

Indiana Model Zoning Ordinance

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The completion of a challenging project is satisfying, especially as one remembers the contribution of the many professionals who assisted in this revision of the Indiana Model Zoning Ordinance.

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It is my sincere wish that the Revised Indiana Model Zoning Ordinance might be of assistance in the understanding of the local planning or zoning process. To the end, that Indiana citizens might work together with a sense of community to better their environment, and through personal commitment and contribution to their community, better their own lives in return.

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INTRODUCTION TO THE 1999 REVISION

Preface

The Highway Extension and Research Project for Indiana Counties and Cities (HERPICC) is pleased to offer this 1999 Revision to the *Indiana Model Zoning Ordinance* originally published in April 1991. This publication is targeted to community leadership and concerned citizens in the smaller counties, cities, and towns in Indiana about to begin the process of planning and zoning.

The objectives of this revision are (1) to present the planning and zoning process in layