanship or compliance with building standards and procedures; or
- (F) The licensee failed to correct a violation of building standards and procedures relative to heating and cooling work for which the licensee was responsible as applicant for the permit or applicant representing the transferee of the permit, after the building commissioner or his agent issued notice of a building code violation, revoked a building permit or issued a stop-work order and the violation causing any of these actions remained uncorrected for a period of ten days from the date of issuance of the notice of the building code violation, revocation of permit or stop-work order, or in the instance where the period of ten days was not sufficient, such longer period of time as was fixed by the commissioner in writing; or
- (G) The licensee has consistently failed to apply for or obtain required applicable permits for heating and cooling work accomplished by the licensee or under his supervision; or
- (H) The licensee has consistently failed to give notice of availability for inspection at designated stages of heating and cooling work as required by this subchapter;
- (I) The licensee has consistently failed to timely file certificates of completion and compliance for heating and cooling work relative to which he was the applicant for the permits; or
- (J) The licensee, excluding licensees who meet the inspector status requirement of § 153.52 has not for a period of five continuous years accomplished or supervised the accomplishment of a significant amount of heating and cooling work; or
- (K) The licensee qualified for licensure without meeting the bond and insurance requirements of §§ 153.54 and 153.55 by meeting the inspector status requirements of § 153.52, but is no longer employed by the building commissioner or his agent and does not meet the requirements of §§ 153.54 and 153.55; or
- (L) The licensee qualified for licensure without meeting the bond and insurance requirements of §§ 153.54 and 153.55 by meeting the partnership or corporate agent requirements of § 153.51, but without presently meeting the requirements of §§ 153.54 and 153.55 either he:
  - (1) Is no longer a partner or employee of a partnership or an officer or employee of a corporation licensed under this subchapter; or
  - (2) Has made use of his license other than as an agent of the partnership or corporation named in his application; or
- (M) The licensee has not properly paid all specified fees for a license which has been issued or is delinquent in other fees owed pursuant to this subchapter; or
- (N) The licensee has failed to give proper supervision to heating and cooling work in accordance with requirements of § 153.59; or
- (O) The licensee holding a heating and cooling license other than a "heavy commercial (unrestricted)" license has accomplished (without supervision by a licensee of the appropriate type) or supervised the accomplishment of heating and cooling work without having the type license which is required for such construction activity; or
- (P) The licensee has attempted to conceal or has concealed violations of building standards and procedures.

Sec. 153.62. - License suspension; revocation or determination of ineligibility for receipt of a successor license for a partnership or corporation.

The board may, under § 153.53, suspend the license of a partnership or corporation for a period of up to 730 days, revoke the license of a partnership or corporation, or determine on the basis of activities carried out while licensed within the previous 365 days that the partnership or corporation is ineligible to receive a successor license, if one of the following is shown:

- (A) A materially false statement of fact was made to the board by an agent of the licensee or placed on the licensee's application for license; or
- (B) The licensee failed to post and maintain the surety bond and insurance required by §§ 153.54 and 153.55; or
- (C) An agent of the licensee acted fraudulently or with deceit in his relationship with other persons, partnerships or corporations with which he dealt in connection with heating and cooling work; or
- (D) Heating and cooling work for which the licensee was responsible as obtainer of the permit or as transferee of the permit was performed either incompetently or in such manner that it does not meet standards of reasonable workmanship or compliance with building standards and procedures; or
- (E) The licensee failed to correct a violation of building standards and procedures relative to heating and cooling work for which the licensee was responsible as obtainer of the permit or as transferee of the permit, after the building commissioner or his agent issued notice of a building code violation, revoked a building permit or issued a stopwork order, and the violation causing the action remained uncorrected for a period of ten days from the date of issuance of (notice of) the building code violation, revocation of permit, or stopwork order, or in the instance where a period of ten days was not sufficient such longer period of time as was fixed by the commissioner in writing; or
- (F) The licensee has consistently failed to obtain required applicable permits for heating and cooling work; or,
- (G) The licensee has consistently failed to give notice of availability for inspection at designated stages of heating and cooling work as required by this subchapter;
- (H) The licensee has consistently failed to timely file certificates of compliance, as required, for heating and cooling work accomplished pursuant to his license; or
- (I) The licensee has not properly paid all specified fees for a license which has been issued or is delinquent in the payment of fees owed pursuant to this subchapter; or
- (J) If a partnership does not have a licensed person as a general partner or employee, or if a corporation does not have a licensed person as an officer or employee; or
- (K) The partnership presently has a partner or the corporation presently has an officer who has a license under this division presently suspended or who has had such a license revoked within the preceding 730 days or a determination made of ineligibility for license renewal within the preceding 365 days; or
- (L) The partnership presently has a partner or the corporation presently has an officer who, within the previous 365 days, served as a partner in a partnership or an officer in a corporation licensed under this subchapter at a time when actions related to policies or practices of the partnership or corporation occurred which provided the primary basis on which the license of the partnership or corporation was revoked, suspended for more than 365 days or determination made of ineligibility for receipt of a successor license; or
- (M) Heating and cooling work for which the licensee, holding a heating and cooling license other than a "heavy commercial (unrestricted)" license, was responsible as obtainer of the permit or as transferee of the permit



was performed without the licensee having the type of license which is required for such work; or

(N) The licensee has attempted to conceal or has concealed violations of building standards and procedures.

(Ord. No. 74-89, 12-4-89)

Sec. 153.63. - Hearing and appeal.

- (A) The date and place for a revocation or suspension hearing shall be fixed by the board. At least ten days before such date, a written notice of the general nature of the charges, prepared by the building Director or his agent and of the time and place of the hearing thereon shall be served upon the licensee; either by hand delivery to the charged licensed person or to a partner of a charged partnership or officer of a charged corporation or by certified mail with return receipt requested, addressed to the licensee at his main place of business as shown by the licensee's application for license or license renewal. The ten or more days shall run from the date such notice is mailed. In the instance where charges are made which have similar factual basis and a business relationship exists (as, for example, charges against two licensed partners or charges against a licensed corporation and a licensed corporate officer), the board may hear evidence relative to two or more charges at the same hearing.
- (B) The licensee may appear in person or by counsel, produce evidence (including testimonial and documentary evidence), make argument and cross-examine witnesses at such hearing. The building director or his agent shall have the same right. The board may cause or allow any other relevant evidence to be introduced. On the basis of the evidence presented at the hearing, the board shall make findings and enter an order in accordance with such findings, which shall not become effective until ten days after notice and a copy thereof has been served upon the licensee in the manner required for notice of the hearing.
- (C) A licensee may appeal any decision of the board by filing a petition for judicial review in any court of general jurisdiction in Delaware County.

(Ord. No. 74-89, 12-4-89)

Sec. 153.99. - Penalty.

- (A) Any person convicted a second time of violation of any of the provisions of this chapter, of failing to comply with any of the requirements thereof, or of assisting in any such violation or noncompliance shall, in addition to the punishment provided in § 10.99, have his electrician's license revoked for a period of from six months to one year, the time being at the discretion of the court.

(Code 1968, § 132.221)

- (B) Any person violating any provision of §§ 153.40 through 153.63 shall, upon a finding of violation, be fined in an amount not to exceed \$500.00. Each day such violation is committed or permitted to continue may constitute a separate offense and maybe punished as such. In addition, the building director or his agent or head of the department of law may seek injunctive relief and may recover attorney fees.
- (C) Whenever a person, partnership or corporation which is either an applicant for or obtainer of a building permit owes fees (including checks returned for insufficient funds and permit fees owed pursuant to this Code to the city) pursuant to this chapter or has failed to maintain the bond and insurance requirements of this chapter, the building director is authorized to withhold the issuance of subsequently requested permits until such time that the debt is satisfied or the bond and insurance requirements are satisfied.
- (D) If work for which a permit is required by this chapter has been commenced by the obtainer without compliance

with the provisions of this chapter, the permit fee shall be five times the applicable amount stated in this Code, plus the amount of the normal fee for the permit; provided, however, that the maximum fee incurred under this section shall be \$1,000.00 plus the amount of the normal fee for the permit. This sanction shall in no way limit the operation of penalties provided elsewhere in this chapter.

(Ord. No. 74-89, 12-4-89; Am. Ord. No. 2-91, 3-4-91)

## CHAPTER 154. - PLUMBING CODE

### *Footnotes:*

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**State Law reference—** *Contractor's regulation and licensing, IC 18-5-21-1.*

### Sec. 154.01. - Definitions.

For purposes of this chapter the following words and phrases shall have the following meanings ascribed to them respectively.

*Fixture.* A water closet, lavatory, bathtub, shower, floor drain, laundry tub, icebox drain, drinking fountain, sink, or similar appliances.

*Plumber.* A person engaged in plumbing.

*Plumbing.* The art and science of installing in buildings the pipes, fixtures, and other apparatus for bringing the water supply and removing liquid and water-carried wastes.

(Code 1968, § 132.300)

### Sec. 154.02. - Reserved.

**Editor's note—** Ord. No. 19-09, § 1, adopted March 2, 2009, repealed former § 154.02 in its entirety which pertained to the board of plumbers' examiners and derived from the Code of 1968.

### Sec. 154.03. - Permit required; submission of plans and specifications.

Before any plumbing work shall be commenced in any residence, building, or structure of any kind or on any lot or premises in the city, plans and specifications thereof shall be filed with the building commissioner, and, if such plans and specifications are approved by the building commissioner, then he shall endorse his approval thereon; or the building commissioner may be notified of the proposed installation of plumbing by the property owner, as above designated, and thereupon the commissioner shall visit the premises and, after inspection of the methods, plans, and specifications of the owner, shall reduce the same to writing and the building commissioner shall endorse his approval thereon. After the approval of such plans and specifications and methods of proposal, a permit to do such plumbing work shall be obtained from the building commissioner of the city.

(Code 1968, § 132.302)

### Sec. 154.04. - Compliance with regulations prerequisite to issuance of permit.

No application for a permit to do plumbing work shall be approved by the building commissioner unless the person making such application agrees to do all the work for which such permit is granted in accordance with the provisions of this chapter and the approval of the building commissioner.

(Code 1968, § 132.303)

Sec. 154.05. - Effect of approval of plans and specifications.

Approval of all plans and specifications by the building commissioner shall not guarantee any person that the approved plans and specifications are in exact accordance with this chapter, and no errors or omissions found later by the applicant or by the building commissioner shall be construed to permit any person to violate the provisions of this chapter, or other laws. Such errors or omissions shall immediately be rectified, so that such plans and specifications conform with the provisions of this title, and other ordinances and laws of the city.

(Code 1968, § 132.304)

Sec. 154.06. - Repairs.

Repairs shall be taken to mean the repairing or replacing of any old fixture by a new one to be used for the same purpose, forcing out waste, and repairing leaks in pipes; but such repairs or alterations shall not be construed to include cases where new vertical or horizontal lines of soil, waste, vent, or leader pipes are proposed to be used. A building condemned by the board of health because of insanitary conditions shall not be considered as coming under the head of repairs, but any plumbing in such building shall be considered new work. Repairs of plumbing, as above defined and limited, shall not come within the provisions of this chapter.

(Code 1968, § 132.305)

Sec. 154.07. - Permit fees.

The permit fees for the installation and inspection or reinspection of plumbing shall be as set out in the building code of the city in §§ 152.01 through 152.144, as adopted and approved by the common council.

(Code 1968, § 132.306)

Sec. 154.08. - Revocation of permits; authority of building commissioner.

Should the building commissioner become convinced that the work called for in the plumbing permit is not proceeding according to the plans and specifications upon which the permit was issued, it shall be his duty to notify, in writing, the owner of the property involved, or his agent, and the plumbing contractor installing the work, that the work is being done in violation of the approval, permit, or provisions of this chapter, and that such work shall be corrected to conform to this section; and if such work is not corrected as required, then the permit shall be revoked.

(Code 1968, § 132.307)

Sec. 154.09. - Notice of revocation.

The revocation of a plumbing permit shall be by letter to the applicant at the address shown on the plumbing permit application, or to the plumbing concern installing the work; or in lieu thereof, the building commissioner or his authorized assistants may cause a tag, sticker, or notice of such revocation of permit to be attached to the plumbing work under construction or in the vicinity of the work.

(Code 1968, § 132.308)

Sec. 154.10. - Expiration of permits.

Every plumbing permit shall expire by limitation if active work has not been commenced within two months of the date of issue.

(Code 1968, § 132.309)

Sec. 154.11. - Inspection of plumbing; duty of building commissioner.

The building commissioner, when notified that any plumbing work or other pipe fitting is ready for inspection and test, shall examine the same and approve or reject all such work, or parts thereof, not less than eight working hours from the time of such notification. All work shall be left uncovered for examination until the inspection is made.

(Code 1968, § 132.310)

Sec. 154.12. - Reserved.

**Editor's note**— Ord. No. 19-09, § 1, adopted March 2, 2009, repealed former § 154.12 in its entirety which pertained to notice to building commissioner and property owner; reinspection fee and derived from the Code of 1968.

Sec. 154.13. - Adoption of rules and regulations.

The plumbing rules and regulations of the administrative building council of the state, and revisions thereto, two certified copies of which are on file in the office of the city clerk for public inspection, are accepted and adopted as the minimum requirements for the installation of all plumbing within the city in the type of buildings as set forth under § 154.03.

(Code 1968, § 132.312)

Sec. 154.14. - Registration required.

No person shall engage in or operate a business of plumbing in the City of Muncie without first obtaining a registration to do so as hereinafter provided. No registration shall be issued until the applicant has filed with the Muncie Building Commissioner's office a copy of his current state license.

(Code 1968, § 132.313; Ord. No. 44-14, § 1, 1-5-15)

Sec. 154.15. - List of licensed employees and registered apprentices required.

No registration shall be issued without first submitting a list of all licensed plumbing employees and registered apprentices along with their current license/registration number from IPLA.

(Ord. No. 44-14, § 2, 1-5-15)

Sec. 154.16. - Registration fee; expiration of registration; renewal; renewal fee.

The fee for a registration to operate a plumbing business or to engage in plumbing as an independent contractor in the city shall be at the rate of \$150.00 per annum payable at the time the application for a registration is filed. All registrations shall expire on January 1st of each year and no registration shall be issued for a longer period than one year. No registration shall be transferable and the registration shall be conspicuously posted in the place of business for which it was issued. The renewal fee, after one year's registration fee of \$150.00 has been paid, shall be \$100.00 per year.

(Code 1968, § 132.315; Ord. No. 19-11, § 1, 8-1-11; Ord. No. 44-14, § 3, 1-5-15)

Sec. 154.17. - Evidence required for registration.

Any person properly applying to the Muncie Building Commissioner shall produce the required evidence that he/she is actively connected with any firm or corporation engaged in the plumbing business in the city and shall request that such registration be issued in the name of such firm or corporation, provided that all parts of this section have been complied with. Any change in location of business or the addition or withdrawal of state licensed employees or members of the firm must be reported immediately to the Muncie Building Commissioner's office.

(Code 1968, § 132.316; Ord. No. 44-14, § 4, 1-5-15)

Sec. 154.18. - Reserved.

**Editor's note**— Ord. No. 19-09, § 1, adopted March 2, 2009, repealed former § 154.18 in its entirety which pertained to examination of applicant for plumber's license and derived from the Code of 1968.

Sec. 154.19. - Issuance of license; disposition of fee.

The registration provided for in 154.14 shall be issued by the building commissioner to any person qualified in accordance with this chapter, and the registration fee shall be deposited in the general fund.

(Code 1968, § 132.318; Ord. No. 44-14, § 5, 1-5-15)

Sec. 154.20. - Reserved.

**Editor's note**— Ord. No. 19-09, § 1, adopted March 2, 2009, repealed former § 154.20 in its entirety which pertained to failure to pass examination; fee and reexamination and derived from the Code of 1968.

Sec. 154.21. - Plumbing contractors.

No firm or corporation shall engage in or operate a plumbing business in the city unless one member of such firm or officer or agent of such corporation has been registered according to the provisions of this chapter and has had the registration issued in the name of the firm or corporation. A person requesting a registration to be issued in the name of a firm or corporation shall file with the building commissioner the names of all members of the firm and the name of the corporation. The registration and all provisions of this section relating thereto shall be binding on all members of the firm or corporation.

(Code 1968, § 132.320; Ord. No. 44-14, § 6, 1-5-15)

Secs. 154.22, 154.23. - Reserved.

**Editor's note**— Ord. No. 19-09, § 1, adopted March 2, 2009, repealed former §§ 154.22, 154.23 in their entirety which derived from the Code of 1968. Former § 154.22 pertained to the examination of journeyman plumbers. Former § 154.23 pertained to reexamination upon failure to pass exam.

Sec. 154.24. - Violations of regulations.

No person shall follow the occupation of plumber, either as a master plumber or journeyman plumber within the city, or do any plumbing work for hire within the city, without first having complied with the provisions of this chapter. Any person who shall violate any of the provisions of this chapter, or who shall fail to comply with any of the requirements thereof, or shall assist in any violation, shall be guilty of a misdemeanor.

(Code 1968, § 132.323)

Sec. 154.99. - Penalty.

Any person convicted a second time of violation of any of the provisions of this chapter, or of failing to comply with any of the requirements thereof, shall be deemed guilty of a misdemeanor, and his plumber's registration shall be revoked for a period of from six months to one year, the time being at the discretion of the court.

(Code 1968, § 132.323; Ord. No. 44-14, § 7, 1-5-15)

## CHAPTER 155. - HOUSING CODE

### *Footnotes:*

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**Editor's note**— Ord. No. 15-02, adopted June 3, 2002, amended former Ch. 155 in its entirety to read as herein set out. Former Ch. 155 pertained to similar subject matter and derived from the Code of 1968; Ord. No. 220-B, 2-7-72; Ord. No. 89-95, §§ 1—4, 11-3-95.

## DIVISION 1. - GENERAL PROVISIONS

Sec. 155.01. - Definitions.

For the purposes of this chapter the following words and phrases shall have the following meanings ascribed to them respectively.

*Adult occupant.* Any person over 18 years of age, including owner or operators, living and sleeping in a dwelling unit or having actual possession of the dwelling or rooming unit.

*Approved.* As applied to material, device, or method of construction, official sanction given by the building commissioner or other official authorized by or designated by the building commissioner or by law to give official sanction in the matter in question.

*Basement.* A portion of the building partly underground, but having more than half of its clear height below the average grade of the adjoining ground.

*Board.* "Board" shall mean and refer to the housing board as established under 155.21(A) herein.

*Boarding house.* A building not open to transients, where lodging and/or meals are provided regularly for not less than three nor more than 30 persons; a lodging house.

*Building code.* Any code officially adopted or officially designated by the legislative body of the municipality for the regulation of construction, alteration, addition, repair, removal, demolition, use, location, occupancy, and maintenance of buildings and structures.

*Building commissioner.* The official designated by the municipality to enforce building, housing quality, zoning, or similar laws, or his duly authorized representative.

*Dwelling.* A single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

*Exterior property areas.* The open space on the premises and on adjoining property under the control of owners or operators of such premises.

*Extermination.* The control and elimination of insects, rodents, or other pests, by eliminating the harborage place; by removing or making inaccessible materials that may serve as their food; by poison spraying, fumigating, trapping, or by any other approved pest elimination methods.

*Garbage.* The animal, vegetable and mineral wastes resulting from the handling, preparation, cooking, and consumption of food.

*Gross floor area.* The total area of all habitable space in a building or structure.

*Habitable room.* A room or enclosed floor space arranged for living, eating, or sleeping purposes, not including bathrooms, water closet compartments, laundries, pantries, foyers, hallways, and other accessory floor spaces.

*Infestation.* The presence, within or contiguous to a dwelling unit, or premises, of insects, -rodents, vermin, or other pests.

*Openable area.* That part of a window or door which is available for unobstructed ventilation and which opens directly to the outdoors.

*Operator.* Any person who has charge, care, or control of a dwelling unit or rooming house in which rental units or rooming units are let for occupancy.

*Owner.* Any person or legal entity having a legal or equitable interest in the property.

*Person.* A natural person or any legal entity.

*Plumbing or plumbing fixtures.* Water heating facilities, water pipes, gas pipes, garbage and disposal units waste lavatories, bathtubs, shower baths, installed clothes washing machines, or other similar equipment, catch basins, drains, vents, or other similarly supplied fixtures, together with all connections to water, gas, sewer, or vent lines.

*Premises.* A lot, plot, or parcel of land including the buildings or structures thereon.

*Rent, rental or rented.* A transaction whereby money or other valuable consideration is transferred by the tenant to the landlord in return for possession and use of premises.

*Rental building.* A building containing one or more rental units.

*Rental dwelling unit.* A dwelling unit in residential premises covered by a tenancy agreement.

*Rental unit.* Rented dwelling unit or rooming unit.

*Rooming house.* Any residence building, or any part thereof, containing one or more rental units, in which space is let by the owner or operator to more than three persons who are not members of the family.

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

*Rubbish.* Combustible and noncombustible waste materials, except garbage; and shall include without limitation the residue from the burning of wood, coal, coke, and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery, dust, and other similar materials.

*Tenant.* Any person entitled to occupy a rental unit under a tenancy agreement to the exclusion of others.

*Tenancy agreement.* A written agreement embodying the terms and conditions concerning the use and occupancy of a rental unit and premises.

*Transient occupancy.* Occupancy which is less than two weeks duration in the same or similar units owned by the same owner.

*Ventilation.* The process of supplying and removing air by natural or mechanical means to or from any space, and shall include:

- (1) *Mechanical.* Ventilation by power-driven devices.
- (2) *Natural.* Ventilation by opening to outer air through windows, skylights, doors, louvers, or stacks, without wind-driven devices.

*Workmanlike.* Made in a reasonably skillful manner consistent with local standards and in conformance with legally required standards.

*Yard.* An open unoccupied space on the same lot with a building, extending along the entire length of the front, or rear or side lot-line.

(Ord. No. 15-02, 6-3-02)

Sec. 155.02. - Title; purpose; scope.

- (A) *Title.* This chapter, together with any revisions, amendments, restatements, or additions thereto, and all matters included therein by reference, shall be known as the "Minimum Housing Standards Code of the City of Muncie, Indiana." It may be referred to and cited as the "Muncie Housing Code of 2002."
- (B) *Purpose.* The purpose of this chapter is to protect the public health, safety, and welfare in buildings and premises used for dwelling purposes as hereinafter provided:
  - (1) Establishing minimum standards for basic equipment and facilities for light, ventilation, heating, and sanitation; for safety from fire; for space, use, and location; for parking; for safe and sanitary maintenance; and for cooking equipment in all dwellings.
  - (2) Fixing the responsibilities of owners, operators, and occupants of dwellings;



(3) Providing for administration, enforcement, and penalties.

(C) *Scope.* The provisions of this chapter shall apply to all structures used for human habitation, which are now, or may in the future become, substandard with respect to structure, protection against fire hazards, equipment or maintenance, inadequate provisions for light and air, lack of proper heating, unsanitary conditions, and overcrowding, or otherwise may be deemed to constitute a menace to the safety, health, or welfare of their occupant. The existence of such conditions, factors, or characteristics adversely affect public safety, health, and welfare, and lead to the continuation, extension, and aggravation of urban blight. Adequate protection of the public, therefore, requires the establishment and enforcement of these minimum housing standards.

(D) *Travel trailers and mobile homes.* All movable units used for human habitation, and the areas, grounds, or parcels on which they are located, as provided for in the laws or ordinances of the city applicable thereto, shall comply with the requirements of this chapter.

(Ord. No. 15-02, 6-3-02)

#### Sec. 155.03. - Applicability.

Every portion of a building or premise used or intended to be used for residential purposes, except hotels and motels having transient guests only, rest homes, convalescent homes, and nursing homes, shall comply with the provisions of this chapter, except as hereinafter provided.

(A) *Application of building code and zoning laws.* Any alterations to buildings, or changes of use therein, which may be caused directly or indirectly by the enforcement of this chapter shall be done in accordance with applicable sections of the then existing building code and zoning laws of the municipality.

(B) *Conflict with other ordinances.* In any case where a provision of this chapter is found to be in conflict with the provision of any zoning, building, fire, safety, or health ordinance of the city existing on the effective date of this chapter, the provision which establishes the higher standard protection of the safety and health of the people shall prevail. In any case where a provision of this chapter is found to be in conflict with a provision of any other ordinance of this municipality, existing on the effective date of this chapter, which establishes a lower standard for the promotion and protection of the safety and health of the people, the provisions of this chapter shall prevail.

(C) *Existing buildings.* This chapter establishes minimum requirements for the initial and continued occupancy of all buildings used for human habitation and does not replace or modify requirements otherwise established for the construction, alteration, or use of buildings, equipment, or facilities.

(D) *Hazardous conditions.* Where it is determined that there is a condition in any building which is hazardous to human life or health or to adjoining property and in violation of this housing code, the building commissioner shall have full power and authority to require changes or alterations therein regardless of whether the buildings were built in compliance with laws applicable at the time or whether there was no applicable law within the scope of this section at the time of construction.

(Ord. No. 15-02, 6-3-02)

#### Sec. 155.04. - Existing remedies.

Nothing in this chapter shall be deemed to abolish or impair existing remedies of the municipality or its officers or agencies relating to the removal or demolition of any buildings which are deemed to be dangerous, unsafe or unsanitary.

DIVISION 2. - ADMINISTRATION AND ENFORCEMENT

Sec. 155.05. - Enforcement authority; coordination of enforcement.

- (A) *Enforcement officer.* It shall be the duty and responsibility of the building commissioner of the municipality to enforce the provisions of the housing code as hereby provided.
- (B) *Coordination of enforcement.* Inspection of premises and the issuing of orders in connection therewith under the provisions of this chapter shall be the exclusive responsibility of the building commissioner of the municipality. Wherever, in the opinion of the building commissioner, it is necessary or desirable to have inspection of any condition by any other department, he shall arrange for this to be done in such a manner that the owners or occupants of the building shall not be subjected to visits by numerous inspectors nor to multiple or conflicting orders.

(Ord. No. 15-02, 6-3-02)

Sec. 155.06. - Administrative liability.

- (A) *Administrative liability.* Except as may otherwise be provided by statute or local law or ordinance, no officer, agent, or employee of the municipality charged with the enforcement of the housing code shall be held personally liable for any damage that may accrue to persons or property as the result of any act required or permitted in the discharge of his duties under this chapter. No person who institutes or assists in the prosecution of a criminal proceeding under this chapter shall be liable to damages hereunder unless he acted with actual malice and without reasonable grounds for believing that the person accused or prosecuted was guilty of an unlawful act or omission. Any suit brought against any officer, agent, or employee of the municipality, as a result of any act required or permitted in the discharge of his duties under this chapter, shall be defended by the legal representative of the municipality until the final determination of the proceedings therein.

(Ord. No. 15-02, 6-3-02)

Sec. 155.07. - Inspections and citations.

- (A) The building commissioner or authorized representative shall perform inspections and enforce the provisions of this Code:
  - (1) Upon complaint of a code violation; or
  - (2) Whenever the commissioner has cause to believe that a structure or premise does not comply with the provisions of this Code.
- (B) Notice of inspection. Citations.
  - (1) Prior to the inspection, written notice of the inspection shall be given to the owner or the owner's agent and to the occupant at least seven days prior to the date of inspection by certified mail, by personal service, or by leaving a copy at the structure to be inspected. If service is by personal delivery or leaving a copy at the structure, service shall also be made by ordinary mail to the last known address of the person being served.

The building commissioner shall in each instance keep a record of the service of the notice. If the building commissioner determines there is a potential condition hazardous to life or health, or property, the inspection may be made immediately and the notice served contemporaneously therewith.

(2) The notice shall show the date and time the inspection will be made, the address of the property to be inspected, the nature of the inspection and reason therefor, and such other information as the building commissioner shall deem pertinent.

(C) Every owner and every occupant of a dwelling unit shall give the building commissioner or his authorized representative access to any part of the dwelling unit and its premises for the purpose of making inspections, and every occupant shall give the owner or the owners agent access thereto for the purpose of maintenance, repair or alterations necessary to comply with the provisions of this Code.

(D) Notice and citation. Upon completion of the inspection, if the building commissioner finds a violation of any provision of this code, a notice specifying the violation(s) shall be issued and served upon the owner and the occupant in the manner set forth in subsection (B) hereof. The violations shall be cured within 30 days from the date of receipt of the notice. If the violations are not cured within 30 days, with no extension granted, the building commissioner shall cause a citation to be filed by the city legal representative against the owner or operator. Upon good cause shown why the violation(s) cannot be cured within 30 days, the building commissioner may in his discretion extend in writing the time for curative work for a definite period of time, not to exceed (60) days.

(Ord. No. 15-02, 6-3-02)

Secs. 155.08, 155.09. - Reserved.

### DIVISION 3. - CONDEMNATION

Sec. 155.10. - Dangerous structures; structures unfit for human occupancy.

(A) *Dangerous structures.* If all or part of any building or structure, including, among others, a fence, billboard, or sign, or the equipment for the operation thereof, the heating plant, plumbing, electric wiring, moving stairways, elevators, and fire extinguishing apparatus, shall be found, in the opinion of the building commissioner, to be in an unsafe condition dangerous to life, health, or property, he shall proceed to have the same condemned pursuant to the applicable laws pertaining to unsafe structures.

(B) *Structures unfit for human occupancy.* Whenever the building commissioner finds that any dwelling constitutes a hazard to the safety, health, or welfare of the occupants, or to the public, because it lacks maintenance; or is in disrepair, unsanitary, vermin-infested, or rodent infested; or because it lacks the sanitary facilities or equipment; or otherwise fails to comply with the minimum provisions of this chapter, but has not yet reached such state of complete disrepair as to be condemned as a dangerous structure, as hereinbefore provided, he may declare such dwelling as unfit for human habitation, and order it to be vacated.

(C) *Unlawful structure.* If any dwelling, or any part thereof, is occupied by more occupants than permitted under this chapter, or was erected, altered, or occupied contrary to law, such dwelling shall be deemed an unlawful structure, and the building commissioner may cause such dwelling to be vacated. It shall be unlawful to again occupy such dwelling until it or its occupation as the case may be, has been made to conform to the law.

(Ord. No. 15-02, 6-3-02)

Sec. 155.11. - Notice.

- (A) *Notice.* Notice of the declaration of any building as unfit for human habitation, and the order to vacate it shall be served as provided in the following sections. When the condition requires the removal or demolition of the building, such notice shall be given as provided in the building code or any other laws or ordinances of the municipality pertaining to unsafe buildings.
- (B) *Posting of notice.* Any dwelling declared as unfit for human habitation shall be posted with a placard by the building commissioner. The placard shall include the following:
  - (1) Name of city;
  - (2) The name of the authorized department having jurisdiction;
  - (3) The section of the chapter under which it is issued;
  - (4) An order that the dwelling, when vacated, must remain vacated until the provisions of the order are complied with and the order to vacate is withdrawn;
  - (5) The date that the placard is posted;
  - (6) A statement of the penalty for defacing or removal of the placard.
- (C) *Form of notice.* Whenever the building commissioner has declared a dwelling as unfit for human habitation, he shall give notice to the owner of such declaration and placarding of the dwelling as unfit for human habitation. Such notice shall:
  - (1) Be in writing;
  - (2) Include a description of the real estate, sufficient for identification;
  - (3) Include a statement of the reason or reasons why it is being issued;
  - (4) State the time to correct the condition;
  - (5) State the time occupants must vacate the dwelling units.

(Ord. No. 15-02, 6-3-02)

Sec. 155.12. - Service of notice.

Service of notice to vacate shall be made on the occupant and owner as follows:

- (A) By delivering to the owner and occupant personally; or
- (B) By sending a copy of the notice to vacate by certified mail to the last known address of the owner, and by sending a copy by certified mail addressed to the occupant; or
- (C) By publication of the notice in a local newspaper of general circulation for three consecutive days, if all other methods of service shall fail.

(Ord. No. 15-02, 6-3-02)

Sec. 155.13. - Removal of placard or notice.

No person shall deface or remove the placard from any dwelling which has been declared or placarded as unfit for human habitation, except by authority in writing from the building commissioner.

(Ord. No. 15-02, 6-3-02)

Sec. 155.14. - Vacation of declared building.

Any dwelling which has been declared and placarded by the building commissioner as unfit for human habitation shall be vacated within a reasonable time as required by the building commissioner, and it shall be unlawful for any owner or operator to let such dwelling or dwelling unit therein to any person for human habitation. After the date set forth in the placard, no person shall occupy any dwelling which has been declared or placarded by the building commissioner as unfit for human habitation. If the building commissioner determines that the structure presents an immediate threat to life or health, the immediate vacation of the dwelling may be ordered. Extensions of time may be granted for good reason, in sole judgment of the building commissioner.

(Ord. No. 15-02, 6-3-02)

Sec. 155.15. - Occupancy of building.

No dwelling which has been declared or placarded as unfit for human habitation shall again be used for human habitation until written approval is secured from the building commissioner, who shall remove such placard, whenever the defect or defects upon which the declaration and placarding action were based have been eliminated. The building commissioner shall reinspect such dwelling within three working days after notification of correction.

(Ord. No. 15-02, 6-3-02)

Sec. 155.16. - Report of notice to vacate.

The building commissioner shall furnish to any other designated officials in the municipality concerned therewith, a copy of each notice to vacate a building.

(Ord. No. 15-02, 6-3-02)

Secs. 155.17—155.19. - Reserved.

DIVISION 4. - TENANCY AGREEMENTS AND VARIANCES

Sec. 155.20. - Reserved.

**Editor's note—** Ord. No. 43-21, § 1, adopted Oct. 4, 2021, repealed former § 155.20 in its entirety which pertained to tenancy agreements and derived from Ord. No. 15-02, 6-3-02; Ord. No. 2-17, § 1, 2-6-17; Ord. No. 23-18, 1, 10-1-18.

Sec. 155.21. - Variances.

- (A) The municipality shall establish a five-member housing board which shall consist of the building commissioner, who shall be the presiding officer, a member of the common council of the city and three private citizens. The common council shall designate its member and shall designate two private citizens and the mayor shall designate one private citizen member to sit on the board.
- (B) No variance in the application of the provisions of this chapter shall be made by the board relating to dwellings, or premises now existing or to be constructed, unless, after a public hearing, the board shall find that the structure or the plans and specifications for the construction of any such structure are substantially in keeping

with the intent and purposes of this chapter, and that the granting of such variance will not be detrimental to the public health, safety, and welfare. No variance will be granted if such structure or premises are in violation of any existing building, zoning, or other ordinances of the municipality.

- (C) An application for a variance shall be submitted to the building commissioner and shall be in writing and verified, and specifically state all facts in support thereof, on forms provided by the building commissioner the applicant shall conclusively prove that he cannot secure reasonable use of the property if compelled to comply with this chapter, that he suffers a hardship as defined herein, resulting from the provisions of this chapter, that the hardship claimed is suffered by his property directly, not merely by other properties, and is not the result of applicant's own actions. The applicant must prove and the board must find that there are peculiar circumstances applicable to the property or its intended use that do not apply generally to other property in the neighborhood, that the variance will not be detrimental to public welfare or to property in the neighborhood and that it will not be contrary to the goals of this chapter. It is not a hardship that the property would be worth more or produce more income if the variance were granted.
- (D) The variance shall be subject to public hearing and the applicant shall publish notice of the hearing on a notice form to be provided by the building commissioner, in a newspaper of general circulation in the city at least ten days prior to the hearing. The applicant shall cause the notice to be published and pay all cost thereof. The applicant shall submit a complete list of all surrounding property owners within a 300-foot radius of the property, together with addressed envelopes and postage necessary to mail the hearing notice to such owners. All hearings shall be open to the public and the applicant may appear in person and/or by an agent or attorney.
- (E) Judicial review. Each decision of the housing board is subject to review by certiorari. Each person aggrieved by a decision of the board may present, to the circuit courts of Delaware County, a verified petition setting forth that the decision is illegal in whole or in part and specifying the grounds of the illegality. The person shall present the petition to the court within 30 days after the date of that decision of the housing board.

(Ord. No. 15-02, 6-3-02)

Secs. 155.22—155.24. - Reserved.

## DIVISION 5. - ENVIRONMENTAL REQUIREMENTS

Sec. 155.25. - Exterior property area.

- (A) The provisions of this section shall govern the minimum conditions of property and buildings to be used for human occupancy. Every building or structure occupied by human beings, and the premises on which it stands, shall comply with the conditions herein prescribed as they may apply thereto.
- (B) No person shall occupy as owner-occupant or let to another for occupancy for the purpose of living therein, any premises or dwelling unit which do not comply with the following requirements.
  - (1) *Sanitation.* All exterior property areas shall be maintained in a clean and sanitary condition, free from any accumulation of rubbish or garbage.
  - (2) *Grading and drainage.* All premises shall be graded and maintained so as to prevent the accumulation of stagnant water thereon or within any building or structure located thereon.
  - (3) *Noxious weeds.* All exterior property areas shall be kept free from species of weeds or plant growth which are

noxious or detrimental to the public health.

- (4) *Accessory structures.* All accessory structures, including detached garages, shall be maintained structurally sound and in good repair.

(Ord. No. 15-02, 6-3-02)

Sec. 155.26. - Exterior structure.

No person shall occupy as owner occupant, or let to another for occupancy, for the purpose of living therein, any dwelling, dwelling unit, rooming house, rooming unit, or portion thereof; which does not comply with the following requirements:

- (A) *Foundations, walls, and roof.* Every foundation, exterior wall, roof, and all other exterior surfaces shall be maintained in a workmanlike state of maintenance and repair and shall be kept in such condition as to prevent the presence of rodents.
- (B) *Foundations.* The foundation elements shall adequately support the building at all times.
- (C) *Exterior walls.* Every exterior wall shall be free of holes, breaks, loose or rotting boards or timbers and any other condition which might admit rain or dampness to the interior portions of the walls or to the occupied spaces of the building.
- (D) *Roofs.* The roof shall be structurally sound, and have no defects which might admit rain; and roof drainage shall be adequate to prevent rainwater from causing dampness in the walls or interior portion of the building.
- (E) *Stairs, porches, and railings.* Stairs and other exit facilities shall be adequate for safety as provided in any other codes or ordinances of the municipality regulating construction, alteration, or repair and maintenance of buildings and structures, and shall comply with the following:
  - (1) *Structural safety.* Every outside stair, every porch, and every appurtenance attached thereto shall be so constructed as to be safe to use and capable of supporting the loads to which it is subjected as required by the building code of the city, and shall be kept in sound condition and good repair.
  - (2) *Handrails.* Where the building commissioner deems it necessary for safety, every flight of stairs which is more than two risers high shall have handrails which shall be located as required by the building code; and every porch which is more than two risers high shall have handrails so located and of such design as required by the building code. Every handrail and balustrade shall be firmly fastened and shall be maintained in good condition.
- (F) *Windows.*
  - (1) *Windows, doors, and hatchways.* Every window, exterior door, and basement hatchway shall be substantially tight and shall be kept in sound condition and repair.
  - (2) *Windows to be glazed.* Every window sash shall be fully supplied with glass window panes or approved substitutes which are without open cracks or holes.
  - (3) *Windows to be tight.* Every window sash shall be in good condition and fit reasonably tight within its frame.
  - (4) *Windows to be openable.* Every window, other than a fixed window, shall be capable of being easily opened, and shall be held position by window hardware.
- (G) *Doors.*

- (1) *Door hardware.* Every exterior door, door hinge, and door latch shall be maintained in good condition.
  - (2) *Doors to fit in frame.* Every exterior door, when closed, shall fit reasonably well within its frame.
  - (3) *Window and door frames to fit in wall.* Every window, door, and frame shall be constructed and maintained in such relation to the adjacent wall construction as to exclude rain as completely as possible, and to substantially exclude wind from entering dwellings.
  - (4) *Basement hatchways.* Every basement hatchway shall be so constructed and maintained as to prevent the entrance of rodents, rain, and surface drainage water into the dwelling.
  - (5) *Exit doors.* Every door available as an exit shall be capable of being opened from the inside easily and without the use of a key.
- (H) *Screening.* Guards and screens shall be supplied for protection against rodents and insects in accordance with the following requirements:
- (1) *Guards for basement windows.* Every basement or cellar window which is openable shall be supplied with corrosion-resistive rodent-proof shields.
  - (2) *Insect screens.* From June 1 to October 15 of each year, every door, other than steel or fiberglass doors, opening directly from any dwelling to the outdoors, and every window or outside opening used for ventilation purposes, shall be supplied with a screen.

(Ord. No. 15-02, 6-3-02)

Sec. 155.27. - Interior structure.

No persons shall occupy as owner occupant, or let to another for occupancy, for the purposes of living therein, any dwelling, dwelling unit, rooming house, rooming unit, or portion thereof which does not comply with the following requirements:

- (A) *Structural members.* The supporting structural members of every dwelling used for human habitation shall be maintained structurally sound, showing no evidence of deterioration which would render them incapable of carrying the imposed loads in accordance with the provision of the building code.
- (B) *Interior stairs and railings.* Stairs shall be provided in every dwelling, rooming, and boarding house as required by the building code of the municipality.
- (C) *Maintained in good repair.* All interior stairs of every structure used for human habitation shall be maintained in sound condition and good repair by replacing treads and risers that evidence excessive wear or are broken, warped, or loose. Every inside stair shall be so constructed and maintained as to be safe to use and capable of supporting a load as required by the provisions of the building code of the municipality.
- (D) *Handrails.* Every stairwell and every flight of stairs which is more than two risers high shall have handrails and railings located in accordance with the provisions of the building code of the municipality. Every handrail or railing shall be firmly fastened and must be maintained in good condition. Properly balustraded railings, capable of bearing normally imposed loads as required by the building code, shall be placed on the open portions of stairs balconies, landings and stairwells.
- (E) *Bathroom floors.* Every toilet and bathroom floor surface shall be constructed and maintained so as to be substantially impervious to water and so as to permit such floor to be easily kept in a clean and sanitary condition.
- (F) *Sanitation.* The interior of every dwelling used for human habitation shall be maintained in a clean and



sanitary condition free from any accumulation of rubbish or garbage. Rubbish, garbage, and other refuse shall be properly kept in inside temporary storage facilities as required under § 155.30.

- (G) *Insect and rodent harborage*. Buildings used for human habitation shall be kept free from insect and rodent infestation, and where insects or rodents are found, they shall be promptly exterminated by acceptable processes which will not be injurious to human health. After extermination, proper precaution shall be taken to prevent reinfestation.
- (H) *Extermination from buildings*. Every owner and occupant of a dwelling shall be responsible for the extermination of insects, rodents, vermin, or other pests wherever infestation exists in a dwelling unit, or in the shared or public parts of the structure.
- (I) *Responsibility of owner*. Notwithstanding the foregoing provisions, whenever infestation of rodents is caused by failure of the owner to maintain any dwelling in rodent-proof condition, extermination of such rodents shall be the responsibility of the owner.

(Ord. No. 15-02, 6-3-02)

Secs. 155.28, 155.29. - Reserved.

#### DIVISION 6. - SPACE AND OCCUPANCY REQUIREMENTS

Sec. 155.30. - Basic facilities.

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

- (A) *Sanitary facilities*. The following minimum sanitary facilities shall be supplied and maintained in a sanitary, safe, working condition:
  - (1) *Water closet*. Every dwelling unit shall contain within its walls a room, separate from the habitable rooms, which affords privacy and which is equipped with a water closet.
  - (2) *Lavatory*. Every dwelling unit shall contain a lavatory which, shall be in the same room with the water closet, or in close proximity thereto;
  - (3) *Bathtub or shower*. Every dwelling unit shall contain a room which affords privacy to a person in such room and which is equipped with a bathtub or shower;
  - (4) *Kitchen sink*. Every dwelling unit shall contain a kitchen sink apart from the lavatory required in (A)(2) above.
- (B) *Water*.
  - (1) *Water and sewer system*. Every kitchen sink, lavatory, basin, bathtub or shower, and water closet required under the provisions of this section shall be properly connected to either a public water and sewer system or to an approved private water and sewer system. All sinks, lavatories, bathtubs, and showers shall be supplied with hot and cold running water;
  - (2) *Water-heating facilities*. Every dwelling unit shall be supplied with water-heating facilities which are installed in an approved manner, properly maintained, and properly connected with hot-water lines to the fixtures required to be supplied with hot water in (B)(1) above. Water-heating facilities shall be capable of

heating water to such a temperature as to permit an adequate amount of heated water to be drawn at every required kitchen sink, lavatory, basin, bathtub, shower and laundry facility or other similar unit.

(C) *Heating facilities and incinerators.*

- (1) *Heating facilities.* Every dwelling shall have heating facilities, and the owner of the heating facilities shall be required to see that they are properly installed, safely maintained, in good working condition, and that they are capable of safely and adequately heating all habitable rooms, bathrooms, and toilet rooms located therein to a temperature of at least an average of 70F., with an outside temperature of -10F.
- (2) *Operation of heating and incinerator facilities.* Every heating or water-heating facility and incinerator shall be installed and shall operate in accordance with the requirements of the building code or the air pollution control ordinances of the municipality.

(D) *Rubbish storage facilities; responsibility for removal of rubbish.*

- (1) *Rubbish storage facilities.* Every dwelling and dwelling unit shall be supplied with approved containers and covers for storage of rubbish.
- (2) (a) *Responsibility for removal of rubbish.* Every occupant in a dwelling or dwelling unit therein shall be responsible for the removal of rubbish from such dwelling or dwelling unit and shall be responsible for placing such rubbish in the approved containers for storage of such material.  
(b) Every occupant shall be required to maintain the entire demised premises free of rubbish.

(E) *Parking.* There shall be at least one designated, improved, off-street parking space per adult occupant. If a dwelling unit existed prior to the passage of the ordinance from which this chapter is derived [Ord. No. 15-02] with off-street parking space which complied with prior requirements, and it is physically impossible to comply with the requirements thereof for off-street parking, the owner may upon proof of the same to the building commissioner receive a special permit for the pre-existing non-conforming off-street parking. Parking areas shall meet the following standards:

- (1) Parallel parking spaces shall be 8' 23' minimum;
- (2) All other parking spaces shall be 9' 18' minimum.
- (3) Each parking space shall require direct access to an alley or driveway;
- (4) Parking spaces created to accommodate parking requirements set forth above for expanded dwelling units must be gravel or paved with a minimum of one percent slope for bituminous/asphalt paving surface, or one-half (1/2) for concrete paving surface.

(F) There shall be an open space ratio (open space area/living area) of no less than 1.2 to 1. The open space requirement shall be met in the side yard, back yard and that portion of the front yard in excess of any set back. The parking area or portion of the front yard contained within any setback shall not be used to meet the requirement.

(G) *Location of parking areas.* Parking areas will be limited to rear and/or side yards, except as stated below. No parking will be allowed in front yards except for permitted parking in easement areas presently in place. A front yard is defined as the space bounded by a line extending across the front wall of the house or structure (excluding porches) to the lot line on each side, and by the street right-of-way line.

(H) *Outside elements.* Building facades, lawns, and other landscape elements must be maintained on a regular basis.

(I) *Fire escape routes.* Each sleeping area must have at least one primary and one secondary escape route to a

firerated area.

- (J) *Window surface area.* Each residential unit must have a minimum of eight square feet of window surface per resident.

(Ord. No. 15-02, 6-3-02)

Sec. 155.31. - Installation and maintenance.

No person shall occupy as owner occupant, or let to another for occupancy, for the purpose of living, sleeping., cooking, or eating therein, any dwelling, dwelling unit, rooming house, or rooming unit which does not comply with the following requirements:

- (A) *Facilities and equipment.* All required equipment and all building space and parts in dwellings shall be constructed and maintained so as to properly and safely perform their intended function in accordance with the provisions of the building code of the municipality.
- (B) *Maintained clean and sanitary.* All housing facilities shall be maintained in a clean and sanitary condition by the occupants, so as not to breed insects and rodents or produce dangerous or offensive gases or odors.
- (C) *Plumbing fixtures.* In buildings and structures used for human habitation, water lines, plumbing fixtures, vents, and drains shall be properly installed, connected, and maintained in working order, and shall be kept free from obstructions, leaks, and defects, and capable of performing the function for which they are designed. All repairs and installations shall be made in accordance with the provisions of the building code or plumbing code or any other applicable codes and ordinances of the municipality.
- (D) *Plumbing systems.* In buildings and structures used for human habitation, every plumbing stack, waste, and sewer line shall be so installed and maintained as to function properly, and shall be kept free from obstruction, leaks, and defects, to prevent structural deterioration or health hazards. All repairs and installations shall be made in accordance with the provisions of the building code or plumbing code of the municipality.
- (E) *Heating equipment.* Every space-heating, cooking, and water-heating device located in a dwelling shall be properly installed, connected, and maintained, and shall be capable of performing the function for which it was designed, in accordance with the provisions of the building code or any other code or ordinance of the municipality applicable thereto.
- (F) *Electrical outlets and fixtures.* Every electrical outlet and fixture as required in section 155.33 shall be installed, maintained, and connected to the source of electrical power in accordance with the provisions of the building code or electrical code or any other code or ordinance of the municipality applicable thereto.
- (G) *Correction of defective system.* Where it is found, in the opinion of the building official, that the plumbing or heating system or the electrical system in a building constitutes a hazard to the occupants or to the building, (in the case of the electrical system, by reason of inadequate service, improper fusing, insufficient outlets, improper wiring or installation, deterioration or damage, or for other similar reasons,) the building commissioner shall require the defects to be corrected, to eliminate the hazard.

(Ord. No. 15-02, 6-3-02)

Sec. 155.32. - Occupancy requirements.

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

(A) *Minimum ceiling heights.* Habitable rooms in existing buildings shall have a clear ceiling height of not less than seven and one-third (7) feet, except that in attics or top half stories the ceiling height shall be not less than seven feet over not less than one-third (1/3) of the area when used for sleeping, study, or similar activity. In calculating the floor area of such rooms, only those portions of the floor area of the room having a clear ceiling height of five (5) feet or more may be included.

(B) *Living area.* All existing and subsequently erected residential structures shall have not less than the following living area per adult occupant:

250 square feet for one

400 square feet for two

650 square feet for three

900 square feet for four

1400 square feet for five

1900 square feet for six

except that efficiency apartments which have exclusive self-contained cooking and bathroom facilities shall have at least 250 square feet of living area for the first adult occupant and at least 100 square feet of living area for the second adult occupant. The living area shall be calculated on the basis of the total area of all habitable rooms.

More than six adult occupants requires a variance under section 155.21 herein which may be granted upon good cause shown.

(C) *Required space in sleeping rooms.* In every dwelling unit, every room occupied for sleeping purposes by one occupant shall have a minimum gross floor area of at least 90 square feet. Every room, occupied for sleeping purposes by more than one occupant shall contain at least 60 square feet of floor area for each occupant thereof.

(D) The number of adult occupants shall not exceed twice the number of bedrooms. Common living areas may not be counted as bedrooms. The number of adult occupants shall not exceed four times the number of full bathrooms. A full bathroom shall be defined as: a sink, toilet, and a bathtub or shower.

(E) *Access limitation of dwelling unit to commercial uses.* No habitable room, bathroom, or water closet compartment which is accessory to a dwelling unit shall open directly into or shall be used in conjunction with a food store, barber or beauty shop, doctors' or dentists' examination treatment room, or similar room used for commercial or public purposes.

(F) *Location of bath in second sleeping room.* No residence building or dwelling unit containing two, or more sleeping rooms shall have such room arrangement that access to a bathroom or water closet compartment intended for use by occupants of more than one sleeping room can be had only by going through another sleeping room; nor shall the room arrangement be such that access to a sleeping room can be had only by going through another sleeping room or a bathroom or water closet compartment.

(G) *Occupancy of dwelling units below grade.* No dwelling unit partially below grade shall be used for living purposes:

- (1) Floors and walls are watertight;
- (2) Total window area, total openable area, and ceiling height are in accordance with this chapter; and
- (3) Required minimum window area of every habitable room is entirely above the grade of the ground adjoining the window area.

(H) *Requirements cumulative.* All requirements of this section are cumulative and compliance with one subsection does not relieve compliance with other subsections.

(Ord. No. 15-02, 6-3-02)

Sec. 155.33. - Light and ventilation.

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

- (A) *Natural light in habitable room.* Every habitable room shall have at least one window of approved size facing directly to the outdoors or to a court. The minimum total window area, measured between stops, for every habitable room shall be four percent of the floor area of such room, except in kitchens where artificial light be provided in accordance with the provisions of the building code or any other code or ordinance of the municipality applicable thereto. Whenever walls or other portions of a structure face a window of any room and such obstructions are located less than three feet from the window and extend to a level above that of the ceiling of the room, such a window shall not be deemed to face directly to the outdoors or to a court and shall not be included as contributing to the required minimum total window area for the room.
- (B) *Light in non-habitable work space.* Every laundry, furnace room, and all similar non-habitable work spaces located in a dwelling shall have one supplied electrical light fixture available at all times.
- (C) *Light in public halls and stairways.* Every public hall and inside stairway in every dwelling shall be adequately lighted at all times with an illumination of at least five lumens per square foot in the darkest portion of the normally traveled stairs and passageways.
- (D) *Electric outlets required.* Every habitable room of the dwelling shall contain at least two separate and remote outlets, one of which may be a ceiling or wall-type electric light fixture. In the kitchen, three electric separate such convenience outlets and one ceiling or wall-type electric light fixture shall be provided. Every public hall, water closet compartment, bathroom, laundry room, or furnace room shall contain at least one electric light fixture. In addition to the electric light fixture in every bathroom and laundry room, there shall be provided at least one electric outlet.
- (E) *Adequate ventilation.* Every habitable room shall have at least one window which can be easily opened, or such other device as will adequately ventilate the room. The total openable window area in every habitable room shall be equal to at least 45 percent of the minimum window area size required in (A) above, except where mechanical ventilation is provided in accordance with the provisions of the building code or any other code or ordinance of the municipality applicable thereto.
- (F) *Ventilation and light in bathroom and water closet.* Every bathroom and water closet compartment shall comply with the light and ventilation requirement for habitable rooms as required by (A) and (D) above, except that no window shall be required in bathrooms or water closet compartments equipped with an approved ventilation system.

Sec. 155.34. - Minimum requirements for safety from fire.

No person shall occupy as owner occupant, or shall let to another for occupancy, any dwelling, dwelling unit, rooming house, rental unit, lodging house, or lodging unit which does not comply with the applicable provisions of the fire prevention sections of the building code or any other code or ordinance of the municipality providing requirements for safety from fire, and the following additional requirements for safety from fire: All such dwellings shall be equipped with functioning smoke alarms as required by the Muncie City Code.

- (A) *Storage of flammable liquids prohibited.* No dwelling, dwelling unit, or rental unit shall be located within a building containing any area handling, dispensing, or storing flammable liquids with a flash point of 110F. or lower.
- (B) *Cooking and heating equipment.* All cooking and heating equipment, components, and accessories in every heating, cooking, and water-heating device shall be maintained free from all leaks and obstructions and kept functioning properly so as to be free from fire, health, and accident hazards. All installations and repairs shall be made in accordance with the provisions of the building code, plumbing code, or any other codes or ordinances of the municipality applicable thereto.

Secs. 155.35—155.39. - Reserved.

DIVISION 7. - RESPONSIBILITIES OF PERSONS

Sec. 155.40. - Scope.

Owners and occupants of dwellings or dwelling units, and owners or operators of rooming houses shall be responsible for maintenance thereof as provided in this section:

- (A) *Cleanliness.* Each occupant of a dwelling unit shall keep that part of the unit, and premises thereof, being occupied, controlled, or used, in a clean and sanitary condition.
- (B) *Disposal of rubbish.* Each occupant of a dwelling unit shall dispose of all his rubbish in a clean and sanitary manner, by placing it in the rubbish containers required in subsection 155.30(D).
- (C) *Disposal of garbage.* Each occupant of a dwelling unit shall dispose of his garbage in a clean and sanitary manner by placing it in the garbage disposal facilities or, if such facilities are not available, by removing all non-burnable matter and securely wrapping such garbage and placing it in a tight metal storage container as required by subsection 155.30(D); or by such other disposal method as may be required by applicable laws or ordinances of the municipality. Every occupant shall be required to maintain the entire demised premises free of garbage and rubbish.
- (D) *Use and operation of supplied plumbing fixtures.* Each occupant of a dwelling unit shall keep the supplied plumbing fixtures therein clean and sanitary, and shall be responsible for the exercise and reasonable care of their proper use and operation.

Sec. 155.41. - Prosecution of violation.

In case any citation or other lawful order is not promptly complied with, the building commissioner may request the legal representative of the municipality to institute an appropriate action or proceeding at law or in equity against the person responsible for the violation:

- (A) To restrain, correct, or remove the violation, or refrain from any further execution of work;
- (B) To restrain or correct the erection, installation, or alteration of a building;
- (C) To require the removal of work in violation;
- (D) To enjoin the occupation and use of the building, structure, or part thereof maintained in violation of any provision of this Code; or
- (E) To enforce the penalty provisions of this Code.
- (F) To secure any other proper remedy.

(Ord. No. 15-02, 6-3-02)

Sec. 155.42. - Penalty.

Every person or legal entity who shall violate any provision of this code shall, upon conviction, be punished by fine. Each day that each violation continues after due notice has been served, shall be deemed a separate offense; provided, that for one offense, no penalty or fine shall exceed \$1,000.00, nor shall be less than \$250.00. A person or entity who commits a second or subsequent offense involving the same building or premises shall be fined not less than \$500.00 for each offense.

(Ord. No. 15-02, 6-3-02; Ord. No. 2-17, § 2, 2-6-17; Ord. No. 23-18, § 1, 10-1-18)

CHAPTER 156. - UNIFORM HOUSE NUMBERING SYSTEM

Sec. 156.01. - Uniform numbering system.

A plan for the orderly and systematic numbering and renumbering of houses and structures located within corporate limits of the city is enacted. Any and all ordinances previously adopted by the common council regarding the numbering and renumbering of houses and structures are deemed repealed.

(Ord. No. 56-74, 12-3-74; amend. Ord. No. 385-78, 7-12-78)

Sec. 156.02. - Authority.

The power to regulate properties within its municipal limits is reserved to the city by state law. The power for this project should be exercised only under the supervisory control of the elected representatives of the residents of the city sitting on the common council. The common council assigns the task of making all the necessary preliminary surveys and proposed number designations to the staff of the Delaware-Muncie Metropolitan Plan Commission. The commission shall serve as the administrative office referred to herein.

(Ord. No. 56-74, 12-3-74; amend. Ord. No. 385-78, 7-12-78)

**State Law reference—** Powers of cities to regulate buildings, see IC 18-1-1.5-10.

Sec. 156.03. - Relation to health and welfare.

The numbering of houses and other structures in an orderly and systematic manner will make the location of such houses and structures more expeditious in cases of fire emergencies, in situations involving immediate need for medical attention for members of a family or occupants of a building, and in instances where police protection may be required with haste. The numbering of houses and other structures in an orderly and systematic manner will enhance the delivery of goods and performance of services and will increase the efficiency of operations such as postal delivery.

(Ord. No. 56-74, 12-3-74; amend. Ord. No. 385-78, 7-12-78)

Sec. 156.04. - Conformity.

From the effective date of this chapter, the numbering of all houses and structures located on lots or parcels of land fronting on public streets within the corporate limits of the city shall be accomplished in conformity with the uniform house numbering system as herein described. At the time of the issuance of any permit for the construction of a house or structure, a number shall be assigned by the administrative office to the house or structure. The number shall be incorporated on the permit. No permit authorizing the occupancy of a building for a house or structure shall be issued, and no final inspection of a building performed for the purpose of permitting its occupancy shall be deemed complete, unless such house or structure displays, at the time of the inspection, the officially assigned number, in full compliance with the standards of this chapter.

(Ord. No. 56-74, 12-3-74; amend. Ord. No. 385-78, 7-12-78)

**Cross reference—** Penalty, see § 156.99. (A)

Sec. 156.05. - Axis and progression.

- (A) Walnut Street, also known as Center Pike, and Main Street, also known as Division Road, shall be the axis for the uniform numbering system. Numbers shall be assigned in all directions beginning at the intersection of Walnut Street and Main Street, and shall increase in denomination in accordance with the provisions of this chapter.
- (B) The first numbers on Walnut Street at Main Street shall be in the 100 series and shall increase to the north and south therefrom but shall not exceed 100 numbers to each block; 16 blocks to the mile, or approximately 330 feet per block. The first numbers on Main Street at Walnut Street shall be in the 100 series and shall increase to the east and west therefrom but shall not exceed 100 numbers to each block; 16 blocks to the mile, or approximately 330 feet per block. Whenever a block is not 330 feet the block series for this segment shall be established at logical intervals as the case may require.
- (C) All streets or sections of streets, regardless of name type, running north and south and being north of Main Street shall be designated by the prefix "North". All streets or sections of streets, regardless of name type, running north and south and being south of Main Street shall be designated by the prefix "South". All streets or sections of streets, regardless of name type, running east and west and being east of Walnut Street shall be designated by the prefix "East". All streets or sections of streets, regardless of name type, running east and west and being west of Walnut Street shall be designated by the prefix "West".
- (D) Any diagonal or curved street or section of street running in a general directional angle of 45° or less, shall be treated as a north-south street and shall be assigned the applicable directional prefix depending on its location in relation to the east-west axis street. Any diagonal or curved street or section of street running in a general



directional angle of greater than 45° shall be treated as an east-west street and shall be assigned the applicable directional prefix depending on its location in relation to the north-south axis street.

(E) Odd numbers shall be used on the south side of streets regarded as east-west streets and on the west side of streets regarded as north-south streets. Even numbers shall be used on the north side of streets regarded as east-west streets and on the east side of streets regarded as north-south streets.

(F) Any street which does not extend to or through an axis street shall be assigned the same relative numbers and directional prefix as if the street did extend to or through an axis street.

(Ord. No. 56-74, 12-3-74; amend. Ord. No. 385-78, 7-12-78)

**Cross reference—** Penalty, see § 156.99.

#### Sec. 156.06. - Renumbering of houses and structures.

Houses and structures numbered prior to the effective date of this chapter may be renumbered in order that the same may comply with the uniform numbering system, and so that numerical harmony throughout an area or areas is substantially achieved. The administrative office as designated in this chapter shall authorize such changes.

(Ord. No. 56-74, 12-3-74; amend. Ord. No. 385-78, 7-12-78)

**Cross reference—** Penalty, see § 156.99. (B)

#### Sec. 156.07. - Numbers other than on public streets.

The administrative office as designated in this chapter may, if it deems proper and necessary to the implementation of the uniform numbering system, agree to assign new numbers to houses or structures situated on private streets, or issue numbers to such houses and structures which may be constructed after the effective date of this chapter. This shall include houses and structures located along unmapped private streets in a condominium or apartment complex, mobile home courts, planned unit developments, lanes in rural areas, or similar situations. Such an agreement shall be between the owner or owners of properties and may require only routine exchange in written communications between the administrative office and the owner or owners.

(Ord. No. 56-74, 12-3-74; amend. Ord. No. 385-78, 7-12-78)

**Cross reference—** Penalty, see § 156.99.

#### Sec. 156.08. - Standards; posting.

The owner or occupant of a house or structure located within the corporate limits of the city shall post officially assigned numbers in a location providing easy identification from the abutting street or streets. Such numbers may be located above the front door, on a house column, attached to the mailbox, on a decorative stone, post, or outside light, or in any other prominent place on the house or structure or in their immediate proximity.

(Ord. No. 56-74, 12-3-74; amend. Ord. No. 385-78, 7-12-78)

**Cross reference—** Penalty, see § 156.99.

#### Sec. 156.09. - Administrative office.

The Delaware-Muncie Metropolitan Plan Commission, subject to the supervision of the common council, shall act as the administrative office in charge of issuing numbers to houses or structures in compliance with the provisions of this chapter. The administrative office shall issue numbers to all new houses or structures, renumber houses and structures whenever it becomes necessary to do so in the implementation of the uniform numbering system, and cause the numbering of all existing houses or structures which are not numbered to be numbered in accordance with the provisions of this chapter.

(Ord. No. 56-74, 12-3-74; amend. Ord. No. 385-78, 7-12-78)

#### Sec. 156.10. - Notification of local agencies.

The administrative office as designated in this chapter shall provide a uniform system of notification of the issuance of numbers or the renumbering of houses and structures. Notification shall be made reasonably far ahead of impending changes so as to allow major interested groups and agencies to plan and prepare for proposed changes. The administrative office shall keep accurate records and shall, from time to time, prepare and make available to the common council a report on the state of the uniform numbering system. In performing its functions, the administrative office shall use its best judgment, shall carefully consider and evaluate all contingencies, and shall, in the context of the sensitive job assigned to it, be considerate of the citizens of the city.

(Ord. No. 56-74, 12-3-74; amend. Ord. No. 385-78, 7-12-78)

#### Sec. 156.99. - Penalty.

- (A) The owners or occupants of houses or structures being erected, or which may be erected after the enactment of this chapter, within the corporate limits of the city, who shall fail to number such houses or structures as herein provided for within 30 days after the same shall have been constructed, or who shall number any house or structure otherwise than in conformity with the provisions of this chapter, may be fined not more than \$1,000.00. Each and every day the infraction remains shall be considered a separate offense and may carry an additional fine of not more than \$1,000.00 per day until the infraction is corrected.
- (B) The owner or the occupants of houses or structures presently erected within the corporate limits of the city may be required to renumber such houses or structures in conformity with the provisions of this chapter. Any owner or occupant of a house or structure presently erected who shall fail to renumber such house or structure within 30 days after he shall have been notified of the renumbering of the house or structure, may be fined not more than \$1,000.00. Each and every day after the infraction shall be considered a separate offense and may carry an additional fine of not more than \$1,000.00 per day until the infraction is corrected.

### CHAPTER 157. - OPEN SPACE PLAN

#### Sec. 157.01. - Title.

This chapter shall be known as the open space plan.

(Ord. No. 18-74, 7-1-74)

#### Sec. 157.02. - Purpose.

The purpose of this chapter is to establish certain guidelines and procedures for the effective and reasonable implementation of the provision of the open space plan which is a part of the Delaware-Muncie Metropolitan Transportation and Urban Development Study.

(Ord. No. 18-74, 7-1-74)

Sec. 157.03. - Authority.

The authority for the adoption of this chapter is provided for in IC 18-7-5-1 through 99.

(Ord. No. 18-74, 7-1-74)

Sec. 157.04. - Objectives of the open space plan.

The objectives of the open space plan are:

- (A) To develop for a variety of recreational facilities a workable plan that is adaptable, usable, and acceptable to all segments of the community, such plan to be based on neighborhood composition, proximity to major traffic arteries, changing of population, direction of growth, use of lands occurring from removal of obsolete structures, and carefully coordinated with the use of schools and other public buildings.
- (B) To provide, supervise, and maintain indoor and outdoor recreational facilities and services for people of all ages, in convenient locations.
- (C) To use, develop, and preserve major streams, lakes, marginal lands, and watercourses, as scenic points in the community.
- (D) To utilize lands possessing special natural beauty and affording extraordinary features of terrain and flora as areas for enjoyment by the public.

(Ord. No. 18-74, 7-1-74)

Sec. 157.05. - Use of the open space plan.

- (A) Upon the adoption of the open space plan, the same shall serve as norm in the planning, reservation, and acquisition of lands for use as open space for public recreational facilities and services. The Delaware-Muncie Metropolitan Plan Commission shall cooperate with all departments of local governments in the promotion and development provisions of the open space plan.
- (B) After adopting the plan, the city council or other governing body within the territorial jurisdiction of the plan commission shall be guided by and give consideration to the general policy and pattern of development set out in the open space plan.

(Ord. No. 18-74, 7-1-74)

Sec. 157.06. - Amendment.

After the adoption of the open space plan the same may be amended in accordance with the procedure followed for its adoption; except, that if the city council desires an amendment it may direct the plan commission to prepare an amendment and submit it to public hearing within 60 days after formal written request by the city council.

(Ord. No. 18-74, 7-1-74)

## CHAPTER 157.5. - LAND BANK

### Sec. 157.5.01. - Title.

This chapter shall be known as the "Land Bank." The land bank established under this chapter shall be referred to the Muncie Land Bank.

(Ord. No. 30-17, §§ 1, 2, 7-10-17)

### Sec. 157.5.02. - Purpose.

The purpose of this chapter is to direct the Mayor of the City of Muncie to organize a non-profit corporation under IC § 23-17 and allowed under IC § 36-7-38, governed by a board of directors, as an independent instrumentality exercising essential governmental functions. The primary purpose of the land bank is to manage and improve the marketability of distressed real property located in the City of Muncie.

(Ord. No. 30-17, §§ 1, 2, 7-10-17)

### Sec. 157.5.03. - Authority, function, powers, duties and administration.

The authority for the adoption of this chapter is provided for in IC § 36-7-38. The function, powers, duties, and administration of the land bank established under this chapter is as stated and shall be followed as outlined in IC § 36-7-38.

(Ord. No. 30-17, §§ 1, 2, 7-10-17)

### Sec. 157.5.04. - Establishment of the land bank board of directors.

The establishment of the land bank board of directors shall include:

- (A) A director appointed under this chapter must have demonstrated competency in an occupation or discipline that is relevant to the primary purpose of a land bank.
- (B) Except as provided in this section, the term of the director of the land bank is for three consecutive calendar years. If a director is unable to complete the director's term, the authority that appointed the director shall appoint a successor to serve for the remainder of the incomplete term.
- (C) The board of directors shall consist of nine directors.
  - (1) Three directors must be residents of the City of Muncie and shall be appointed by the mayor. The initial directors appointed by the mayor shall serve a term equal to the remainder of the calendar year in which the land bank is established; plus one more calendar year.
  - (2) Three directors must be residents of the city and shall be appointed by city council. The initial directors appointed by city council shall serve a term equal to the remainder of the calendar year in which the land bank is established; plus two more calendar years.
  - (3) One director must be a resident of the city and shall be appointed by the Delaware County Treasurer. The initial director appointed by the Delaware County Treasurer shall serve a term equal to the remainder of

the calendar year in which the land bank is established plus renewable terms equal to three calendar years.

- (4) Two additional directors shall be appointed in the manner and subject to the requirements set forth in the land bank's bylaws.

(Ord. No. 30-17, §§ 1, 2, 7-10-17)

## CHAPTER 158. - HISTORIC PRESERVATION AREAS

### Sec. 158.01. - Emily Kimbrough historic district.

There is established the Emily Kimbrough historic district, a portion of section 1 of the city historic preservation plan.

(Ord. No. 390-78, 7-12-78)

**Cross reference**— Historic preservation and rehabilitation commission, §§ 34.100 through 34.102.

### Sec. 158.02. - Old Federal building historic district.

The Council, pursuant to sections 34.100 through 34.111, as amended, and in response to the petition of the property owners hereby establishes and designates the following described properties located in Delaware County, as the Old Federal Building historic district described as follows:

Beginning at a point approximately 650 feet south of and 320 feet east of the northeast corner of Section 16, Township 20 North, Range 10 East, with said point being the center point of the intersection of the center lines of S. High and W. Charles Streets; thence south along said center line of High Street approximately 155 feet to the intersection of the center line of the alley between W. Charles and W. Howard Streets; thence in an easterly direction along the center line of said alley approximately 165 feet to the intersection with the center line of the alley between S. High St. and Walnut Plaza; thence in a southerly direction along the center line of said alley approximately 160 feet to the intersection with the center line of W. Howard Street; thence in a westerly direction along the center line of said street approximately 320 feet to the intersection of the center line of the alley between S. High and S. Franklin Streets; thence in a northerly direction along the center line of said alley approximately 310 feet to the intersection of the center line of W. Charles Street; thence in an easterly direction along the center line of said street approximately 160 feet to the intersection of the center line of S. High Street, the point of beginning.

(Ord. No. 765-81, 11-2-81)

### Sec. 158.03. - The Boyce block historic district.

The Council, pursuant to sections 34.100 through 34.111 of the Code of Muncie, Indiana of 1980, as amended, approves a portion of section 3 of the Historic Preservation Plan known as "The Boyce Block Historic District" and establishes said district as an historic preservation district.

(Ord. No. 794-82, § 1, 3-1-82)

### Sec. 158.04. - English Lutheran church historic landmark.

The Council, pursuant to sections 34.100 through 34.111 of the Code of Muncie, Indiana of 1980, as amended, and in response to the petition of the property owners hereby establishes and designates the following described property located in Delaware County, State of Indiana as an historic landmark described as follows:

Willard 3rd W 70 feet, Lot 43.

(Ord. No. 116-83, § 1, 12-19-83)

Sec. 158.05. - Local historic landmarks.

The following properties are hereby designated as local historic landmarks:

- (1) The building known as the Moore-Youse House, 122 E. Washington Street on the following described property:  
Gilbert's Donation, Lot 8, Block 9.
- (2) The buildings known today as Standt's Fine Jewelry, historically known as the Senate Block, located at 200 and 202 S. Walnut Street and 109 E. Jackson Street:  
Brown's Donation, north 42 feet of Lot 2 Block 27.
- (3) The building known today as the Freund or Murray Building, historically known as the Jones Block, located at 401—403 S. Walnut Street:  
Seitz Addition Lot 5 and north ten feet of Lot 6.
- (4) The building known today as Pazol's Jewelers, historically known as the Anthony Block, located at 123—125 S. Walnut Street:  
South 42 feet of Lot 7 in Block 23 of Jackson's Donation.
- (5) A portion of the building known today as Gloria's Women's Apparel, historically known as Geiger Block, located at 125 W. Charles Street:  
Seitz Addition, part of west half of Lots 50 and 51.
- (6) The building known today as Dunnuck, Teagle & Hunt Attorneys, located at 114 South Walnut Street:  
Brown's Donation, 21 feet, Lot 5, Block 24.
- (7) The building known today as Jack's Camera Shop, historically known as the Commercial Club, located at 300 East Main Street:  
Brown's Donation, west 53 feet, five inches Out Lot 6.
- (8) The building known today as American United Appraisal Company, Inc., located at 211 South Walnut Street:  
SS Addition south 20 feet, six inches of Lot 1 and Lot 2, Block 1.
- (9) The building located at 625 North Elm Street:  
WL CO 2nd Addition Lot 8.
- (10) The building known as The Creative Opportunity Center, located at 215 South Walnut Street:  
SSN 41 foot ten inch Lot 7, Block 1
- (11) The Phillips-Johnson House located at 516 West Jackson Street, in the City of Muncie, Indiana, to wit:

JD Addition, Block 19, Lot 6, (Sidwell Number 11-09-462-013, Tax ID Number 1520389000) and JD Addition, Block 19, Lot 7, (Sidwell Number 11-09-462-014, Tax ID Number 1502121000).

- (12) The David Cammack House located at 524 West Jackson Street, in the City of Muncie, Indiana, to wit:  
JD except southern 76 feet Lot 5, Block 19, (Sidwell Number 11-09-462-011, Tax ID Number 1524031000) and JD southern 76 feet Lot 5, Block 19, (Sidwell Number 11-09-462-012, Tax ID Number 1508356000).
- (13) The property located at 115 South Council Street, in the City of Muncie, Indiana, to wit:  
JD Addition, north 40 feet Lot 8, Block 18, (Sidwell Number 11-09-461-015, Tax ID Number 15056543000).
- (14) The F. R. Miller Building located at 309 North Jefferson Street, in the City of Muncie, Indiana, to wit:  
A part of Lot 8 in Block 1 in Goldsmith C. Gilbert's donation to Muncie Town, now City of Muncie, Indiana, more particularly described as follows, to-wit: Commencing at the northeast corner of Lot 8 and running thence south on the east line thereof 69½ feet; thence west parallel with the north line of said lot 42½ feet; thence north parallel with the west line of said lot 14½ feet; thence west parallel with the north line of said lot 20 feet to the west line of said lot; thence north on and along the west line of said lot, 55 feet to the northwest corner thereof; thence east 62½ feet to the place of beginning. More commonly known as 309 North Jefferson Street, Muncie, Indiana 47305.
- (15) The Mitchell Block Building located at 301 South Walnut Street in the City of Muncie, Indiana, to wit:  
A part of Lot 21 in Section 16, Township 20 North, Range 10 East, more particularly described and bounded as follows, to-wit: Beginning at the intersection of the west line of Walnut Street and the south line of Adams Street as said streets are laid out, platted and established in the City of Muncie, Delaware County, Indiana; thence extending south on and along the west line of Walnut Street 79 feet and nine and one-half inches; thence extending west 125 feet to a point 80 feet south of the south line of Adams Street; thence extending north 80 feet, more or less, to the south line of Adams Street; thence east on and along the south line of Adams Street 125 feet, more or less, to the place of beginning, in the City of Muncie, County of Delaware and State of Indiana, known as 301, 303, 305, and 307 South Walnut Street in the City of Muncie, County of Delaware and State of Indiana. (Unit Tax Number 15-1078; Sidwell Number 11-16-233-007)
- (16) The Patterson Block located at 103 East Main Street and 100—112 South Walnut Street (southeast corner of Main and Walnut Streets), in the City of Muncie, Indiana, to wit:  
B D Addition, Lot 4, Block 24 in the City of Muncie, County of Delaware and State of Indiana. (Unit Tax Number 15-01063000; Sidwell Number 11-10-363-001).
- (17) The Topp House located at 323 South Liberty Street, in the City of Muncie, Indiana, to wit:  
PT Lot 18, .1400 AC, STR: 16-20-10, (Unit Tax Number 15-22182000; Sidwell Number 11-16-230-013).
- (18) The Eiler Flats located at 405—411 South Liberty Street, in the City of Muncie, Indiana, to wit:  
J C E Add, IN: 2, (Unit Tax Number 15-19017000; Sidwell Number 11-16-234-025).
- (19) The Carpenter House located at 417 South Liberty Street, in the City of Muncie, Indiana, to wit:  
Mess and R N 36', IN: 1, (Unit Tax Number 15-12207000; Sidwell Number 11-16-234-027).
- (20) The house located at 320 South Cherry Street, in the City of Muncie, Indiana, to wit:  
NE Qtr NE Qtr 40' 48', .0400 AC, STR: 16-20-10, (Unit Tax Number 15-17872500; Sidwell Number 11-16-230-

008).

- (21) The Goddard House located at 402 West Charles Street, in the City of Muncie, Indiana, to wit:  
PT Lots 3 and 18, .0700 AC, STR: 16-20-10, (Unit Tax Number 15-12206000; Sidwell Number 11-16-230-015).
- (22) The Eiler House located at 403 West Charles Street, in the City of Muncie, Indiana, to wit:  
J C E Add, IN: 3, (Unit Tax Number 15-19018000; Sidwell Number 11-16-234-024).
- (23) The Truitt House located at 415 & 415 West Charles Street, in the City of Muncie, Indiana, to wit:  
J C E, IN: 4, (Unit Tax Number 15-02870000; Sidwell Number 11-16-234-011).
- (24) The Lesh House located at 418—420 West Charles Street, in the City of Muncie, Indiana, to wit:  
PT Lot 18, .1400 AC, STR: 16-20-10, (Unit Tax Number 15-12242000; Sidwell Number 11-16-230-010).
- (25) *Reserved.*
- (26) The Ira Hunter House located at 47 West Orchard Place, in the City of Muncie, Indiana, to wit:  
Glascok Add, IN: 17, (Unit Tax Number 15-00690000; Sidwell Number 11-16-276-009).
- (27) The building known today as Vera Mae's, located at 209 South Walnut Street in the City of Muncie, Indiana, to wit:  
S and S Addition, 20 feet, Block 1. (Unit Tax Number 15-16448000; Sidwell Number 11-16-229-014-000).
- (28) The building known today as the Heorot, located at 219 South Walnut Street in the City of Muncie, Indiana, to wit:  
SS Addition South 20.8 feet Lot 7 Block 1. (Unit Tax Number 15-20230000; Sidwell Number 11-16-229-017).
- (29) The building known today as Wealth Strategies, Inc., located at 207 North High Street in the City of Muncie, Indiana, to wit:  
Part GD Addition and Part 39 feet mid Lot 5 Block 7. (Unit Tax Number 15-23781000; Sidwell Number 11-09-482-011-000).
- (30) The building known today as the Mark III, located at 107 East Main Street in the City of Muncie, Indiana, to wit:  
BDW 16, Lot 3, Block 24. (Unit Tax Number 15-08355000; Sidwell Number 11-10-363-002).
- (31) The building known today as the Henry Haymond House, located at 814 West Charles Street in the City of Muncie, Indiana, to wit:  
P I Add E45 and 10 Ft ADJ E45 FT (Unit Tax Number 15-06722000; Sidwell Number 11-16-207-010-000).
- (32) The building known today as the Otto Carmichael house, located at 900 West Kilgore Avenue in the City of Muncie, Indiana, to wit:  
Winton addition lot 6 and 7 Exc. N 2½'. (Unit Tax Number 15-16064000; Sidwell Number 11-16-127-013-000).  
  
The lot located directly behind the Otto Carmichael house, located at 900ADJ West Kilgore Avenue in the City of Muncie, Indiana, to wit:  
  
PT TR S SD Jackson Street ADJ Winton 12. (Unit Tax Number 15-16062000; Sidwell Number 11-16-127-012-000).
- (33) The building known today as Vera Mae's, located at 209 S. Walnut Street in the City of Muncie, Indiana, to wit:



Owner, Kent W. Shuff; S and S Addition, south 20 feet, Block 1. (Unit Tax Number 15-16448000; Sidwell Number 11-16-229-014-000).

- (34) The building located at 205 S. Walnut Street in the City of Muncie, Indiana, to wit:

Owner, Gary D. Riley; S and S Addition, Lots 1 and 2, Block 1. (Unit Tax Number 15-16767000; Sidwell Number 11-16-229-012-000).

- (35) The building known today as the north section of the Odd Fellows Building located at 120 S. Walnut St. in the City of Muncie, to wit:

Owner, Muncie Urban Enterprise Assoc./Downtown Development; Brown's Donation Block 24, Lot 8. (Unit Tax Number 15-23943000; Sidwell Number 11-10-363-013).

- (36) The building known today as the south section of the Odd Fellows Building located at 122-124 S. Walnut St. in the City of Muncie, to wit:

Owner, Muncie Urban Enterprise Assoc./Downtown Development; Brown's Donation Block 24, Lot 8. (Unit Tax Number 15-23943000; Sidwell Number 11-10-363-013).

- (37) The Building the east section of the Odd Fellows Building located at 108 E. Jackson St. in the City of Muncie, to wit:

Owner, Muncie Urban Enterprise Assoc./Downtown Development; Brown's Donation Block 24, Lot 8. (Unit Tax Number 15-23943000; Sidwell Number 11-10-363-013).

- (38) The building known today as Ballaird Hall, located at 207 S. Walnut Street in the City of Muncie, Indiana, to wit:

Owner: Kent W. Shuff & Steven E. Fennimore; Legal Description: S&S Addition, pt. 24 feet × 125 feet. (Unit Tax Number: 15-16695000; Sidwell Number: 11-16-229-013-000).

- (39) The building known as UEA/Downtown Development Partnership Building, located at 407 S. Walnut Street in the City of Muncie, Indiana, to wit:

Owner: Muncie Urban Enterprise Association, Inc.; Legal Description: Seitz Addition North 20 feet of lot 7, south 20 feet of lot 6. (Unit Tax Number: 15-16701000; Sidwell Number: 11-16-237-009-000).

- (40) The building known today as 309 S. Walnut St. in the City of Muncie, Indiana, to wit:

Owner: Renaissance Place LLC; Legal Description: Part of Lot 8 Block 24 in Brown's Donation to Muncietown, now City of Muncie, Delaware County, Indiana, described as follows: Beginning at the northwest corner of Lot 8 in Block 24 in Brown's Donation to Muncietown, now City of Muncie, as shown in the Records of Delaware County, Indiana, said corner being 0.4 feet east of a nail; thence north 89 degrees 39 minutes 51 seconds east 100.41 feet along the north line of said lot; thence south 00 degrees 00 minutes 00 seconds 21.95 feet along the outside of a wall; thence south 00 degrees 1 minutes 55 seconds east 1.56 feet; thence south 89 degrees 39 minutes 51 seconds west 100.39 feet along the center of a common wall to a point on the west line of said lot to a point 0.4 feet east of a nail; thence north 00 degrees 02 minutes 52 seconds west 23.51 feet to the point of beginning, containing 0.05 of an acre, more or less. (Unit tax number: 15-00338000; Sidwell number: 11-16-233-008-000).

- (41) The building known today as 311 S. Walnut St. in the City of Muncie, Indiana, to wit:

Owner: Renaissance Place LLC; Legal Description: Part of Lot 8 Block 24 in Brown's Donation to Muncietown, now City of Muncie, Delaware County, Indiana, described as follows: Beginning at a point on the west line of Lot 8 Block 24 in Brown's Donation to Muncietown, now City of Muncie, as shown in the records of Delaware County, Indiana, said point being south 00 degrees 02 minutes 52 seconds east 23.51 feet (assumed bearing) from the northwest corner of said lot and also being 0.4 feet east of a nail; thence north 89 degrees 39 minutes 51 seconds east 100.39 feet along the center of a common wall; thence south 00 degrees 11 minutes 53 seconds east 38.99 feet along the center of a common wall to a point on the south line of said Lot 8; thence south 89 degrees 39 minutes 51 seconds west 100.36 feet to the southwest corner of said lot which is 0.4 feet east of a nail; thence north 00 degrees 02 minutes 52 seconds west 38.99 feet to the point of beginning, containing 0.09 of an acre, more or less. (Unit tax number: 15-00338000; Sidwell number: 11-16-233-008-000).

- (42) The building known today as 313 S. Walnut St. in the City of Muncie, Indiana, to wit:

Owner: Renaissance Place, LLC; Legal Description: Part of Lot 8 Block 24 in Brown's Donation to Muncietown, now City of Muncie, Delaware County, Indiana, described as follows: Beginning at a point on the south line of Lot 8 Block 24 in Brown's Donation to Muncietown, now City of Muncie, as shown in the records of Delaware County, Indiana, said point being north 89 degrees 39 minutes 51 seconds east 100.36 feet (assumed bearing) from the southwest corner of said lot; thence north 00 degrees 11 minutes 53 seconds west 40.55 feet along the center of a common wall; thence north 00 degrees 00 minutes 00 seconds 21.95 feet along the outside of a wall to the north line of said Lot 8; thence north 89 degrees 39 minutes 51 seconds east 24.78 feet to a nail at the northeast corner of said lot; thence south 00 degrees 02 minutes 52 seconds east 62.50 feet to a nail at the southeast corner of said lot; thence south 89 degrees 39 minutes 51 seconds west 24.50 feet to the point of beginning, containing 0.04 of an acre, more or less. (Unit tax number: 15-00338000; Sidwell number: 11-16-233-008-000).

- (43) The building known today as 419-421 S. Walnut St. in the City of Muncie, Indiana, to wit:

Owner: Walnut Investors, LLC; Legal Description: Lots 9, 10, 11 and north 10 feet and west 39 feet of lot 12, Seitz Addition, City of Muncietown, now City of Muncie. (Sidwell Number: 11-16-237-011-000).

- (44) That building know today as as the Kelso Building and/or Health Iron Building at 116 S. Walnut Street.

Legal Description: B D Add. S 41 ft.; Sidwell Number: 11-10-363-012-000.

- (45) That building know today as as St. Peter's Rock Foundation in Christ Church at 600 W. Jackson St./117 S. Council St.

Legal Description: Jackson's Donation S 85 ft.; Sidwell Number: 11-09-461-016-000.

(Ord. No. 42-90, § 1, 11-12-90; Ord. No. 12-93, 5-3-93; Ord. No. 19-94, 5-9-94; Ord. No. 62-94, 12-6-94; Ord. No. 19-95, 6-5-95; Ord. No. 2-96, 3-4-96; Ord. No. 17-96, 5-13-96; Ord. No. 22-96, 6-10-96; Ord. No. 15-98, 5-11-98; Ord. No. 37-99, 10-4-99; Ord. No. 24-00, § 1, 7-10-00; Ord. No. 25-00, § 1, 7-10-00; Ord. No. 3-02, §§ 1—5, 2-4-02; Ord. No. 34-03, 12-1-03; Ord. No. 38-05, 6-6-05; Ord. No. 10-06, 4-3-06; Ord. No. 11-06, 4-3-06)

## CHAPTER 159. - FLOODPLAIN MANAGEMENT

### *Footnotes:*

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**Editor's note—** *Ord. No. 1-25, § 1, adopted Feb. 3, 2025, amended Ch. 159 in its entirety to read as herein set out. Former Ch. 159, §§ 159.01—159.34, pertained to similar subject matter and derived from Ord. No. 8-11, § 2, adopted June 29, 2011.*

## DIVISION 1. - IN GENERAL

### Sec. 159.01. - 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 Muncie does hereby adopt the following floodplain management regulations which shall be known as the Floodplain Management Ordinance for the City of Muncie.

(Ord. No. 1-25, § 1, 2-3-25)

### Sec. 159.02. - Findings of fact.

- (A) The flood hazard areas of the City of Muncie 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.
- (B) Additionally, structures that are inadequately elevated, floodproofed, or otherwise protected from flood damage also contribute to the flood loss. To minimize the threat of such damages and to achieve the purposes hereinafter set forth, these regulations are adopted.

(Ord. No. 1-25, § 1, 2-3-25)

### Sec. 159.03. - 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) Restrict or prohibit uses which are dangerous to health, safety, and property due to water hazards or which result in damaging increases in in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which help accommodate or channel flood waters;
- (4) Control filling, grading, dredging, excavating, and other development which may increase flood damage;
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands; and
- (6) Make federally subsidized flood insurance available for structures and their contents in the city by fulfilling the requirements of the National Flood Insurance Program.

(Ord. No. 1-25, § 1, 2-3-25)

### Sec. 159.04. - Objectives.

The objectives of this chapter are:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To 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) To 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 areas;
- (7) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions;
- (8) Minimize the impact of development on adjacent properties within and near flood prone areas;
- (9) Ensure that the flood storage and conveyance functions of the floodplain are maintained;
- (10) Minimize the impact of development on the natural, beneficial values of the floodplain;
- (11) Prevent floodplain uses that are either hazardous or environmentally incompatible; and
- (12) Meeting community participation requirements of the National Flood Insurance Program.

(Ord. No. 1-25, § 1, 2-3-25)

#### Sec. 159.05. - Definitions.

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

A *zone* means portions of the SFHA in which the principal source of flooding is runoff from rainfall, snowmelt, or a combination of both. In A zones, floodwaters may move slowly or rapidly, but waves are usually not a significant threat to buildings. These areas are labeled as Zone A, Zone AE, Zones A1-30, Zone AO, Zone AH, Zone AR and Zone A99 on a FIRM or FHBM. The definitions are presented below:

- (1) *Zone A*: Areas subject to inundation by the one-percent annual chance flood event. Because detailed hydraulic analyses have not been performed, no base flood elevation or depths are shown. Mandatory flood insurance purchase requirements apply.
- (2) *Zones AE and A1-30*: Areas subject to inundation by the one-percent annual chance flood event determined by detailed methods. Base flood elevations are shown within these zones. Mandatory flood insurance purchase requirements apply. (Zone AE is on new and revised maps in place of Zones A1-30.)
- (3) *Zone AO*: Areas subject to inundation by one-percent annual chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone. Mandatory flood insurance purchase requirements apply.
- (4) *Zone AH*: Areas subject to inundation by one-percent annual chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone. Mandatory flood insurance purchase requirements apply.
- (5) *Zone AR*: Areas that result from the decertification of a previously accredited flood protection system that is determined to be in the process of being restored to provide base flood protection. Mandatory flood

insurance purchase requirements apply.

- (6) *Zone A99*: Areas subject to inundation by the one-percent annual chance flood event, but which will ultimately be protected upon completion of an under-construction federal flood protection system. These are areas of special flood hazard where enough progress has been made on the construction of a protection system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes. Zone A99 may only be used when the flood protection system has reached specified statutory progress toward completion. No base flood elevations or depths are shown. Mandatory flood insurance purchase requirements apply.

*Accessory structure (appurtenant structure)* means a structure with a floor area of 400 square feet or less that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal initial investment, may not be used for human habitation, and be designed to have minimal flood damage potential.

- (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 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 (including a challenge of a board decision) or a request for a variance.

*Area of shallow flooding* means a designated AO or AH zone on the community's flood insurance rate map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

*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 current 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 area under 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, installations which produce, use or store hazardous materials or hazardous waste.

*Development* means 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.

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

*Elevation certificate* is a certified statement that verifies a structure's elevation information as identified on a FEMA form that is routinely reviewed and approved by the White House Office of Management and Budget under the Paperwork Reduction Act.

*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."

*Emergency program* means the first phase under which a community participates in the NFIP. It is intended to provide a first layer amount of insurance at subsidized rates on all insurable structures in that community before the effective date of the initial FIRM.

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

*Existing construction* means any structure for which the "start of construction" commenced before the effective date of the community's first floodplain ordinance.

*Existing manufactured home park or subdivision* 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.

*Five-hundred-year flood (500-year flood)* means the flood that has a 0.2 percent chance of being equaled or exceeded in any year.

*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 boundary and floodway map (FBFM)* means an official map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated the areas of flood hazards and regulatory floodway.

*Flood hazard area* means areas subject to the one percent annual chance flood. (See "Special flood hazard area.")

*Flood hazard boundary map (FHBM)* means an official map of a community, issued by FEMA, where the boundaries of the areas of special flood hazard have been identified as Zone A.

*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)* is the official hydraulic and hydrologic report provided by FEMA. The report contains flood profiles, as well as the FIRM, FBFM (where applicable), 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 elevation of the regulatory flood plus two feet at any given location in the SFHA. See "Freeboard."

*Floodplain* means the channel proper and the areas adjoining any wetland, lake, or watercourse which have been or hereafter may be covered by the regulatory flood. The floodplain includes both the floodway and the fringe districts. 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 this chapter and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage. Floodplain management regulations are also referred to as floodplain regulations, floodplain ordinance, flood damage prevention ordinance, and floodplain management requirements.

*Floodproofing (dry floodproofing)* 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 nonresidential structures as an alternative to elevating structures to or above the FPG. This certification must be by a registered professional engineer or architect.

*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 those portions 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. In granting a variance, the board of zoning appeals must find that there is a hardship and that the reason for 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.

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

*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 and 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 the 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 modifications 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 only, 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 those 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.

*Map amendment* means a change to an effective NFIP map that results in the exclusion from the SFHA of an individual structure or a legally described parcel of land that has been inadvertently included in the SFHA (i.e., no alterations of topography have occurred since the date of the first NFIP map that showed the structure or parcel to be within the SFHA).

*Map panel number* is the four-digit number followed by a letter suffix assigned by FEMA on a flood map. The first four digits represent the map panel, and the letter suffix represents the number of times the map panel has been revised. (The letter "A" is not used by FEMA, the letter "B" is the first revision.)

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

*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.

*National Flood Insurance Program (NFIP)* is the federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the federal government and the private insurance industry.

*National Geodetic Vertical Datum (NGVD) of 1929* as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

*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-hundred-year flood (100-year flood)* is the flood that has a one percent chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the one-percent annual chance flood. See "Regulatory flood".

*One-percent annual chance flood* is the flood that has a one percent chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the one-percent annual chance flood. See "Regulatory flood".

*Participating community* is any community that voluntarily elects to participate in the NFIP by adopting and enforcing floodplain management regulations that are consistent with the standards of the NFIP.

*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.

*Post-FIRM construction* means construction or substantial improvement that started on or after the effective date of the initial FIRM of the community or after December 31, 1974, whichever is later.

*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.

*Pre-FIRM construction* means construction or substantial improvement, which started on or before December 31, 1974, or before the effective date of the initial FIRM of the community, whichever is later.

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

*Probation* is a means of formally notifying participating communities of violations and deficiencies in the administration and enforcement of the local floodplain management regulations.

*Public safety and nuisance* means anything which is injurious to the safety or health of an entire community, neighborhood or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

*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 quarters for recreational camping, travel, or seasonal use.

*Regular program* means the phase of the community's participation in the NFIP where more comprehensive floodplain management requirements are imposed and higher amounts of insurance are available based upon risk zones and elevations determined in a FIS.

*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 [section 159.07](#). 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 ten-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.

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

*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 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.

*Suspension* means the removal of a participating community from the NFIP because the community has not enacted and/or enforced the proper floodplain management regulations required for participation in the NFIP.

*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. A structure or other development without the elevation, other certification, or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.

*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.

*Water surface elevation* means the height, in relation to the North American Vertical Datum of 1988 (NAVD 88) or National Geodetic Vertical Datum of 1929 (NGVD) (other datum where specified) of floods of various magnitudes and frequencies in the floodplains of riverine areas.

*X zone* means the area where the flood hazard is less than that in the SFHA. Shaded X zones shown on recent FIRMs (B zones on older FIRMs) designate areas subject to inundation by the flood with a 0.2 percent chance of being equaled or exceeded (the 500-year flood). Unshaded X zones (C zones on older FIRMs) designate areas where the annual exceedance probability of flooding is less than 0.2 percent.

*Zone* means a geographical area shown on a FHBM or FIRM that reflects the severity or type of flooding in the area.

*Zone A.* See definition for "A zone."

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

(Ord. No. 1-25, § 1, 2-3-25; Ord. No. 17-25, § 1, 6-2-25)

#### Sec. 159.06. - Lands to which this chapter applies.

This chapter shall apply to all SFHAs and known flood prone areas within the jurisdiction of the City of Muncie as identified in section 159.07, including any additional areas of special flood hazard annexed by the city.

(Ord. No. 1-25, § 1, 2-3-25)

#### Sec. 159.07. - Basis for establishing regulatory flood data.

- (A) The regulatory flood elevation, floodway, and fringe limits for the studied SFHAs within the jurisdiction of the City of Muncie, delineated as an "AE Zone" on the Delaware County, Indiana and Incorporated Areas Flood Insurance Rate Map (FIRM) dated July 4, 2011 shall be determined from the one-percent annual chance flood profiles in the

Flood Insurance Study of Delaware County, Indiana and Incorporated Areas and the corresponding flood insurance rate maps (FIRM) dated July 4, 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 remaining SFHAs within the jurisdiction of the City of Muncie, delineated as an "A Zone" on the Delaware County, Indiana and Incorporated Areas Flood Insurance Rate Map, dated July 4, 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. 1-25, § 1, 2-3-25)

#### Sec. 159.08. - 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. 1-25, § 1, 2-3-25)

#### Sec. 159.09. - Compliance.

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. 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. 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. 1-25, § 1, 2-3-25)

#### Sec. 159.10. - 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. 1-25, § 1, 2-3-25)

Sec. 159.11. - Discrepancy between mapped floodplain and actual ground elevations.

- (A) In cases where there is a discrepancy between the mapped floodplain (SFHA) on the FIRM and the actual ground elevations, the elevation provided on the profiles from the flood insurance study 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. 1-25, § 1, 2-3-25)

Sec. 159.12. - 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; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. No. 1-25, § 1, 2-3-25)

Sec. 159.13. - 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 Muncie, 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. 1-25, § 1, 2-3-25)

Sec. 159.14. - 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 any other violation of the City of Muncie Comprehensive Zoning Ordinance and/or the Muncie City Code. All violations shall be punishable by a fine not exceeding \$2,500.00.

- (1) A separate offense shall be deemed to occur for each day the violation continues to exist.
- (2) The common council of the City of Muncie shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a standard flood insurance policy



to be suspended.

(3) Nothing herein shall prevent the city from taking such other lawful action to prevent or remedy any violations.

All costs connected therewith shall accrue to the person or persons responsible.

(Ord. No. 1-25, § 1, 2-3-25)

#### Sec. 159.15. - Severability.

If any section, clause, sentence, or phrase of this chapter is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this chapter.

(Ord. No. 1-25, § 1, 2-3-25)

### DIVISION 2. - ADMINISTRATION

#### Sec. 159.16. - Designation of administrator.

The common council of the City of Muncie hereby appoints the zoning administrator to administer and implement the provisions of this chapter and is herein referred to as the floodplain administrator.

(Ord. No. 1-25, § 1, 2-3-25)

#### Sec. 159.17. - Permit procedures.

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 nonresidential 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 section 159.18(B)(7) and section 159.32 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) *Construction stage.* Upon establishment of the lowest floor of an elevated structure or structure constructed on fill, it shall be the duty of the applicant to submit to the floodplain administrator an elevation certificate for the building under construction. The floodplain administrator shall review the elevation certificate. Any deficiencies detected during the review shall be corrected by the applicant before work is allowed to continue. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project.
- (3) *Finished construction.*
- (a) Upon completion of construction of any structure requiring certification of elevation, an elevation certificate which depicts the "as-built" lowest floor elevation and other applicable elevation data is required to be submitted by the applicant to the floodplain administrator. The elevation certificate shall be prepared by or under the direct supervision of a registered land surveyor and certified by the same.
  - (b) Upon completion of construction of an elevated structure constructed on fill, a fill report is required to be submitted to the floodplain administrator to verify the required standards were met, including compaction.
  - (c) Upon completion of construction of a floodproofing measure, a floodproofing certificate is required to be submitted by the applicant to the floodplain administrator. The floodproofing certificate shall be prepared by or under the direct supervision of a registered professional engineer or architect and certified by same.

Sec. 159.18. - Duties and responsibilities of the floodplain administrator.

- (A) The floodplain administrator and/or designee 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.
- (B) Duties and responsibilities of the floodplain administrator shall include, but not be limited to:
- (1) Enforce the provisions of this chapter;
  - (2) Review all floodplain development permits to assure that the permit requirements of this chapter have been satisfied;
  - (3) 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;
  - (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) Ensure that construction authorization has been granted by the Indiana Department of Natural Resources for all development projects subject to sections 159.23, 159.25(A), and 159.26;
  - (6) 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.
  - (7) 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;
  - (8) 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 amendment (LOMA), letters of map revision (LOMR), 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 section 159.18(B)(17)–(20).
  - (9) Utilize and enforce all letters of map change (LOMC) and/or physical map revisions (PMR) issued by FEMA for the currently effective SFHA maps of the community;
  - (10) Verify the upstream drainage area of any proposed development site near any watercourse not identified on a FEMA map to determine if section 159.18(B)(5) 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 section 159.17;
  - (13) Verify and record the actual elevation to which any new or substantially improved structures have been floodproofed, in accordance with section 159.17;
  - (14) Make on-site inspections of projects in accordance with section 159.18;
  - (15) Evaluate application for permits to develop in special flood hazard areas to assure that the permit requirements of this chapter have been satisfied;
  - (16) Ensure that an approved connection to a public sewer system or an approved on-site septic system is planned for any structures (residential or nonresidential) to be equipped with a restroom, kitchen or other facilities

requiring disposal of wastewater;

- (17) Provide information, testimony, or other evidence as needed during variance hearings;
- (18) 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 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 of this chapter are required.
- (19) Interpret floodplain boundaries and provide flood hazard and flood protection elevation information.
- (20) Coordinate map maintenance activities and associated FEMA follow-up in accordance with section 159.32;
- (21) 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.
- (22) Serve notices of violations, issue stop-work orders, revoke permits and take corrective actions in accordance with section 159.18(B)(17)–(20);
- (23) 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.
- (24) *Stop work orders.*
  - (a) Upon notice from the floodplain administrator, work on any building, structure or premises that is being done contrary to the provisions of this chapter shall immediately cease.
  - (b) 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.
- (25) *Revocation of permits.*
  - (a) 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.
  - (b) The floodplain administrator may revoke a permit upon determination by the floodplain administrator

that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this chapter.

- (26) *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.
- (27) *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.
- (28) *Floodplain management records.*
- (a) Regardless of any limitation on the period required for retention of public records, records of actions associated with the administration of this 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; determination 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.
- (b) These records shall be available for public inspection at the Muncie Building Commissioner's Office located at 100 W Main St. Muncie, IN 47305.

(Ord. No. 1-25, § 1, 2-3-25)

### DIVISION 3. - PROVISIONS FOR FLOOD HAZARD REDUCTION

#### Sec. 159.19. - General standards.

In all SFHAs and known flood prone areas the following provisions are required:

- (1) 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 shall be constructed by 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 nonresidential 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 flood waters into the system;
- (6) New on-site sewage systems located in a fringe area and repairs to existing on-site sewage systems shall be located and installed in accordance with state and local health codes and procedures; new and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (7) On-site waste disposal and sewage systems shall be located and constructed to avoid impairment to them or contamination from them during flooding and no part of a new on-site sewage system, including the soil absorption area, shall be located in a floodway;
- (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.
- (12) Non-conversion agreements shall be required for all new or substantially improved elevated structures with an enclosure beneath the elevated floor, accessory structures, and open-sided shelters.
- (13) Construction of new solid waste disposal facilities, hazard waste management facilities, salvage yards, and chemical storage facilities shall not be permitted in areas of special flood hazard.

(Ord. No. 1-25, § 1, 2-3-25)

#### Sec. 159.20. - Specific standards.

In all areas of special flood hazard where base flood elevation data or flood depths have been provided, the following provisions are required:

- (1) In addition to the requirements of section 159.07, all structures are 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 nonresidential structure;
  - (c) An addition or improvement made to any existing structure as follows:

- (i) Where the cost of the addition or improvement equals or exceeds 50 percent of the value of the existing structure (excluding the value of the land);
    - (ii) With a previous repair, addition, or improvement constructed since the community's first floodplain ordinance.
  - (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 travel trailer or recreational vehicle on a site for more than 180 days;
  - (f) Installing a manufactured home on a new site or a newly installed manufactured home on an existing site;
  - (g) Reconstruction or repairs made to a repetitive loss structure;
- (2) *Residential construction.*
- (a) New construction or substantial improvement of any residential structures shall meet provisions described in sections 159.23 through 159.26 and applicable general standards described in section 159.19.
  - (b) 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 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.
  - (c) New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, at or above the FPG (two feet above the base flood elevation). 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 section 159.20(4). Should fill be used to elevate a structure, the standards of section 159.20(5) must be met.
- (3) *Nonresidential construction.*
- (a) New construction or substantial improvement of any nonresidential structures (excludes accessory structures) shall meet provisions described in sections 159.23 through 159.26 and applicable general standards described in section 159.19.
  - (b) New construction or substantial improvement of any commercial, industrial, or nonresidential structure (excludes accessory structures) shall either have the lowest floor, including basement, elevated to or above the FPG (two feet above the base flood elevation) or be floodproofed to or above the FPG.
  - (c) 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 section 159.20(4). Should fill be used to elevate a structure, the standards of section 159.20(5) must be met.
  - (d) 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.
  - (e) A nonresidential structure may be floodproofed in accordance with the following:
    - (i) 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.

- (ii) Floodproofing measures shall be operable without human intervention and without an outside source of electricity.
- (4) Fully enclosed areas formed by foundation and other exterior walls below the flood protection grade shall meet the following requirement:
- (a) 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 requirements 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.
    - (vii) Openings are to be not less than three inches in any direction in the plane of the wall. This requirement applies to the hole in the wall, excluding any device that may be inserted such as typical foundation air vent device.
  - (b) The floor of such enclosed area must be at or above grade on at least one side.
- (5) *Structures constructed on fill.* A residential or nonresidential structure may be constructed on a permanent land fill in accordance with the following:
- (a) The 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.
  - (b) The fill should extend at least ten feet beyond the foundation of the structure before sloping below the BFE.
  - (c) The fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulkheading. If vegetative cover is used, the slopes shall be no steeper than three foot horizontal to one foot vertical.
  - (d) The fill shall not adversely affect the flow of surface drainage from or onto neighboring properties.



- (e) The top of the lowest floor including basements shall be at or above the FPG.
- (f) Fill shall be composed of clean granular or earthen material.
- (6) *Standards for manufactured homes and recreational vehicles.* Manufactured homes and recreational vehicles to be installed or substantially improved on a site for more than 180 days must meet the following requirements:
  - (a) 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.
  - (b) Manufactured homes with fully enclosed areas formed by foundation and other exterior walls below the flood protection grade 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 section 159.20(4).
  - (c) Flexible skirting and rigid skirting not attached to the frame or foundation of a manufactured home are not required to have openings.
  - (d) Recreational vehicles placed on a site shall either:
    - (i) Be on site for less than 180 days and be fully licensed and ready for highway use (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or
    - (ii) Meet the requirements for "manufactured homes" as stated earlier in this section.
- (7) *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 this section 159.20(4).
  - (i) Shall not have subsequent additions or improvements that would preclude the structure from its continued designation as an accessory structure.
- (8) *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 services 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.
- (9) *Above ground gas or liquid storage tanks.* Within SFHAs, all newly placed aboveground gas or liquid storage tanks shall meet the requirements for a nonresidential structure as required in section 159.20(3).

(Ord. No. 1-25, § 1, 2-3-25)

Sec. 159.21. - Standards for subdivision proposals and other new developments.

- (A) All subdivision and new development proposals shall be consistent with the need to minimize flood damage.
- (B) All subdivision and new development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (C) All subdivision and new development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (D) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions) containing land in the SFHA and/or flood prone areas. Lines depicting the floodway and fringe shall be delineated on the plat and/or site plans.
- (E) All subdivisions containing a SFHA shall include statements in the restrictions and owner's certificate dealing with the lowest floor elevation requirement, increased flood risks and flood insurance premiums, and protection of the floodway. The plan commission may require additional information to be included as deemed necessary to meet the requirements of this chapter.
- (F) All subdivision proposals shall minimize development in the SFHA and/or limit density of development permitted in the SFHA. The plan commission may require additional engineering studies prior to allowing development in the SFHA.
- (G) All subdivision proposals shall ensure safe access into/out of SFHA for pedestrians and vehicles (especially emergency responders).
- (H) Streets, blocks lots, parks and other public grounds shall be located and laid out in such a manner as to preserve and utilize natural streams and channels. Whenever possible the floodplains shall be included within parks or other public grounds.
- (I) 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. 1-25, § 1, 2-3-25)

Sec. 159.22. - Critical facility.

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.

Sec. 159.23. - Standards for identified floodways.

Located within SFHAs, established in section 159.07, 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 exemptions to the 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, creek rock removal, and prospecting.

- (A) If the site is in a regulatory floodway as established in section 159.07, 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).
- (B) No action shall be taken by the floodplain administrator until approval has been granted by the Indiana Department of Natural Resources for construction in the floodway, or evidence provided by an applicant that the development meets specified criteria to qualify for a general license or exemption to the requirement of the Flood Control Act. The floodplain development permit shall meet the provisions contained in this article.
- (C) The floodplain development permit cannot be less restrictive than an approval issued for construction in a floodway issued by the Indiana Department of Natural Resources, or the specified criteria used to qualify for a general license or exemption to the Flood Control Act for a specific site/project. However, a community's more restrictive regulations (if any) shall take precedence.
- (D) In floodway areas identified on the FIRM, development shall cause no increase in flood levels during the occurrence of the base flood discharge without first obtaining a conditional letter of map revision and meeting requirements of section 159.32(A). A conditional letter of map revision cannot be issued for development that would cause an increase in flood levels affecting a structure and such development should not be permitted.
- (E) In floodway areas identified by the Indiana Department of Natural Resources through detailed or approximate studies but not yet identified on the effective FIRM as floodway areas, the total cumulative effect of the proposed development, when combined with all other existing and anticipated development, shall not adversely affect the efficiency of, or unduly restrict the capacity of the floodway. This adverse effect is defined as an increase in the elevation of the regulatory flood of at least 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.
- (F) For all projects involving channel modifications or fill (including levees) the city shall submit the data and request that the Federal Emergency Management Agency revise the regulatory flood data per mapping standard regulations found at 44 CFR 65.12.

Sec. 159.24. - Standards for identified fringe.

If the site is located in an identified 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), then the floodplain administrator may issue the local floodplain development permit provided the provisions contained in division 3 of this chapter have been met.

(Ord. No. 1-25, § 1, 2-3-25)

Sec. 159.25. - Standards for SFHAs without established base flood elevation and/or floodways/fringes.

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

- (1) If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined, and the drainage area upstream of the site is 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 receipt of 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 division 3 of this chapter have been met.

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

- (1) If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined and the drainage area upstream of the site is less than 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.
- (2) Upon receipt, the floodplain administrator may issue the local floodplain development permit, provided the provisions contained in division 3 of this chapter have been met.

(Ord. No. 1-25, § 1, 2-3-25)

Sec. 159.26. - Standards for flood prone areas.

All development in known flood prone areas not identified on FEMA maps, or where no FEMA published map is available, shall meet general standards of section 159.19 and the following:

- (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 article have been met.

(Ord. No. 1-25, § 1, 2-3-25)

#### DIVISION 4. - VARIANCES AND APPEALS PROCEDURES

##### Sec. 159.27. - Designation of variance and appeals board.

The Delaware-Muncie Metropolitan Board of Zoning Appeals shall hear and decide appeals and requests for variances from requirements of this chapter in accordance with established schedules and procedures.

(Ord. No. 1-25, § 1, 2-3-25)

##### Sec. 159.28. - Duties of board of zoning appeals.

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. The board shall hear and decide requests for variances from requirements of this chapter. Any person aggrieved by the decision of the board may appeal such decision to the Delaware County Circuit Courts.

(Ord. No. 1-25, § 1, 2-3-25)

##### Sec. 159.29. - Variance procedures.

The Delaware-Muncie Metropolitan Board of Zoning Appeals shall hear and decide appeals and requests for variances from requirements of this chapter. 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 Delaware County Circuit Courts. In addition to established procedures, in passing upon a request to vary the requirements of this chapter, the board of zoning appeals shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and:

- (1) The danger of life and property due to flooding or erosion damage;
- (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

- (3) The importance of the services provided by the proposed facility to the community;
- (4) The necessity to the facility of a waterfront location, where applicable;
- (5) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (6) The compatibility of the proposed use with existing and anticipated development;
- (7) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (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 of transport of the floodwaters at the site;
- (10) The danger that materials may be swept onto other lands to the injury of others; and
- (11) 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.

(Ord. No. 1-25, § 1, 2-3-25)

Sec. 159.30. - Conditions for variances.

- (A) 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 written report addressing each of the above factors submitted with the variance application;
  - (3) A determination that failure to grant the variance would result in exceptional hardship as defined in section 159.05; and
  - (4) 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.
- (B) Variances may be issued for new construction, substantial improvements, and other development necessary for the conduct of a functionally dependent use.
- (C) No variance for a residential use within a floodway subject to section 159.23, section 159.25(A), and section 159.26 may be granted.
- (D) Any variance granted in a floodway subject to section 159.23, section 159.25(A), and section 159.26 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.
- (E) Variances to the provisions for flood hazard reduction of division 3, may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade.
- (F) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (G) 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.

- (H) 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.
- (I) 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. 1-25, § 1, 2-3-25)

Sec. 159.31. - Special conditions.

Upon the consideration of the factors listed in division 4 of this chapter, and the purposes of this chapter, the board of zoning appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(Ord. No. 1-25, § 1, 2-3-25)

Sec. 159.32. - Map maintenance activities.

To meet NFIP minimum requirements to have flood data reviewed and approved by FEMA, and to ensure that the City of Muncie flood maps, studies and other data identified in section 159.07 accurately represent flooding conditions so appropriate floodplain management criteria are based on current data, the following map maintenance activities are identified:

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

- (1) 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:
  - (a) Floodway encroachments that increase or decrease base flood elevations or alter floodway boundaries.
  - (b) 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.
  - (c) Alteration of watercourses that result in a relocation or elimination of the special flood hazard area, including the placement of culverts; and subdivision of large-scale development proposals requiring the establishment of base flood elevations.
- (2) 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.
- (3) 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.

(4) Floodplain development permits issued by the floodplain administrator shall be conditioned upon the applicant's letter of map revision from FEMA for any development proposal subject to this section.

(B) *Right to submit new technical data.*

(1) 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 president of the common council of the City of Muncie and may be submitted to FEMA at any time.

(C) *Annexation/detachment.*

(1) Upon occurrence, the floodplain administrator shall notify FEMA in writing whenever the boundaries of the City of Muncie 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 Delaware County, Indiana and Incorporated Areas Flood Insurance Rate Map accurately represent the city boundaries, include within such notification a copy of a map of the City of Muncie 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. 1-25, § 1, 2-3-25)

## CHAPTER 160. - URBAN HOMESTEADING

*Footnotes:*

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**Editor's note—** Ord. No. 1-14, § 2(Exh. A), adopted Feb. 14, 2014, amended former Ch. 160, §§ 160.01—160.12, in its entirety to read as herein set out. Former Ch. 160 pertained to similar subject matter and derived from Ord. No. 21-85, 6-3-85; Ord. No. 17-87, 8-3-87; 37-88, 8-2-88.

### Sec. 160.01. - Establishment.

The following guidelines, policies, and procedures are established for the implementation of the City of Muncie, urban homesteading program.

(Ord. No. 1-14, § 2(Exh. A), 2-3-14)

### Sec. 160.02. - Administration.

The Muncie Redevelopment Commission (MRC) is established as the agency to administer an urban homesteading program under which family dwellings for one through four families may be conveyed to individuals or families, who must occupy and rehabilitate the dwellings, and community organizations that must rehabilitate the dwellings and offer them for sale. The urban homesteading program shall be administered by MRC or its designee on the recommendation and advice of the neighborhood investment committee (NIC) and the community development director and his or her designated staff. This urban homesteading program shall be named and referred to as the "Urban Revitalization Program."

(Ord. No. 1-14, § 2(Exh. A), 2-3-14)



Sec. 160.03. - Acquisition of property.

- (A) The MRC may acquire real property in the name of the city for use as provided in this chapter.
- (B) Under IC 6-1.1-24-4.5, the county auditor shall provide a list of tracts or items of real property on which one or more installments of taxes are delinquent.
- (C) Under IC 6-1.1-25-1 and IC 6-1.1-25-4, MRC may acquire the deed for real property purchased at tax sale for the purposes of this chapter 120 days after the date of the sale, after compliance with the notice provisions of IC 6-1.1-25-4.5.
- (D) Under IC 6-1.1-25-7.5, MRC may acquire the deed for real property for which the holder of the certificate of sale has failed to request the county auditor execute and deliver a deed within 120 days after issuance of the certificate.
- (E) In addition to real property acquired through tax sale for the purposes of this chapter, MRC may acquire real property by purchase or gift.

(Ord. No. 1-14, § 2(Exh. A), 2-3-14)

Sec. 160.04. - Notice to residents of unit.

MRC shall, after the acquisition of real property for use as provided in this chapter, take the steps necessary to fully inform the residents of each unit in which the dwellings are located of:

- (1) The existence, nature, and location of the dwellings.
- (2) The qualifications required for participation in the urban revitalization program under this chapter.
- (3) The terms and conditions on which the dwellings may be conveyed to qualified persons.

(Ord. No. 1-14, § 2(Exh. A), 2-3-14)

Sec. 160.05. - Applications; eligibility; drawings to determine receipt of dwellings; approval procedure.

- (A) An individual or community organization may apply for the urban revitalization program by completing an application.
- (B) The following applicants are qualified and shall be approved to receive real property offered under this chapter:
  - (1) A person who:
    - (a) Is at least 18 years of age;
    - (b) Applies for and receives a rehabilitation loan with respect to the real property not later than the period prescribed by MRC in its rules and regulations as allowed under IC 36-7-17.1-11 and described in section 160.10 of this chapter.
    - (c) Has, including immediate family, not previously participated in the urban revitalization program or other urban homesteading programs by the city.
  - (2) A community organization as described in IC 36-7-9-2, following the rules and regulations prescribed by MRC as allowed under IC 36-7-17.1-11 and section 160.10 of this chapter.
- (C) Approved applicants are entitled to receive a list of all properties owned by the MRC that are available under the urban revitalization program. MRC shall have the final determination of properties that shall be made available.
- (D) Approved applicants may apply for each dwelling in which they are interested. A drawing shall be held to

determine those applicants receiving the dwellings. Persons applying under this chapter shall receive priority over community organizations if both indicate an interest in the dwelling in the drawing. Each approved person and his or her immediate family may receive only one dwelling in the drawing. Each approved community organization may receive as many dwellings as MRC considers appropriate.

(Ord. No. 1-14, § 2(Exh. A), 2-3-14)

Sec. 160.06. - Conveyances; duties of recipients.

- (A) If the applicant executes an agreement that meets the minimum conditions specified in subsection (B) below, the conveyance of a dwelling to an applicant under this chapter shall be made in return for a fee of:
  - (1) One dollar; plus
  - (2) Other costs as prescribed by MRC in its rules and regulations as allowed under IC 36-7-17.1-11 and section 160.10 of this chapter.
- (B) The agreement described in subsection (A) above must include the following minimum conditions:
  - (1) The applicant must apply for an receive a rehabilitation loan with respect to the dwelling and the real property on which is it located not later than the period prescribed by the MRC in its rules and regulations as allowed under IC 36-7-17.1-11 and described in section 160.10 of this chapter.
  - (2) Upon receiving the rehabilitation loan described in subsection 160.06(B)(1), the applicant must comply with the program regulations set forth in 24 CFR 203.50 and 24 CFR 203.440 et seq., with respect to the rehabilitation loan described in subsection 160.06(B)(1).
  - (3) The applicant must comply with any additional terms, conditions, and requirements that MRC may impose to ensure that the purposes of this chapter are carried out. This may include the requirement that the dwelling be rehabilitated to minimum building code standards before possession.

(Ord. No. 1-14, § 2(Exh. A), 2-3-14)

Sec. 160.07. - Conveyances; methods authorized.

- (A) MRC shall convey real property acquired for the purposes of this chapter to an individual or community organization qualified under section 160.06 of this chapter by using a method prescribed by subsection (B) or (C).
- (B) The real property may be conveyed by a conditional sales contract, with title to remain in MRC until the individual or community organization receives the rehabilitation loan described in subsection 160.06(B) of this chapter, subject to section 160.08.
- (C) The title to real property may be conveyed as a determinable fee, with the language of the granting clause in the deed of conveyance providing that the real property is conveyed on the conditions that the purchaser:
  - (1) Will apply for and receive a rehabilitation loan with respect to the real property not later than the period prescribed by the MRC in its rules and regulations as allowed under IC 36-7-17.1-11 and section 160.10 of this chapter.
  - (2) Will comply with such additional terms, conditions, and requirements as MRC requires under this chapter.

(Ord. No. 1-14, § 2(Exh. A), 2-3-14)

Sec. 160.08. - Conveyances; effect of purchaser's failure to fulfill agreement.

Before the vesting of a fee simple title in the purchaser under section 160.09 of this chapter, any material failure by the purchaser to carry out the agreement entered into under section 160.06 of this chapter nullifies the agreement and all right, title, and interest in the property immediately reverts to MRC, except that MRC may grant the purchaser a specified period, not to exceed two years, to come into compliance with the terms of the agreement.

(Ord. No. 1-14, § 2(Exh. A), 2-3-14)

Sec. 160.09. - Conveyances; fee simple title.

If, after purchasing real property under this chapter, an individual or community organization has complied with the terms of the individual's agreement under section 160.06 of this chapter, MRC shall convey to the individual a fee simple title to the real property.

(Ord. No. 1-14, § 2(Exh. A), 2-3-14)

Sec. 160.10. - Rules and regulations.

MRC shall prescribe the rules and regulations necessary to carry out this chapter, including, but not limited to, rules and regulations establishing the period by which an individual or community organization must apply for and receive a rehabilitation loan with respect to the dwelling and the real property on which it is located as described in section 160.06 of this chapter, the applicant approval process, the dwelling award procedure, and prior inspections and conditions of the dwelling.

(Ord. No. 1-14, § 2(Exh. A), 2-3-14)

Sec. 160.11. - Retention of deed by city; property deemed municipal property; tax exemption.

Property acquired or held under this chapter with retention of the deed by MRC is considered property of MRC held for municipal purposes and is exempt from property taxation. This property tax exemption becomes effective on the date of conveyance to MRC. A petition to cancel taxes or a certified application for exemption is not required for property acquired or held under this chapter.

(Ord. No. 1-14, § 2(Exh. A), 2-3-14)

Sec. 160.12. - Property not applied for in successive drawings; sale; disposition of proceeds.

A property for which no one applies in two successive drawings held under this chapter may be sold at public auction to the highest bidder.

(Ord. No. 1-14, § 2(Exh. A), 2-3-14)

CHAPTER 161. - ECONOMIC REVITALIZATION AREAS

DIVISION 1. - REAL PROPERTY TAX ABATEMENT

*Footnotes:*

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**Editor's note—** Ord. No. 3297, §§ 1—4, adopted Aug. 4, 1997, amended Subchapter, Real Property Tax Abatement, of Ch. 161 to read as herein set out. Formerly, said subchapter, §§ 161.01, 161.02, pertained to similar subject matter and derived from Ord. No. 85-89, adopted Feb. 5, 1990, and Ord. No. 48-95, §§ 1—4, adopted Aug. 31, 1996.

Sec. 161.01. - Tax abatement committee established.

The common council, City of Muncie, hereby creates the Tax Abatement Committee (committee). The committee shall be comprised of members appointed by the presiding officer of the council pursuant to section 32.35 of the Muncie Code for the purpose of reviewing tax abatement applications and monitoring property owner compliance. The committee shall also make recommendations to the common council concerning property owner compliance, upon which the final decision rests with the common council. The committee may also make recommendations concerning ordinance, resolution, application, and monitoring revisions which can effect the tax abatement program. Final decisions concerning the tax abatement program rests with the common council.

(Ord. No. 32-97, § 1, 8-4-97)

Sec. 161.02. - Procedure established for designation of economic revitalization areas.

The following procedure is hereby established for the designation of economic revitalization areas for purposes of real property tax abatement or real property tax abatement in already designated areas:

- (A) Applications shall be filed with the common council tax abatement committee (committee) and with the city clerk prior to the project and be in writing and signed by the applicant and shall contain all applicable information required by the application form and shall be supported by payment of fees hereinafter fixed.
- (B) Upon receipt of an application, the committee shall review the information filed, in a public meeting proceeding the common council meeting, and the proposed rehabilitation or redevelopment project and make findings and recommendations to the common council with regard to:
  - (1) Compliance with statutory criteria.
  - (2) Furtherance of city development objectives.
  - (3) Creation of and the retention of employment opportunities.
  - (4) Expansion of property tax base.
  - (5) Compliance with EEG/AA practices as well as a review of human resource policies.
  - (6) Stabilization of property values.
- (C) Upon review by the city legal department to assure legality in form, and review and sponsorship by a council member, the application shall be filed with the office of the city clerk in accordance with all deadlines, policies, and procedures established by the common council to be placed on council's agenda.
- (D) The common council may consider a preliminary declaratory resolution designating the requested economic revitalization area for real property tax abatement, and fixing the duration of such designation for periods of three, six, or ten years, at its regularly scheduled meeting following the filing of said application after receiving and reviewing the findings and recommendations of the committee.

For a three-year abatement:

- (1) The new or rehabilitated property must be within the major groups 20—39 or 42 of the Standard

Industrial Classification Manual, published by the United States Office of Management and Budget; and

- (2) All jobs of the applicant and/or occupant of the real property upon which the three-year abatement is being sought shall pay a minimum of \$7.25 per hour and comply with the hourly rate and other representations as contained in the SB-1 submitted with the application.

For a six-year abatement:

- (1) The new or rehabilitated property must be within the major groups 20—39 or 42 of the Standard Industrial Classification Manual, published by the United States Office of Management and Budget; and
- (2) At least five new full-time, permanent jobs should be created by the project within one year or 15 in three years, and all existing jobs should be retained, as certified by the petitioner; and
- (3) All jobs of the applicant and/or occupant of the real property upon which the six-year abatement is being sought shall pay a minimum of \$7.25 per hour and comply with the hourly rate and other representations as contained in the SB-1 submitted with the application.

For a ten-year abatement:

- (1) The new or rehabilitated property must be within the major groups 20—39 or 42 of the Standard Industrial Classification Manual, published by the United States Office of Management and Budget; and
  - (2) At least ten new full-time, permanent jobs should be created by the project within one year or 30 jobs in three years, and all existing jobs should be retained, as certified by the petitioner; and
  - (3) All jobs of the applicant and/or occupant of the real property upon which the ten-year abatement is being sought shall pay a minimum of \$7.25 per hour and comply with the hourly rate and other representations as contained in the SB-1 submitted with the application.
- (E) Upon adoption of said resolution, the common council shall cause a notice of such adoption and the purpose thereof, and of the fact that maps and plats have been prepared and can be inspected at the office of the Muncie Redevelopment Commission and the Delaware County Assessor's Office to be published in the Muncie Star Press Daily Newspaper published in and of general circulation in the city one time at least ten days prior to the public hearing which shall state the date, time and place at which the common council will receive and hear remonstrances or objections from persons interested in or affected by said proceedings pertaining to the requested real property tax abatement.
- (F) On the date and at the time and place theretofore fixed and as stated in said notices, the common council shall receive and hear remonstrances and objections to said resolutions together with the additional evidence and arguments, if any, of the applicant, with respect to said application. In its deliberations, the common council shall give consideration to all those factors with respect to the findings and recommendations as presented. Said hearing may be adjourned from time to time. At the conclusion of said hearing, if the common council approves said application, it shall adopt a final declaratory resolution. If the common council disapproves said application, it shall rescind the preliminary declaratory resolution. Such action shall be duly recorded, and shall be binding and conclusive on all persons, except that any person who has filed a written remonstrance and is aggrieved by such decision may, within ten days, appeal to a circuit or superior court of Delaware County as hereinafter provided.
- (G) Any applicant, and any other person who has filed a written remonstrance to such application, who is aggrieved by the final action taken by the common council, may, within ten days after such final action, file in the office of the clerk of a circuit or superior court of Delaware County, a copy of said application, all written

remonstrances thereto, the order of the common council, and his appeal therefrom, together with his bond conditions to pay the costs of said appeal [to] be determined within the limitations and restrictions imposed by I.C. 34-4-17.5-1 et al; provided, however, that in all appeals the burden of proof shall be upon the applicant.

- (H) After the final approval(s) by the common council, the property owner may file a certified deduction application form with the Delaware County auditor.
- (I) Property owners receiving tax abatement are required to file annual reports with the tax abatement committee for review. Also, property owners receiving a tax abatement, after July 1, 1991, are required to file an annual copy of compliance with the statement of benefits form (CF-1) with the Muncie city clerk's office and the tax abatement committee no later than June 15th of each year during which the abatement is received. The committee will review the CF-1 for compliance and forward a recommendation to the common council for review. If the property owner does not file a CF-1, the committee may immediately forward a recommendation of non-compliance to the common council.
- (J) All property owners who file a CF-1, after passage of this ordinance, shall be required to appear annually before the committee to ascertain whether the business has complied with the statement of benefits and whether the abatement should be continued. If the property owner receiving the tax abatement has not complied with the statement of benefits, the committee may immediately forward information of non-compliance to the common council to begin revocation of the tax abatement pursuant to IC 6-1.1-12.1-5.9.
- (K) Each applicant shall be limited to one tax abatement on real property in each calendar year. Provided additional abatements may be granted with the unanimous approval of common council.
- (L) The tax abatement committee has the authorization to develop a memorandum of agreement as part of the application process. The agreement will outline the property owner's commitment to the project and outline the criteria for the possible rescission of the tax abatement and payback if the property owner is found to be in noncompliance.

(Ord. No. 32-97, § 2, 8-4-97; Ord. No. 57-99, §§ 1—3, 2-23-00)

#### Sec. 161.03. - Office projects.

The purpose of granting real property tax abatement for office projects is to revitalize economically distressed areas. In order to take advantage of the tax abatement program for new or rehabilitated office projects, the Muncie common council must designate an area an "economic revitalization area". If an area is designated an economic revitalization area, the common council can consider either a three, six, or ten year partial abatement on increased tax assessments as a result of new construction or rehabilitative improvements made to real property. Office project abatements will follow the same procedure and criteria as outlined in section 161.02. The following criteria will be followed to determine the number of years and percentage of deduction allowed for abatement.

- (A) For three-year abatement:
  - (1) The new or rehabilitated property must be located in an economic revitalization area; and
  - (2) At least five new full-time, permanent jobs should be created by the project within three years, and all existing jobs should be retained as certified by the petitioner, and
  - (3) All jobs of the applicant and/or occupant of the real property upon which the three-year abatement is being sought shall pay a minimum of \$7.25 per hour and comply with the hourly rate and other representations as contained in the SB-1 submitted with the application.

(B) For a six-year abatement:

- (1) The new or rehabilitated property must be located in an economic revitalization area; and
- (2) Minimum construction costs estimated to exceed \$250,000.00 for new construction or \$100,000.00 for rehabilitation; and
- (3) At least five new full-time, permanent jobs should be created by the project within one year or 15 in three years, and all existing jobs should be retained, as certified by the petitioner; and
- (4) All jobs of the applicant and/or occupant of the real property upon which the six-year abatement is being sought shall pay a minimum of \$7.25 per hour and comply with the hourly rate and other representations as contained in the SB-1 submitted with the application.

(C) For a ten-year abatement:

- (1) The new or rehabilitated property must be located in an economic revitalization area; and
- (2) Minimum construction costs estimated to exceed \$1,000,000.00 for new construction or \$500,000.00 for rehabilitation; and
- (3) At least ten new full-time, permanent jobs should be created by the project within one year or 30 in three years, and all existing jobs should be retained, as certified by the petitioner; and
- (4) All jobs of the applicant and/or occupant of the real property upon which the ten-year abatement is being sought shall pay a minimum of \$7.25 per hour and comply with the hourly rate and other representations as contained in the SB-1 submitted with the application.

(Ord. No. 32-97, § 3, 8-4-97; Ord. No. 57-99, §§ 4—6, 2-23-00)

Sec. 161.035. - Low and moderate income multi-family residential projects.

In accordance with Indiana Code 6-1.1-12.13(e)(11)(A), a real property deduction may be approved for a residential multi-family facility that "contains at least 20 percent of the units available for use by low and moderate income individuals". The purpose of said abatements would be twofold. First, they would serve to revitalize these distressed areas within the City of Muncie, and secondly, they would serve to provide additional housing for low and moderate income individuals in the City of Muncie.

In order to utilize the tax abatement program for new multi-family housing projects the Muncie Common Council must designate an area as an "economic revitalization area". If an area is designated an economic revitalization area, the Common Council can consider either a three, six, or ten year partial abatement on increased tax assessments as a result of new multi-family residential construction in which at least 20 percent of the units are reserved for low and moderate income individuals and are within the required distressed area boundaries.

Abatements for low and moderate income multi-family residential construction projects will follow the same procedures as outlined in section 161.02 subject to the following criteria which will be followed in determining the number of years and percentage of deduction allowed for these abatements.

(A) For a three-year abatement:

- (1) The new multi-family residential construction must be located in the required low and moderate income qualifying area and be declared an economic revitalization area; and
- (2) At least 20 percent of the units in the development shall be reserved for low and moderate income individuals; and

- (3) At least five new full-time, permanent jobs should be created by the project within three years, and all existing jobs should be retained as certified by the petitioner; and
- (4) All jobs of the applicant and/or occupant of the residential project upon which the six-year abatement is being sought shall pay a minimum of \$7.25 per hour and comply with the hourly rate and other representations as contained in the SB-1 submitted with the application.

(B) For a six-year abatement:

- (1) The new multi-family residential construction must be located in the required low and moderate income qualifying area and be declared an economic revitalization area; and
- (2) At least 20 percent of the units in the development shall be reserved for low and moderate income individuals; and
- (3) Minimum construction costs estimated to exceed \$250,000.00; and
- (4) At least five new full-time, permanent jobs should be created by the project within one year or 15 jobs in three years, and all existing jobs should be retained, as certified by the petitioner; and
- (5) All jobs of the applicant and/or occupant of the residential project upon which the six-year abatement is being sought shall pay a minimum of \$7.25 per hour and comply with the hourly rate and other representations as contained in the SB-1 submitted with the application.

(C) For a ten-year abatement:

- (1) The new multi-family residential construction must be located in the required low and moderate income qualifying area and be declared an economic revitalization area; and
- (2) At least 20 percent of the units in the development shall be reserved for low and moderate income individuals; and
- (3) Minimum construction costs estimated to exceed \$1,000,000.00; and
- (4) At least ten new full-time, permanent jobs should be created by the project within one year or 30 jobs in three years, and all existing jobs should be retained, as certified by the petitioner.
- (5) All jobs of the applicant and/or occupant of the residential project upon which the ten-year abatement is being sought shall pay a minimum of \$7.25 per hour and comply with the hourly rate and other representations as contained in the SB-1 submitted with the application.

(Ord. No. 64-98, § 1, 12-7-98; Ord. No. 59-99, §§ 1—3, 2-23-00)

Sec. 161.04. - Fee schedule.

- (A) When submitting an application for real estate property tax abatement, the following nonrefundable fee schedule applies:

| Total Rehabilitation/<br>Construction Cost<br>of Project | Application<br>Fee |
|----------------------------------------------------------|--------------------|
| \$ 20,000.99 or less                                     | \$100.00           |
| 20,001 to \$ 75,000.99                                   | 200.00             |



|                         |          |
|-------------------------|----------|
|                         |          |
| 75,001 to \$500,000.99  | 300.00   |
| 500,001 to \$999,999.99 | 500.00   |
| 1,000,000 or more       | 1,000.00 |

- (B) Such fees so collected by the city shall be deposited into a special account and shall be expended to pay the costs of publication of public notices required herein and administrative expenses incurred in the processing of applications for designation of economic revitalization areas and applications for tax abatement therein, and shall not revert to the general fund.

(Ord. No. 32-97, §§ 1-4, 8-4-97)

#### Sec. 161.05. - Single-family residences.

- (A) Deductions relating to the construction of residential real property shall be granted by the council only when the council finds that the facility to be constructed is located in an economic development target area following findings by the council made pursuant to I.C. 6-1.1-12.1-7 and further provisions of this section.
- (B) Before the common council determines that an abatement is appropriate for real property within an economic development target area, and after following procedures required by I.C. 6-1.1-12.1-7, the council shall further make all of the following findings pertaining to said property.
- (1) That the facility to be constructed consists of new construction intended for the habitation by a single-family (owner occupied) unit;
  - (2) That the construction of the facility is intended to commence not later than December 31, 2006; and
  - (3) That the total project for which the applicant seeks abatement consists of construction on not less than one separate free standing structure, which shall be intended for residential usage by a single-family unit.
- (C) The Muncie Redevelopment Commission shall be entitled to charge a reasonable fee payable to the "City of Muncie" for applications for the aforesaid residential tax abatement. These fees shall be an amount equal to the fees authorized for application fees for real estate property tax abatement, as found within the City of Muncie Code of Ordinances, section 161.04, fee schedule, and all amendments thereto.
- (D) Abatements granted under this section shall be for three years and the granting of the abatements under the provisions of this section shall terminate on December 31, 2026, unless extended by ordinance of the common council. The termination of the provisions of this ordinance shall not affect the length of any abatements granted prior to termination.

(Ord. No. 46-97, §§ 1, 4, 10-10-07; Ord. No. 37-01, § 1, 10-1-01; Ord. No. 41-16, § 2, 11-14-16; Ord. No. 50-21, § 1, 12-6-21)

Secs. 161.06—161.19. - Reserved.

#### DIVISION 2. - TANGIBLE PERSONAL PROPERTY TAX ABATEMENT

Footnotes:

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**Editor's note—** Ord. No. 31-97, §§ 1—4, adopted Aug. 4, 1997, amended Subchapter Tangible Personal Property Tax Abatement of Ch. 161 to read as herein set out. Formerly, said subchapter, §§ 161.20, 161.21, pertained to similar subject matter and derived from Ord. No. 84-89, 2-5-90; Ord. No. 48-95, §§ 5—15, 8-7-95; Ord. No. 49-96, § 1, 9-9-96)

Sec. 161.20. - Tax abatement committee established.

The common council hereby creates the tax abatement committee (committee). The committee shall be comprised of members appointed by the presiding officer of the council pursuant to section 32.35 of the Muncie Code for the purpose of reviewing tax abatement applications and monitoring property owner compliance. The committee shall also make recommendations to the common council concerning property owner compliance, upon which final decision rests with the common council. The committee may also make recommendations concerning ordinance, resolution, application, and monitoring revisions which can affectS the tax abatement program. Final decisions concerning the tax abatement program rests with the common council.

(Ord. No. 31-97, § 1, 8-4-97)

Sec. 161.21. - Procedure established for the designation of economic revitalization areas.

The following procedure is hereby established for the designation of economic revitalization areas for the purpose of tangible, personal property tax abatement and for personal property tax abatement in an already designated area:

- (A) Applications may be filed with the common council tax abatement committee (committee) and with the city clerk's office prior to the project and be in writing and signed by the applicant and shall contain all applicable information required by the application form and shall be supported by payment of fees hereinafter fixed.
- (B) Upon receipt of an application, the committee shall review the information filed, in a public meeting proceeding the common council meeting, and the proposed rehabilitation project and make finding and recommendations to the common council with regard to:
  - (1) Compliance with statutory criteria.
  - (2) Furtherance of city developmental objectives.
  - (3) Creation of and retention of employment opportunities.
  - (4) Expansion of property tax base.
  - (5) Compliance with EEO/AA practices as well as review of human resource policies.
- (C) Upon review by the city legal department to assure legality in form, and a review and sponsorship by a council member, the application shall be filed with the city clerk's office in accordance with all deadlines, policies, and procedures established by the common council to be placed on the council's agenda.
- (D) The common council may consider a preliminary declaratory resolution designating the requested economic revitalization area for new manufacturing equipment tax abatement and fixing the duration of such designation for terms not to exceed five years or ten years, at its regularly scheduled meeting following the said application after receiving the findings of and recommendations of the committee.
  - (i) The following criteria must be met for five-year personal property tax abatement:

- (1) Use of new or rehabilitated machinery or equipment must be within major groups 20—39 and 42 of the Standard Industrial Classification Manual, published by the United States Office of Management and Budget; and
  - (2) All existing jobs will be retained as certified by the petitioner; and
  - (3) All jobs of the applicant and/or occupant of the entire facility where the personal property, upon which the five-year abatement is being sought shall pay a minimum of \$7.25 per hour and comply with the hourly rate and other representations as contained in the SB-1 submitted with the application.
- (ii) The following criteria must be met for ten-year personal property tax abatement:
- (1) Use of new, or rehabilitated machinery or equipment must be within major groups 20—39 and 42 of the Standard Industrial Classification Manual, published by the United States Office of Management and Budget; and
  - (2) All existing jobs will be retained as certified by the petitioner; and
  - (3) At least 250 new jobs will be created by applicant within a five-year period, and at least 125 of these within three years from the time of approval. However, since the common council has placed a high priority and importance on attracting and retaining local manufacturing jobs, and due to the high regard and value placed on existing manufacturing jobs, this jobs creation criteria can be waived by a majority vote of the common council in the event there is a potential significant loss of local existing manufacturing jobs or plant closure. The significance of any potential job loss due to plant closure or relocation shall be determined at the time of the filing of any ten-year tax abatement application based upon this criteria.
  - (4) All jobs of the applicant and/or occupant of the entire facility where the personal property, upon which the ten-year abatement is being sought shall pay a minimum of \$7.25 per hour and comply with the hourly rate and other representations as contained in the SB-1 submitted with the application.
- (iii) The following types of equipment are eligible for tax abatement following the same criteria in section (D)(i—ii) above for periods of one (1) to five (5) years pursuant to the following schedules and subject to council approval.
- (1) "New research and development equipment" meaning any tangible personal property that:
    - (A) Is installed after June 30, 2004 and before January 1, 2006, in an economic revitalization area in which a deduction for tangible personal property is allowed;
    - (B) Consists of:
      - (i) Laboratory equipment;
      - (ii) Research and development equipment;
      - (iii) Computers and computer software;
      - (iv) Telecommunications equipment; or
      - (v) Testing equipment;
    - (C) Is used in research and development activities devoted directly and exclusively to experimental or laboratory research and development for new products, new uses of existing products, or improving or testing existing products; and
    - (D) Is acquired by the property owner for purposes described in this subdivision and was never before used by the owner for any purpose in Indiana.

The term does not include equipment installed in facilities used for or in connection with efficiency surveys, management studies, consumer surveys, economic surveys, advertising or promotion, or research in connection with literacy history, or similar projects.

- (2) "New logistical distribution equipment" meaning any tangible personal property that:
  - (A) Is installed after June 30, 2004, and before January 1, 2006, in an economic revitalization area:
    - (i) In which a deduction for tangible personal property is allowed; and
    - (ii) Located in the City of Muncie; and
  - (B) Consists of:
    - (i) Racking equipment;
    - (ii) Scanning or coding equipment;
    - (iii) Separators;
    - (iv) Conveyors;
    - (v) Fork lifts or lifting equipment (including "walk behinds");
    - (vi) Transitional moving equipment;
    - (vii) Packaging equipment;
    - (viii) Sorting and picking equipment; or
    - (ix) Software for technology used in logistical distribution; and
  - (C) Is used for the storage or distribution of goods, services, or information; and
  - (D) Before being used as described in clause (C), was never used by its owner for any purpose in Indiana.
- (3) "New information technology equipment" meaning tangible personal property that:
  - (A) Is installed after June 30, 2004 and before January 1, 2006, in an economic revitalization area:
    - (i) In which a deduction for tangible personal property is allowed; and
    - (ii) Is located in the City of Muncie; and
  - (B) Consists of equipment, including software, used in the fields of:
    - (i) Information processing;
    - (ii) Office automation;
    - (iii) Telecommunication facilities and networks;
    - (iv) Informatics;
    - (v) Network administration;
    - (vi) Software development; and
    - (vii) Fiber optics; and
  - (C) Before being installed as described in clause (A) was never used by its owner for any purpose in Indiana.
- (4) Abatements for one to five years can be approved at the discretion of the common council on a case-by-case basis pursuant to the following schedules:

*For a one-year abatement:*

| Year one | Thereafter |  |  |  |  |
|----------|------------|--|--|--|--|
| 100%     | 0%         |  |  |  |  |
|          |            |  |  |  |  |

*For a two-year abatement:*

| Year one | Year two | Thereafter |  |  |  |
|----------|----------|------------|--|--|--|
| 100%     | 50%      | 0%         |  |  |  |
|          |          |            |  |  |  |

*For a three-year abatement:*

| Year one | Year two | Year three | Thereafter |  |  |
|----------|----------|------------|------------|--|--|
| 100%     | 66%      | 33%        | 0%         |  |  |
|          |          |            |            |  |  |

*For a four-year abatement:*

| Year one | Year two | Year three | Year four | Thereafter |  |
|----------|----------|------------|-----------|------------|--|
| 100%     | 75%      | 50%        | 25%       | 0%         |  |
|          |          |            |           |            |  |

*For a five-year abatement:*

| Year one | Year two | Year three | Year four | Year five | Thereafter |
|----------|----------|------------|-----------|-----------|------------|
| 100%     | 80%      | 60%        | 40%       | 20%       | 0%         |

- 
- (E) Upon adoption of said resolution, the common council shall cause a notice of such adoption and the purpose thereof, and of the fact that maps and plats have been prepared and can be inspected at the office of the Muncie redevelopment commission and the Delaware County assessor's office to be published in the Muncie Star Press Daily newspaper published in and of general circulation in the city one time at least ten days prior

to the public hearing which shall state the date of such publication, on which the common council will receive and hear remonstrances or objections from persons interested in or affected by said proceedings pertaining to the installation of new manufacturing equipment.

- (F) On the date and at the time and place theretofore fixed and as stated in said notice, the common council shall receive and hear remonstrances and objections to the resolution together with the additional evidence and arguments of the applicant if any, with respect to the application. In its deliberations, the common council shall give consideration to all those factors with respect to the findings and recommendations as presented. Said hearing may be adjourned from time to time. At the conclusion of the hearing, if the common council approves said application it shall adopt a final declaratory resolution confirming the preliminary declaratory resolution. If the common council disapproves said application it shall rescind the preliminary declaration resolution. Such action shall be duly recorded, and shall be binding and collusive on all persons, except that any person who has filed a written remonstrance and is aggrieved by such decision may, within ten days, appeal to the circuit or superior court of Delaware County as hereinafter provided.
- (G) Any applicant, and any other person who has filed a written remonstrance to such application, who is aggrieved by the final action taken by the common council may within ten days after such final action, file in the office of the clerk of a circuit or superior court of Delaware County, a copy of said application, all written remonstrances thereto, the order of the common council and his appeal therefrom, together with his bond conditioned to pay the costs of said appeal should the appeal be determined within the ai limitations and restrictions imposed by IC 34-4-17.5-1 et a]; provided, however, that in all appeals, the burden of proof shall be upon the appellant.
- (H) After final approval(s) by the common council, the property owner may file a certified deduction application form with the Delaware county auditor.
- (I) Property owners receiving tax abatement are required to file annual reports with the tax abatement committee for review. Also, property owners receiving a tax abatement, after July 1, 1991, are required to file an annual copy of compliance with the statement of benefits form (CF-1) with the Muncie city clerk's office and the tax abatement committee no later than June fifteenth of each year during which abatement is received. The committee will review the CF-1 for compliance and forward a recommendation to the common council for review. If the property owner does not file a CF-1, the committee may immediately forward a recommendation of non-compliance to the common council.
- (J) All property owners who file a CF-1, after the passage of this ordinance, shall be required to appear annually before the committee to ascertain whether the business has complied with the statement of benefits and whether the abatement should be continued. If the property owner receiving the tax abatement has not complied with the statement of benefits, the committee shall immediately forward information of non-compliance to the common council to begin revocation of the tax abatement pursuant to IC 6-1.1-12.1-5.9.
- (K) Each application shall be limited to one tax abatement on personal property in each calendar year. Provided additional abatement may be granted with the unanimous approval of common council.
- (L) The tax abatement committee has the authorization to develop a memorandum of agreement as part of the application process. The agreement will outline the property owner's commitment to the project and outline the criteria for the possible rescission of the tax abatement and payback if the property owner is found in non-compliance.

Sec. 161.22. - Fee schedule.

- (A) The following nonrefundable fee structure shall be in place for filing of applications for designation of economic revitalization areas and tax abatement applications. The appropriate fees are payable by the applicant to the city at the time of filing the application.

| Cost of New Tangible Personal Property (New Manufacturing Equipment) | Fee       |
|----------------------------------------------------------------------|-----------|
| \$ 50,000.99 or less                                                 | \$ 100.00 |
| 50,001 to \$100,000.99                                               | 200.00    |
| 100,001 to 500,000.99                                                | 300.00    |
| 500,001 to 999,999.99                                                | 500.00    |
| 1,000,000 or more                                                    | 1,000.00  |

- (B) Such fees so collected by the city shall be deposited into a special account and shall be expended to pay the costs of publication of public notices required herein and administrative expenses incurred in the processing of applications for designation of economic revitalization areas and applications for tax abatement therein, and shall not revert to the general fund.

(Ord. No. 31-97, § 3, 8-4-97)

Secs. 161.23—161.29. - Reserved.

DIVISION 3. - ENVIRONMENTAL CONSIDERATIONS

Sec. 161.30. - Environmental impact.

In addition to the foregoing requirements of this chapter, if the applicant is seeking a real property tax abatement and/or tangible personal property tax abatement for a facility, operation and/or use that requires any of the following to be obtained from, or be filed with the Indiana Department of Environmental Management or its designee, the applicant shall provide the environmental impact committee with the materials that the applicant, or its representative, was or will be required to file with IDEM or its designee describing the potential environmental impact of the facility, operation and/or use:

- (1) Minor Source Operating Permit (MSOP) (Air Permit).

- (2) Federally Enforceable State Operating Air Permit (FESOP) (Air Permit).
- (3) Title V Operating Permit (TVOP) (Air Permit).
- (4) Initial National Pollution Discharge Elimination System Permit (NPDES) (Water Permit).
- (5) Underground Storage Tank Initial Registration.

(Ord. No. 31-21, § 1, 8-2-21)

## CHAPTER 162. - WIRELESS COMMUNICATION FACILITIES>

### Sec. 162.01. - Definitions.

- (A) *Antenna array*. An antenna array is one or more rods, panels, discs or similar devices used for transmission or reception of radio frequency signals, which may include omnidirectional antenna (rod), directional antenna (panel) and parabolic antenna (disc). The antenna array does not include the support structure defined below.
- (B) *Attached wireless communication facility (Attached WCFs)*. An attached WCF is an antenna array that is attached to an existing building or structure (attachment structure), which structures shall include but not be limited to utility poles, signs, water towers, with any accompanying pole or device (Attachment device) which attaches the antenna array to the existing building or structure and associated connection cables, and an equipment facility which may be located either inside or outside of the attachment structure.
- (C) *Co-location/site sharing*. Co-location/site sharing shall mean use of a common WCF or common site by two or more wireless license holders or by one wireless license holder for more than one type of communications technology and/or placement of a WCF on a structure owned or operated by a utility or other public entity.
- (D) *Equipment facility*. An equipment facility is any structure used to contain ancillary equipment for a WCF which includes cabinets, shelters, a buildout of an existing structure, pedestals or any other similar structures.
- (E) *FAA*. FAA shall mean the Federal Aviation Administration.
- (F) *FCC*. FCC shall mean the Federal Communications Commission.
- (G) *Height*. When referring to a WCF, height shall mean the distance measured from the ground level to the highest point on the WCF, including the antenna array.
- (H) *Setback*. Setback shall mean the required distance from the property line of the parcel on which the WCF is located to the support structure.
- (I) *Support structure*. A support structure is a structure designed and constructed specifically to support an antenna array and, for purposes of this chapter, shall be limited to monopoles. Any device (attachment device) which is used to attach an attached WCF to an existing building or structure (attachment structure) shall be excluded from the definition of and regulations applicable to support structures.
- (J) *TCA*. TCA shall mean the Federal Telecommunications Act of 1996.
- (K) *Temporary wireless communication facility*. A Temporary WCF shall mean a WCF to be placed in use for 90 or fewer days.
- (L) *Wireless communications*. Wireless communications shall mean any personal wireless services as defined in the TCA, which includes FCC licensed commercial wireless telecommunications services including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging and similar services that currently exist or that may in the future be developed.



(M) *Wireless communication facility (WCF)*. A WCF is an unstaffed facility for the transmission and/or reception of wireless telecommunications services, usually consisting of an antenna array, connection cables, an equipment facility and a structure to achieve the necessary elevation.

(N) *Zone*. Zones are as defined in Title XV, Chapter 150 of the Code of Ordinances of the City of Muncie, Indiana.

(Ord. No. 66-98, 12-7-98)

#### Sec. 162.02. - Purpose and goals.

(A) The purpose of this chapter is to establish general and specific guidelines for the siting and regulation of WCFs.

(B) The goals of this chapter are to:

- (1) Provide a range of locations for WCFs in a variety of zones;
- (2) Provide clear performance standards addressing the siting of WCFs within each zone;
- (3) Encourage the location of WCFs on existing structures, including utility structures, signs, water towers, buildings and other WCFs where feasible;
- (4) Encourage co-location and site sharing of new and existing WCFs;
- (5) Facilitate the use of public property and structures for WCFs;
- (6) Streamline and expedite any existing permitting procedures in accordance with the intent of any state statute enacted with the purpose to effect compliance with the TCA; and,
- (7) Enhance the ability of providers of telecommunication services to provide such service to the community quickly, effectively and efficiently.

(Ord. No. 66-98, 12-7-98)

#### Sec. 162.03. - Applicability.

(A) Pre-existing WCFs, functioning prior to the effective date of this chapter shall not be required to meet the requirements of this chapter except as specified in section 162.08.

(B) This chapter shall not govern the installation of any amateur radio facility that is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.

(C) This chapter shall supersede all conflicting requirements of other codes, titles or chapters regarding the locating, siting and regulating of WCFs.

(Ord. No. 66-98, 12-7-98)

#### Sec. 162.04. - Performance and usage standards.

(A) *Height standards*.

- (1) Attached WCFs shall not add more than 20 feet in height to the existing attachment structure to which it is attached.
- (2) WCFs with support structures shall not exceed a maximum height of 200 feet.

(B) *Setback standards*.

- (1) Attached WCFs with antenna arrays for attached WCFs are exempt from the setback standards of this title and from the setback standards for the zone in which they are located. An attached WCF antenna array may

extend up to five feet horizontally beyond the edge of the attachment structure so long as the antenna array does not encroach upon an adjoining parcel.

- (2) Equipment facilities shall meet the setback standards for buildings for the underlying zone in which they are located.
- (3) WCFs with support structures shall be set back a minimum of 20 feet from all lot lines.

(C) *Landscaping and screening.*

- (1) WCFs with support structures shall be landscaped to effectively screen the view of the base of the support structure, the equipment facility and the security fence; to ensure the public health, safety, comfort and to improve the environment surrounding the support structure.
- (2) All WCFs with support structures shall comply with the green belt and landscaping standards as established in Title XV Chapter 150 section 150.214.5 (B)(3)(a), (B)(3)(b)5, (B)(3)(f)(1—5 and 7) and (B)(3)(g) of the Code of Ordinances for the City of Muncie, except for the following:
  - (a) All fences shall be as specified in subsection (G) of this section; and,
  - (b) All references to owner or developer shall apply to the site lessee.
- (3) All required landscaping shall be completed by the conclusion of construction; however, if the weather conditions prohibit this, then all landscaping shall be completed within eight months after conclusion of construction. Surety, such as, but not limited to, bonds, letters of credit or personal guaranties may be required to ensure installation.
- (4) Appeals of any decision rendered in connection with this subsection shall be reviewed pursuant to Title XV, Chapter 150, Section 150.214.5(C) of the Code of Ordinances for the City of Muncie.
- (5) Attached WCFs are exempt from this subsection.
- (6) Existing mature growth and natural land forms on the site shall be preserved to the extent feasible; however, vegetation that causes interference with the antennas or inhibits access to the equipment facility may be trimmed.

(D) *Aesthetics placement, materials and colors.*

- (1) Attached WCFs which are significantly visible to the adjacent residences shall be designed so as to blend in with the existing structure to the extent feasible, including placement in a location which is consistent with proper functioning of the WCF and the use of compatible or neutral colors.
- (2) Attached WCFs which are significantly visible to adjacent residences and have aesthetic impacts that are not able to be reasonably mitigated by placement and color solutions are required to be screened in a reasonable and achievable manner.
- (3) WCFs with support structures shall be designed so as to blend in with the existing surroundings to the extent feasible, including the use of compatible colors.
- (4) Equipment facilities shall, to the extent practicable, use materials, colors and textures that will blend with the natural setting and environment.

(E) *Lighting and signage.*

- (1) WCFs shall not be artificially lighted, except for:
  - (a) Security and safety lighting of the equipment facility as long as the lighting is appropriately down shielded and kept within the boundaries of the site; and,
  - (b) Such lighting of WCFs as may be required by the FAA or FCC or other applicable authority and installed in a

manner to comply with the requirements but to minimize the impact on adjacent parcels.

- (2) WCFs shall not display any signage, logos, decals, symbols or any messages of a commercial or noncommercial nature, except for a small message containing provider information and other such identification and emergency telephone information and such other information as may be required by local, state or federal regulations governing WCFs.

(F) *Noise.*

- (1) No equipment shall be operated at a WCF so as to produce noise in excess of the applicable noise standards under the laws of the State of Indiana, except for emergency situations requiring the use of a backup generator. In such situations, the noise standards may be exceeded on a temporary basis.

(G) *Security fencing.*

- (1) WCFs with support structures shall be enclosed by a security fence not less than six feet in height and the support structure shall be constructed in a manner that reasonably prevents unauthorized personnel from climbing the support structure. Nothing herein shall prevent security fencing which is necessary to meet other state or federal requirements.

(H) *Radio frequency emissions.*

- (1) The TCA gives the FCC sole jurisdiction of the regulation of radio frequency (RF) emissions and WCFs which meet the FCC standards shall not be conditioned or denied on the basis of RF impacts.
- (2) In order to provide information to its citizens, applicants for WCFs shall be required to provide information, upon request, on the projected power density of the facility and how this meets the FCC standards.
- (3) No unusual sound emissions such as alarms, bells, buzzers or the like are permitted on any WCFs.

(I) *Structural integrity.*

- (1) WCFs with support structures must be constructed to the Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision F Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures" as it may be updated or amended.

(Ord. No. 66-98, 12-7-98)

Sec. 162.05. - Siting requirements.

(A) *Attached WCFs.*

- (1) Attached WCFs are allowed in all zones as long as the attachment structure complies with the underlying zone's requirements and the attached WCF complies with this chapter and any other applicable local, state or federal regulations.

(B) *WCFs with support structures.*

- (1) WCFs with support structures are allowed in all zones as long as they:
  - (a) Are at least 300 feet in every direction from any type of residence, measuring from the security fence on the side closest to the residence, if the height is between 150 feet and 200 feet; or
  - (b) Are at least 200 feet in every direction from any type of residence, measuring from the security fence on the side closest to the residence, if the height is between 100 feet and 149 feet; or
  - (c) Are at least 150 feet in every direction from any type of residence, measuring from the security fence on the side closest to the residence, if the height is less than 100 feet; and

(d) Comply with this chapter and any other applicable local, state or federal regulations.

(2) WCFs with support structures that cannot comply with subsection (1)(a—c) may request a variance. Such request shall be made to the Delaware-Muncie Board of Zoning Appeals, as outlined in section 162.06 of this chapter.

(C) *WCFs as a part of a coordinated development approval.*

(1) WCFs as a part of a proposed residential or nonresidential subdivision, planned unit development, site plan, rezoning or other coordinated development approval shall be permitted as outlined in subsections (A) and (B).

(D) *WCFs for temporary terms.*

(1) Temporary WCFs, of any type, are allowed for a term of not more than 90 days with a possible one time 90 day extension. Said temporary WCFs are to allow service that was interrupted by an act of God or other means to continue while repairs are being completed on the permanent WCF. The city building commissioner shall be notified, within one business day from the date of discovery that repairs are needed, that repairs are going to begin and that a temporary WCF is going to be used. If the damage to the WCF exceeds 50 percent of the replacement cost, either a WCF building permit or an attached WCF building permit, whichever is appropriate, will be required before repairs are made.

(E) *Co-location/site sharing of WCFs.*

(1) No building permit shall be issued for a new WCF with support structure or attached WCF until the applicant demonstrates, to the reasonable satisfaction of the Delaware-Muncie Metropolitan Board of Zoning Appeals, by written report, that no existing support structure or attachment structure can accommodate the applicant's proposed antenna. Evidence to be submitted shall consist of:

- (a) Whether existing structures are located within the geographical area required to meet the applicant's engineering requirements.
- (b) Whether existing structures are of sufficient height to meet the applicant's engineering requirements.
- (c) Whether existing structures have sufficient structural strength to support applicant's proposed antenna and related equipment.
- (d) Whether the applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing structures or whether the antenna on the existing structures would cause interference with the applicant's proposed antenna.
- (e) Whether the fees, costs or contractual provisions required by the owner of the existing structure or for adapting an existing structure for co-location are unreasonable. Costs exceeding the costs of creating a new structure are to be deemed unreasonable.
- (f) Any other limiting factors presented by the applicant that render existing structures unsuitable.

(2) Any type of WCF that co-locates or site shares, either on a support structure or an attachment structure, shall be required to comply with this chapter and shall be required to purchase only a WCF co-location/site sharing building permit.

(3) It shall be a violation of this chapter for an owner of a WCF to unreasonably deny co-location/site sharing. For purposes of this subsection, an unreasonable denial of co-location/site sharing shall include, but shall not be limited to, instances when the owner of a WCF causes a wireless license holder, utility or public entity to reject co-location/site sharing due to an excessively high, non-market monthly co-location fee or when the owner of a WCF denies co-location/site sharing due to unjustified competitiveness concerns.

(F) *Distance between WCFs.*

- (1) No new WCFs with support structures may be constructed within a distance of 750 yards from an existing support structure, unless the applicant can demonstrate to the Delaware-Muncie Metropolitan Board of Zoning Appeals, through the variance procedure, that a lesser proximity to the existing structure is required to satisfy the operational requirements of the applicant.

(G) *Location on public property.*

- (1) To encourage and facilitate the use of public property for the siting of any type of WCFs, any variance request for a proposed WCF on public property shall be approved or denied expeditiously and without extensive cost to the applicant.

(Ord. No. 66-98, 12-7-98)

Sec. 162.06. - Approval procedures.

(A) *Allowed outright.*

- (1) Where an attached WCF is allowed outright, only an attached WCF building permit is required.
- (2) Where a WCF with support structure is allowed outright, only a WCF building permit is required.

(B) *Variance request.*

- (1) Where a WCF with support structure applicant requests a variance, the Delaware-Muncie Metropolitan Board of Zoning Appeals shall review such requests and issue such variance when deemed appropriate.
- (2) Each applicant requesting a variance shall submit a scaled plan and a scaled elevation view and other support drawings, calculations and other documentation showing the location and dimensions of the WCF and all improvements associated therewith, including information concerning structure specifications, antenna locations, equipment facilities, landscaping, fencing and, if relevant, topography, adjacent uses and existing vegetation.
- (3) A review fee of \$500.00 and a radio frequency intermodulation study fee of \$500.00 (for co-location applicants only and only if the applicant does not supply the study itself) shall accompany each request. These fees may be used to engage consultants to review the technical aspects of the plan and study (if required).
- (4) Notice, hearing, approval or denial and appeal of the request shall be given in accordance with Title XV Chapter 150 section 150.234 of the Code of Ordinances for the City of Muncie.
- (5) Every request for variance shall be reviewed for compliance with section 162.04 of this chapter; however, the applicable standards may be reduced or waived so long as the approval of the WCF meets the goals and purpose of this chapter.
- (6) The Delaware-Muncie Metropolitan Board of Zoning Appeals may impose conditions in addition to the standards of section 162.04 if all of the following findings have been made:
  - (i) The WCF would result in probable significant adverse visual impacts on nearby residences.
  - (ii) The conditions are based upon the goals and purposes of this chapter and other adopted policies and regulations of this jurisdiction.
  - (iii) The conditions are reasonable and capable of being accomplished.
- (7) Upon granting of a variance, the applicant shall then be required to purchase the appropriate building permit.

(Ord. No. 66-98, 12-7-98)

Sec. 162.07. - Removal of abandoned WCFs.

- (A) Any WCF that is not operated for a continuous period of 12 months shall be considered abandoned and the WCF owner shall remove the WCF within 90 days after notice from the City of Muncie. If the abandoned WCF is not removed within 90 days, the City of Muncie may remove it and recover all costs from the WCF owner, including all attorney's fees and court costs that may arise while collecting these costs.
- (B) If there are two or more users of a WCF, then subsection (A) shall not be effective until all providers cease to use the WCF for a continuous period of 12 months.
- (C) If the owner of an abandoned WCF cannot be located or is no longer in business, the requirements of subsection (A) shall be the responsibility of the landowner on whose property the WCF is located.

(Ord. No. 66-98, 12-7-98)

Sec. 162.08. - Nonconforming WCFs.

- (A) WCFs in existence on the effective date of this chapter and that do not comply with the requirements of this chapter are nonconforming WCFs and are subject to the following provisions:
  - (1) Nonconforming WCFs may continue in use for the purpose now used but may not be expanded without complying with this chapter, except as hereinafter provided.
  - (2) Nonconforming WCFs may add additional antennas (belonging to the same carrier or other carriers) subject to the purchase of a WCF building modification permit and the additional antenna must comply with this chapter.
  - (3) Nonconforming WCFs which are hereafter damaged or destroyed due to any reason or cause may be repaired and restored to their former use, location and physical dimensions subject to obtaining a WCF building modification permit but without otherwise complying with this chapter; however, if the damage to the WCF exceeds 50 percent of the replacement cost, the WCF may only be repaired or restored pursuant to the requirements of this chapter.
  - (4) The owner of any nonconforming WCF may replace, repair, rebuild and/or expand such WCF only in order to improve the structural integrity of the facility, to allow the facility to accommodate co-located antennas or facilities, or to upgrade the facilities to current engineering, technological or communications standards, without having to conform to the provisions of this chapter, so long as such facilities are not increased in height by more than ten percent.

(Ord. No. 66-98, 12-7-98)

Sec. 162.09. - Modifications of WCFs.

- (A) Any modification to any type of WCF allowed under this chapter shall be approved by the city building commissioner.
- (B) Any modification of any type of WCF that is approved by the city building commissioner shall require a WCF building modification permit.

(Ord. No. 66-98, 12-7-98)

Sec. 162.10. - Severability.

(A) The various sections, subsections and clauses of this chapter are hereby declared to be severable. If any part, sentence, paragraph or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the chapter shall not be affected thereby.

(Ord. No. 66-98, 12-7-98)

Sec. 162.11. - Repealer.

(A) Any ordinances or parts thereof in conflict with the provisions of this chapter are hereby repealed to [the] extent of such conflict.

(Ord. No. 66-98, 12-7-98)

Sec. 162.12. - Enforcement.

(A) The city building commissioner or an authorized representative shall enforce all provisions of this chapter.

(Ord. No. 66-98, 12-7-98)

Sec. 162.13. - Effective date.

(A) This chapter shall take effect on December 7, 1998.

(Ord. No. 66-98, 12-7-98)

CHAPTER 163. - STORM DETENTION/RETENTION FACILITIES FOR COMBINED SEWERS>

Sec. 163.01. - Purpose.

The final NPDES discharge permit for the Muncie wastewater treatment plant issued by the Indiana department of environmental management February 1, 1998 requires that new construction tributary to the combined sewer system be designed to minimize or delay inflow contribution to the existing combined sewer. To comply with this requirement, the following regulations shall apply:

Sec. 163.02. - Discharge permit application.

Prior to constructing any drainage facilities intended for discharge to a combined sewer system, a discharge permit application shall be submitted to the Muncie sanitary district engineering department for review and approval. The discharge permit application shall be accompanied by plans for stormwater drainage and shall include details for stormwater detention or retention.

(Ord. No. 60-98, § 1, 11-9-98)

Sec. 163.03. - Design criteria for stormwater detention or retention facilities.

Detention/retention facilities shall be designed in accordance with the following guidelines to limit the peak discharge from a development.

(1) For development with a drainage area (tributary to a combined sewer) equal to or greater than ten acres,

peak discharge from the detention/retention facility shall be limited to the five year, predeveloped frequency storm peak discharge, with a duration equal to or slightly greater than the time of concentration for the drainage area or the 24 hour duration storm, whichever provides the lesser peak discharge.

- (2) For developments with a drainage area (tributary to a combined sewer system) less than ten acres, peak discharge from the detention/retention facility shall be limited to the ten year period redeveloped frequency storm peak discharge with a duration equal to or slightly greater than the time of concentration for the drainage area of the 24 hour duration storm whichever provides the lesser peak discharge.
- (3) The five year or ten year peak discharge shall be based on land use conditions prior to development, using corresponding runoff coefficients, time of concentration and other basin parameters.
- (4) Inflow (runoff) to all stormwater detention or retention facilities shall be determined using a 100 year 24 hour storm to develop an inflow hydrograph.
- (5) The 100 year 24 hour peak discharge and inflow hydrograph shall be based on land use conditions representing fully developed conditions, using corresponding runoff coefficients, time of concentration and other basin parameters.
- (6) A routing procedure shall be used to demonstrate that the stormwater detention or retention facility will reduce the 100 year peak discharge equal to or less than the five year or ten year peak discharge using the predeveloped conditions.
- (7) The results of the routing procedure shall demonstrate that adequate storage volume has been provided. The detention facility shall not be overtopped from the 100 year 24 hour storm event and shall have a minimum freeboard of two feet between the maximum routed pool elevation and the top of the facility embankment.
- (8) An emergency spillway shall be provided to discharge flow resulting from pool elevations greater than the 100 year 24 hour pool elevation. The spillway shall have a minimum size adequate to pass the routed 100 year 24 hour storm (assuming the primary spillway is not functional) without overtopping the detention facility embankment. The elevation of the emergency spillway shall not be placed lower than the routed 100 year 24 hour pool elevation.
- (9) Erosion protection shall be provided for the primary outlet and emergency spillway so that the detention facility embankment will be protected. Location of the emergency spillway shall be in undisturbed material.
- (10) The minimum allowable size of the primary outlet conduit from the detention or retention facility shall be 12 inches, unless otherwise approved by the Muncie sanitary district engineer. If further restriction of the outlet conduit is required, the restriction shall be made at the head end for the outlet conduit.
- (11) In the event the discharge velocity from the primary outlet or emergency spillway is greater than six feet per second or is excessive in the opinion of the sanitary district engineer, energy dissipation may be required.
- (12) Detention facilities which are designed to have dry bottoms, must be designed to have underdrains, to drain the bottom of the detention facility so the facility can be maintained. The bottom of the facility shall be designed to have longitudinal and transverse grade to the outlet so that the facility will empty leaving no ponded water.
- (13) The methodology used to develop peak discharge hydrography and flood routing calculation shall be in accordance with acceptable engineering practice. Calculations based on the soil conservation service procedures, corps of engineers procedures or the bureau of reclamation procedures are considered acceptable.
- (14) Peak discharge calculations shall be submitted for the five year or ten year predevelopment and 100 year



post-development condition. The calculations shall show the drainage area, runoff calculations, time of concentrations and other basin parameters used to develop the appropriate peak discharge.

- (15) Calculations shall be submitted which show stage-discharge relations (rating curves) for the primary outlet and emergency spillway, the stage-storage relationship for the retention facility, the inflow hydrography for the 100 year 24 hour storm and the routing 100 year 24 hour discharge hydrography.

(Ord. No. 60-98, § 1, 11-9-98)

#### Sec. 163.04. - Responsibility for maintenance.

It shall be the responsibility of the subdivider owner to maintain the drainage system, detention or retention facility and water course located on private property in good working condition as originally designed and constructed.

(Ord. No. 60-98, § 1, 11-9-98)

#### Sec. 163.05. - Exempt facilities.

Detention or retention facilities shall not be required for:

- (1) Construction of a single- or double-family home where the impervious surface area has not increased by more than one-half acre.
- (2) Areas where stormwater drainage has been designed such that after combining both off-site and on-site drainage area, no increase in total peak discharge occurs from the development during the five-, ten- and 100-year storm events and the volume of rainfall for each project site outlet has not been increased over the entire range of storm events up to the 100-year event.

(Ord. No. 60-98, § 1, 11-9-98)

### CHAPTER 164. - STORM DRAINAGE AND SEDIMENT CONTROL

#### Sec. 164.01. - Purpose.

The purpose of this chapter is to protect the safety, health and general welfare of the citizens of the City of Muncie, Indiana by requiring compliance with standards and practices which result in proper storm water drainage and sediment control in the event of land alterations.

(Ord. No. 21-02, § 1, 6-3-02)

#### Sec. 164.02. - Jurisdiction.

The provisions of this chapter shall be applicable throughout the incorporated area of the city.

(Ord. No. 21-02, § 2, 6-3-02)

#### Sec. 164.03. - Land alterations.

Any land alteration must be accomplished in conformity with the drainage requirements of this chapter. Where any apparent conflict exists between drainage requirements of this chapter and similar requirements of the city or any state or federal agency which has jurisdiction over the work involved, the most stringent requirements shall be applicable. Except for the foregoing, compliance with any other applicable provision of law, ordinance or regulation shall not excuse noncompliance with this chapter.

(Ord. No. 21-02, § 3, 6-3-02)

Sec. 164.04. - Definitions.

*Building commissioner:* As used herein, "building commissioner" shall mean the Building Commissioner of the City of Muncie, Indiana.

*Board of public works and safety.* As used herein, "board" shall mean the Board of Public Works and Safety of the City of Muncie, Indiana.

*Board of sanitary commissioners:* As used herein, "commissioners" and "sanitary commissioners" shall mean the Board of Sanitary Commissioners of the Muncie Sanitary District of the City of Muncie, Indiana.

*City engineer:* As used herein, "city engineer" shall mean the City of Muncie City Civil Engineer or a designee of the mayor which designee may be the civil engineer member of the board of sanitary commissioners.

*County surveyor:* As used herein, or "county surveyor" shall mean the Delaware County Surveyor.

*Drainage board:* As used herein, "drainage board" shall mean the Delaware County Drainage Board.

*Drainage facilities:* As used herein, "drainage facilities" shall mean all ditches, channels, conduits, retention-detention systems, tiles, swales, sewers, and other natural or artificial means of draining storm water from land.

*Drainage requirements:* As used herein, "drainage requirements" shall mean:

- (1) Minimum drainage standards established by the provisions of this chapter.
- (2) Regulations promulgated by the common council of the City of Muncie.
- (3) Obligations and requirements relating to drainage established under the subdivision control ordinance of the City of Muncie, Indiana.
- (4) Requirements stated under the Delaware County Comprehensive Zoning Ordinance and the Flood Plain Management Ordinance for Delaware County, Indiana.
- (5) Obligations and requirements relating to drainage established under the drainage board of Delaware County, Indiana and/or the common council of the city.
- (6) Conditions relating to drainage attached to a grant of appeal by the Delaware - Muncie Metropolitan Board of Zoning Appeals.

*Land alterations:* As used herein, "land alterations" shall mean any action taken relative to land which either:

- (1) Changes the contour; or
- (2) Increases the runoff rate; or
- (3) Changes the elevation; or
- (4) Changes the rate at which water is absorbed; or

- (5) Changes the drainage pattern; or
- (6) Creates or changes a drainage facility; or
- (7) Involves construction, enlargement or location of any building on a permanent foundation as regulated herein; or
- (8) Involves a subdivision of land as regulated in the Delaware County Subdivision Ordinance or a planned unit development or a mobile home park as regulated in the Delaware County Comprehensive Zoning Ordinance; or
- (9) Creates an impoundment.

*Fifty-year return frequency storm:* As used herein "50-year return frequency storm" means a rainfall event for which the intensity and duration generate an accumulated depth expected only once every 50 years. It is also assumed to be maximum storm conditions for which protection is expected through these minimum standards.

*Maintenance:* As used herein, "maintenance" shall mean cleaning out, removing obstructions from, spraying and making minor repairs of a drainage facility so it will perform the function for which it was designed and constructed.

*Minor landscaping:* As used herein, "minor landscaping" shall mean the planting and tilling of gardens, flower beds, shrubs, trees, [etc.]

*Parcel:* As used in herein "parcel" shall mean the total area of land where the land alteration is proposed or accomplished.

*Person.* As used herein, "person" shall mean any natural person and any legal entity

*Plan commission:* As used herein, "plan commission" shall mean the Delaware-Muncie Metropolitan Plan Commission.

*Regulated drain:* A drainage facility which falls under the jurisdiction of the Indiana Drainage Code.

*Sanitary district engineer:* As used herein, "sanitary district engineer" shall mean the engineering director of the Muncie Sanitary District, of the City of Muncie, Indiana.

(Ord. No. 21-02, § 4, 6-3-02)

#### Sec. 164.05. - Administration.

- (A) *Drainage permit exclusions:* The following actions shall not be considered a land alteration for the purpose of this chapter nor shall a drainage permit be required:
- (1) Excavation of cemetery graves;
  - (2) Refuse disposal sites where storm drainage is controlled by other regulations;
  - (3) Excavation for wells, excavation and backfills for poles, conduits and wires of utility companies;
  - (4) Exploratory excavation or soil testing under the direction and control of professional engineers, soil engineers, geologists, civil engineers, architects or land surveyors, which are backfilled and which are restored to original contours;
  - (5) Ordinary cultivation of agricultural land including tilling, terracing, construction of minor open ditches and crop irrigation;
  - (6) The planting and tilling of gardens, flower beds, shrubs, trees and other common uses and minor landscaping of land appurtenant to residences;

- (7) Fill and grading of former basement site after the demolition of a structure, to conform to adjacent terrain;
  - (8) Fill of small holes caused by erosion, settling of earth or the removal of such materials as dead trees, posts or concrete;
  - (9) A fill less than one foot in depth, which has no impact on adjacent properties;
  - (10) Maintenance of drainage facilities;
  - (11) Installation of septic systems, when proper permit has been obtained;
  - (12) Construction of a driveway, when a proper permit has been obtained;
  - (13) Installation of individual building sewers, when a proper tap permit has been obtained;
  - (14) A land alteration upon a lot in an approved subdivision plat, provided proper permits are obtained.
- (B) *Drainage permits application:* No person shall undertake or accomplish any land alteration without having in force a written drainage permit obtained from the city engineer. The drainage permit must be obtained before any work is initiated with the exception of testing to determine procedures or materials. In order to obtain a drainage permit, the applicant for same must be the person or entity that will in fact be responsible for accomplishing the land alteration for which the permit was issued. Applications for a drainage permit shall be filed in the office of the city engineer on forms prescribed by the board of public works and safety of the city. Within seven working days from the date of filing for a drainage permit, the city engineer shall either issue the permit or forward a written statement to the applicant indicating cause for non-issuance. The statement shall set forth all actions, information, and/or plan amendments necessary to allow issuance of a drainage permit. Approvals shall not be unduly withheld. A drainage permit shall be issued by the city engineer if:
- (1) The application and the drainage plan with supplemental information have been properly prepared and submitted and reflect compliance with the general drainage standards for the city.
  - (2) A certificate of sufficiency of plan and a certificate of obligation to observe have been filed by a registered professional engineer, land surveyor or architect engaged in storm drainage design;
  - (3) If required by the city engineer or another entity authorized to establish or enforce drainage requirements, a bond has been posted pursuant to the requirements of this chapter;
  - (4) If required by the city engineer or another entity authorized to establish or enforce drainage requirements, a covenant has been executed pursuant to the requirements of this chapter;
  - (5) If required by the city engineer or another entity authorized to establish or enforce drainage requirements, an easement has been dedicated pursuant to the requirements of this chapter;
  - (6) The applicable fee has been paid.

No drainage facility intended for public dedication shall be constructed until a drainage permit has been obtained from the city engineer. A drainage facility or system intended to be dedicated to the public, in whole or in part, must be accepted by the city by action of the board of public works and safety of the city, as applicable, and no such drainage facility or system shall be accepted unless it is found to be in conformance with this chapter.

(Ord. No. 21-02, § 6, 6-3-02)

#### Sec. 164.06. - Nonconforming sites.

A land altered area existing prior to the enactment of this chapter must be brought into full compliance with this chapter if any of the following activities occur:

(A) *Expansion of area:* The gross area impacted by a land alteration is expanded by more than ten percent. Repeated expansions of a land altered area constructed over a period of time commencing with the effective date of this c shall be combined in determining whether this threshold has been reached.

(B) *Intensification and change of use:* The use of a land altered area is intensified or the use of such area is changed, resulting in an increase in storm water runoff.

(Ord. No. 21-02, § 6, 6-3-02)

#### Sec. 164.07. - Permit duration.

If the land alteration for which the permit has been issued has not commenced within two years from the date of its issuance, the permit shall expire by operation of law and no longer be of any force or effect; provided, however, the board, upon the recommendation of the city engineer, extend the validity of the permit for an additional period of time.

(Ord. No. 21-02, § 7, 6-3-02)

#### Sec. 164.08. - Bonds, covenants and easements.

(A) *Bonds:* The board, upon the recommendation of the city engineer, may as a prerequisite to the issuance of a drainage permit, require the posting of a performance bond with surety to the approval of the board. Such bond shall name the city as the obligee who can enforce the obligations thereunder, and shall be in an amount established by the board as adequate to provide for the satisfactory completion of the improvements required by the drainage permit. In instances where the board has required a performance bond pursuant to the provisions of this chapter, the board may, as an alternative to the posting of such bond, accept other appropriate security, such as a properly conditioned irrevocable letter of credit, which meets the same objectives as the performance bond described in this chapter, subject to the approval of any other department or agency whose interests are protected by the same bonding requirement.

(B) *Covenants:* Where the city engineer shall determine that such is necessary in order to achieve satisfactory present and future drainage of the parcel of land for which a drainage permit is sought and the area surrounding the parcel, the board may, as a prerequisite to the issuance of a drainage permit, require the execution of covenants and/or easements running in form to the city by the owner or owners of such parcel. As a minimum in such cases, the board shall require that the following covenant be executed by the owner or owners of such land which will be included in a recorded plat:

"It shall be the responsibility of the owner of any lot or parcel of land within the area of this plat to comply at all times with the provisions of the drainage plan as approved for this plat by the board and/or the drainage board and the requirements of all drainage permits for this plat issued by the city engineer's office."

(C) *Easements:* The board may, upon recommendation from the city engineer and as a prerequisite to issuance of a drainage permit, require the dedication of easements to the appropriate public agency and to owners of other affected lands by the owner of the parcel of land, relative to which application for a drainage permit has been made, where such is necessary to achieve satisfactory present and future drainage of the parcel and the area surrounding the parcel.

(Ord. No. 21-02, § 8, 6-3-02)

#### Sec. 164.09. - Investigations and inspections.

The power to make investigations and inspections of land alterations shall be vested in the city engineer. Investigation and inspection of land alterations may be made at any time by going upon, around or about the premises on which the land alteration has occurred. Such investigation and inspection may be made either before, during or after the land alteration is completed and it may be made for the purposes, among others, of determining whether the land alteration meets drainage requirements and ascertaining whether the land alteration has been accomplished in a manner consistent with plans and specifications. Efforts to afford an opportunity for investigation and inspection of the land alteration shall be made by persons working on or having control of the land alteration, including making available a copy of plans and specifications submitted to obtain a drainage permit.

(Ord. No. 21-02, § 9, 6-3-02)

Sec. 164.10. - Enforcement.

- (A) *Fees for permits obtained after commencement of work:* If work for which a drainage permit is required by this chapter is commenced without a permit the permit fee shall be double the applicable amount stated in this chapter because of the increased amount of inspection and administrative work; provided, however, that the maximum fee incurred shall be \$300.00 plus the amount of the normal fee for the permit. This sanction shall in no way limit the operation of penalties provided elsewhere in this chapter.
- (B) *Permit revocation:* The board may revoke the drainage permit where the application, plans, supporting documents, or other evidence required by this chapter reflects either:
  - (1) A false statement or misrepresentation as to material fact; or
  - (2) Lack of compliance with drainage requirements of this chapter; or
  - (3) Failure to post bond, execute covenants or dedicate easements as required by the board of works or other applicable entity pursuant to this chapter. This sanction shall in no way limit the operation of penalties provided elsewhere in this chapter.
- (C) *Stop-work order:* Wherever the city engineer, the sanitary district engineer or the city building commissioner or their authorized representatives discover the existence of any of the circumstances listed below, they are empowered to issue an order requiring the suspension of the land alteration. A stop-work order shall be issued if:
  - (1) Land alteration is proceeding in an unsafe manner;
  - (2) Land alteration is occurring in violation of a drainage requirement and in such manner that if land alteration is allowed to proceed, there is a probability that it will be substantially difficult to correct the violation; or
  - (3) Land alteration for which a drainage permit is required is proceeding without a drainage permit being in force. In such an instance the stop-work order shall indicate that the effect of the order terminates when the required drainage permit is obtained. This sanction shall in no way limit the operation of penalties provided elsewhere in this chapter.
- (D) *Civil action:* The City of Muncie, acting by resolution of the board of public works and safety, may initiate a civil action to restrain any person accomplishing a land alteration from violating a drainage requirement or plans and specifications filed in order to obtain a drainage permit or violating any other provision of this chapter.
  - (1) Enforcing the provisions of a stop-work order issued pursuant to this chapter; or
  - (2) Preventing the accomplishment of a land alteration in violation of a drainage requirement; or
  - (3) Requiring accomplishment of a land alteration in accordance with the drainage requirements, and, if a drainage permit has been obtained, plans and specifications filed therewith.

This sanction shall in no way limit the operation of penalties provided elsewhere in this chapter.

- (E) *General penalty:* Any person violating the provisions of this chapter, any regulation promulgated pursuant to this chapter, any minimum standard found in this chapter or any other drainage requirement as defined in this chapter shall be guilty of a misdemeanor and may be subject to a fine in any sum not exceeding \$2,500.00. This penalty shall in no way limit the operation of special penalties for specific provisions of this chapter, nor shall such special penalties in any way limit the operation of this general penalty.
- (F) *Enforcement of covenants:* Any person who violates a covenant required under the provisions of this chapter, and/or the owner of any parcel of land who permits such a violation upon land owned by him or her, may be notified in writing by the city engineer, the sanitary district engineer or by the city building commissioner, that a violation exists, and shall be given a reasonable period of time in which to correct such violation. The notice shall specify the nature of the violation with reasonable clarity. If the person responsible for the violation of a covenant required under the provisions of this chapter, or the owner of the land upon which such violation exists, fails to correct the violation in a reasonable time in accordance with the requirements of the notice described above, the city shall have the authority to correct the violation at its expense and to recover in a civil action all expenses incurred for effecting such correction, together with reasonable attorneys fees and expenses of such actions.

(Ord. No. 21-02, § 10, 6-3-02)

#### Sec. 164.11. - Variances and deviations from plan.

- (A) *Procedure:* The board shall have the power to modify or waive any minimum drainage standard found in this chapter. The board may grant such modification or waiver if an applicant for a drainage permit makes a substantial showing:
  - (1) That a minimum drainage standard regulation is unfeasible or unreasonably burdensome; and
  - (2) The alternate plan submitted by the applicant will achieve the same objective and purpose as compliance with minimum drainage standards and regulations.

The request for a variance together with supporting information shall be made in writing to the city engineer who shall present the request to the board at the first regularly scheduled board meeting following the filing of the request. The board shall make a decision on the request for a variance within 30 days after the request was filed with the city engineer.

- (B) *Deviations from plan:* Any significant deviation or change in the detailed plans and specifications after the granting of a drainage permit shall be approved by the board of works. The request for a deviation or change shall be made prior to commencing any land alteration affected by the deviation or change and shall be made in the same manner as for a variance.

(Ord. No. 21-02, § 11, 6-3-02)

#### Sec. 164.12. - Fees.

- (A) *Amount:* For a land alteration in conjunction with the platting of a subdivision, the development of a planned unit development or a mobile home park the permit fee shall be \$20.00 per acre with a minimum fee of \$20.00 and a maximum fee of \$200.00.
- (B) *Exemption for governmental units:* Drainage permits shall be obtained for land alteration activity accomplished by or for a governmental unit and inspections as specified in this chapter shall be allowed. Fees shall be required as

specified except for the following:

- (1) Land alteration activity for which a fee cannot be charged by the municipality because of federal or state law;  
or
- (2) Land alteration activity accomplished by an employee or contractor of the city in the course of governmental duties.

(C) *Payment:* All drainage permit fees shall be collected by the engineer's office at the time the permit is issued and shall be deposited with the controller of the city.

(Ord. No. 21-02, § 12, 6-3-02)

Sec. 164.13. - Professionally prepared and certified drainage plans.

A drainage plan fulfilling the requirements of this chapter shall be submitted to the office of the city engineer for approval before a drainage permit can be obtained to accomplish a land alteration. The drainage plan must be submitted in duplicate, and shall indicate in a precise manner the work to be accomplished, and said plans shall in all respects be consistent with the drainage plan submitted. One copy of the drainage plan will remain on file in the city engineer's office. The following information must be submitted for approval:

- (A) *Construction features:* The drainage plan shall demonstrate and describe surface and subsurface drainage and include the following:
- (1) The drainage plan shall be drawn to a commonly used scale, and an arrow indicating north shall appear as needed for clarity. Existing land contours shall be shown at an interval necessary for clarity. A bench mark, which is easily accessible and locatable, shall be shown. The bench mark shall be determined by USGS datum.
  - (2) A map which indicates the location and vicinity of the proposed land alteration shall be included in the drainage plan.
  - (3) The drainage plan shall show the locations of all existing and proposed drainage facilities. Storm drains and manholes and other structures shall be located in the plans by dimensions from traverse lines, property markers or road center lines. However, for areas where physical features are not available, coordinates of manholes and bearings of storm drains shall be based on the State of Indiana's coordinate system or other acceptable horizontal and vertical datum. If applicable, the drainage plan should show the direction of flow, elevation of inverts, gradient, size and capacity of existing and proposed storm drains. When using storm drains, the capacity shall be indicated. Profiles of the on-site construction shall be provided which show existing and proposed ground information and any proposed piping and structures.
  - (4) Plan and profile information shall be provided for any constructed flow lines. The plan shall show appropriate right-of-way and easement limits. The profile shall be shown under the plan and shall extend a sufficient distance downstream of the outlet to allow any pertinent information concerning the outfall channel to be shown. The storm drain and inlet profile shall generally be drawn on a commonly used scale. Where a storm drain is located in an existing or proposed pavement or shoulder, the center line grade of the road shall be shown. Where a storm drain is located outside pavement or shoulder, the existing ground over the storm drain with proposed grading shall be shown. If the storm drain is to be constructed on fill, the profile of the undisturbed earth, at drain location, shall be shown.
- (B) *Design calculations:* Design calculations are required as part of the drainage plan and shall specifically include:



- (1) Estimation of existing and proposed storm water runoff conditions, with a drainage area map for the site and area, shall be calculated utilizing storm conditions contained in the General Drainage Standards for the City of Indiana. The drainage area map shall indicate contours at two-foot intervals and limits of the 100-year flood (maps, or the Delaware County Watershed maps, or other contour maps where applicable). Weighted runoff computations and time of concentration computations indicating overland flow time and travel time in man structures shall be indicated.
- (2) Closed conduit and open channel design computations shall include the size of pipe or channel cross section, pipe or channel slope in percent, roughness coefficient, flowing velocities in feet per second, and design capacity in cubic feet per second.
- (3) Head loss computations in manholes and junction chambers.
- (4) Hydraulic gradient computations, wherever applicable.
- (5) Erosion control methods.

Such design calculations shall conform with the standards of this chapter and all regulations promulgated thereunder. The city engineer shall be empowered to require additional information to be included in a drainage plan as is necessary to evaluate and determine the adequacy of the proposed drainage facility.

- (C) *Certificates:* All drainage plans submitted under this section to the city engineer's office for approval must be certified by a registered professional engineer, land surveyor or architect engaged in storm drainage design, under whose supervision the plans were prepared. The certificate shall be in the following form:

\_\_\_\_\_

#### CERTIFICATE OF SUFFICIENCY OF PLAN

Permit Number \_\_\_\_\_

Address where land alteration is occurring \_\_\_\_\_

\_\_\_\_\_

Plan Date \_\_\_\_\_

I hereby certify that to the best of my knowledge and belief:

(1) The drainage plan for this project is in compliance with drainage requirements (as set forth in the Storm Drainage and Sediment Control chapter for the City of Muncie, Indiana) pertaining to this class of work.

(2) The calculations, designs, reproducible drawings, masters and original ideas reproduced in this drainage plan are under my dominion and control and they were prepared by me and my employees.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Typed/Printed Name \_\_\_\_\_

(SEAL)

Business Address \_\_\_\_\_

Surveyor \_\_\_\_\_ Engineer \_\_\_\_\_ Architect \_\_\_\_\_

Indiana Registration Number \_\_\_\_\_

All drainage plans submitted under this section to the city engineer's office must include a certificate of obligation to observe by a registered professional engineer, land surveyor or architect engaged in storm drainage design. The certificate shall be in the following form:

CERTIFICATE OF OBLIGATION TO OBSERVE

Permit Number \_\_\_\_\_

Address where land alteration is occurring \_\_\_\_\_

\_\_\_\_\_

Plan Date \_\_\_\_\_

I will perform periodic observations of this project during construction to determine that such land alteration is in accordance with both the applicable drainage requirements and the drainage plan for this project submitted for a drainage permit to the Office of the City Engineer of the City of Muncie, Indiana.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Typed/Printed Name \_\_\_\_\_

Phone \_\_\_\_\_

(SEAL)

Business Address \_\_\_\_\_

Surveyor \_\_\_\_\_ Engineer \_\_\_\_\_ Architect \_\_\_\_\_

Indiana Registration Number \_\_\_\_\_

Within ten (10) days after the completion of a land alteration for which a drainage permit was required and relative to which a certified plan was required to be filed pursuant to this section, a registered professional engineer, surveyor or architect engaged in storm drainage design, shall execute and file with the city engineer's office a certificate of completion and compliance. Such certificate shall be in the following form:

CERTIFICATE OF COMPLETION AND COMPLIANCE

Address of premises on which land alteration was accomplished \_\_\_\_\_

\_\_\_\_\_

Inspection Date(s) \_\_\_\_\_

Permit Number \_\_\_\_\_

Relative to plans prepared by \_\_\_\_\_

On Date \_\_\_\_\_

I hereby certify that:

(1) I am familiar with drainage requirements applicable to such land alteration (as set forth in the Storm Drainage and Sediment Control Ordinance of the City of Muncie, Indiana); and

(2) I have personally observed the land alteration accomplished pursuant to the above-referenced drainage permit; and

(3) To the best of my knowledge, information and belief such land alteration has been performed and completed in conformity with all such drainage requirements, except

\_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

Type/Printed Name \_\_\_\_\_ Phone \_\_\_\_\_

(SEAL)

Business Address \_\_\_\_\_

Surveyor \_\_\_\_\_ Engineer \_\_\_\_\_ Architect \_\_\_\_\_

Indiana Registration Number \_\_\_\_\_

(Ord. No. 21-02, § 13, 6-3-02)

\_\_\_\_\_

#### Sec. 164.14. - Regulated drain clearance.

*Process:* Prior to any land alteration the applicant shall obtain clearance from the county surveyor's office that no work shall encroach upon any regulated drain easement.

The following information must be submitted in order for the surveyor's office to establish such regulated drain clearance:

- (1) The legal description and the street address for the property;
- (2) The dimensions and borders of the parcel;
- (3) The name and address of the owner;
- (4) An arrow indicating north;
- (5) Location of all existing and proposed improvements, structures and paved areas on the site.

Regulated drain clearance shall be indicated on subdivisions for which a drainage plan has been approved as set forth in this chapter. Such clearance shall be shown on the subdivision plat in the form of drainage easements and special notes as deemed necessary. Regulated drain clearance shall not be required as a precondition for obtaining permits in a subdivision for which a plat and a drainage plan have been approved provided the land alteration such dwellings comply with the specifications and information found on the approved plat and drainage plan.

The county surveyor may require the submission of plans or other information in order to establish regulated drain clearance.

(Ord. No. 21-02, § 14, 6-3-02)

Sec. 164.15. - Minimum drainage standards and regulations.

- (A) *General compliance:* All land alterations accomplished in the incorporated area of the city shall adhere to and be in compliance with the minimum drainage standards established by this chapter and all regulations promulgated by the board in accordance with this chapter, unless a variance from the minimum drainage standards or regulations has been granted by the board.
- (B) *Protection downstream of a land alteration:* The release of runoff from a land alteration shall not increase the peak flow generated by the 50-year return frequency storm over the entire watershed of the receiving drainage facility at the point of the release by any amount greater than the runoff generated by a five-year return frequency storm over the undeveloped land altered site.
  - (1) Direct non-detained release of runoff from a land alteration is required when the peak flow from the land alteration that is generated by the 50-year return frequency storm does not increase the peak flow generated by the 50-year return frequency storm over the entire watershed of the receiving drainage facility at the point of release by any amount greater than the runoff generated by a five-year return frequency storm over the undeveloped land altered site.
  - (2) Compliance with the release limitations must be provided either by improving the capacity of the receiving drainage facility or by retaining/detaining the runoff and releasing the runoff at a lesser rate or a combination of both.
    - (a) If improving the capacity of the receiving drainage facility is to be done then the reconstruction shall extend from the point of connection to a point downstream where adequate capacity exists, or to a point along the downstream waterway where the total watershed area has increased by an amount equaling ten times the area of the land alteration. If the receiving drainage facility is not under some form of perpetual maintenance then such must be created through purchase of right-of-way, easement or regulated drain action by the county drainage board.
  - (3) If the receiving drainage facility is a combination sewer then the maximum rate of release shall be limited to that portion of the sewer's capacity which represents the ratio of the area of the land alteration to the area of the sewer's upper watershed from the point of the connection.
- (C) *Protection upstream of a land alteration:* The drainage facilities constructed on a land altered site shall include provisions for accepting all drainage entering the site. Such provisions must have the capacity to accept the runoff generated by the 50-year return frequency storm over the present land use of the off site upper watershed areas. No excavations or fills shall block or otherwise impede the free drainage of surface water in a drainage way.
- (D) *Protection on the land altered site:* It is not the intent of these minimum standards to intervene into the professional relationship between a practicing engineer and his client nor are they intended to guaranty the practicing engineer's performance in protecting the applicant's facilities. However, drainage facilities constructed on a land altered site shall:
  - (1) Be durable, easily maintained and safe to persons;
  - (2) Sufficiently sized to produce the results required of this chapter;
  - (3) Retard sedimentation and erosion.
- (E) *Subsurface drainage required:* Subsurface drainage shall be provided in areas where water table would cause undesirable wetness.

Sec. 164.16. - Minimum standards for erosion and sediment control.

- (A) *General requirements:* Land alterations shall be accomplished in accordance with standards found in this chapter and in accordance with regulations adopted by the board of public works and safety which are pertinent to these standards.
- (B) *Protection of exposed areas:* Land alteration which strips the land of vegetation, including re-grading, shall be done in a way that will minimize erosion. Whenever feasible, natural vegetation shall be retained, protected and supplemented. Cut and fill operations shall be kept to a minimum to ensure conformity with existing topography so as to create the least potential erosion. The duration of time which an area remains exposed shall be kept to a practical minimum. The area shall be stabilized as quickly as practical.
- (C) *Protection during development:* Temporary vegetation or mulching shall be used to protect exposed areas during development.
- (D) *Permanent vegetation:* Permanent and final vegetation or structural erosion-control devices shall be installed as soon as practical under the circumstances.
- (E) *Sediment control:* Sediment in runoff water shall be trapped by the use of such methods as debris basins and silt traps until the disturbed area is stabilized.

Sec. 164.17. - Procedure for promulgation of regulations.

- (A) *Authorization:* The board shall adopt, amend or repeal regulations which more specifically deal with the subject matter of the standards found in this chapter. The provisions of such regulations shall be consistent with the standards of this chapter. Any conflict between this chapter and the regulations shall be reconciled in favor of the chapter.
- (B) *Notice of hearing:* Before any regulation is adopted, amended or repealed by the board as authorized by this section, the board shall cause a notice to be published at least ten days prior to the date set for a public hearing. The notice shall include a statement of the time and place of the hearing, a reference to the general subject matter of the proposed regulations and reference to the fact that a copy of the proposed regulations is on file at the city engineer's office where it may be examined; however, no action with respect to a regulation shall be invalid because the reference to the subject matter thereof in such notice is insufficient.
- (C) *Public hearing:* On the date set for hearing on a proposed regulation, any interested party shall be afforded an adequate opportunity to comment on the proposed regulation through the presentation of facts or arguments or the submission of written materials. The proposed regulation may be amended at the hearing. All relevant matters presented shall be given full consideration by the board of works. All hearings shall be open to the public.
- (D) *Publication of adopted regulations:* Adopted, amended or repealed regulations promulgated by the board shall be published according to Indiana State Statute publication requirements. Copies of all regulations and amendments thereto shall be on file in the city engineer's office.
- (E) *Amendments:* After the initial adoption of the regulations, the board may amend the regulations in accordance with the procedure set forth in this chapter.
- (F) *Title:* The regulations adopted by the board pursuant to this chapter shall be known as the General Drainage

Standards and Regulations of the City of Muncie, Indiana.

(Ord. No. 21-02, § 17, 6-3-02)

Sec. 164.18. - General Drainage Standards adopted by reference.

The General Drainage Standards shall mean the General Drainage Standards and Regulations of City of Muncie, Indiana, as promulgated by the board as set forth in this chapter. The General Drainage Standards and Regulations of the City of Muncie, Indiana, and all amendments thereto, are hereby adopted by reference and incorporated as a part of the Storm Drainage and Sediment Control Ordinance set forth herein.

(Ord. No. 21-02, § 18, 6-3-02)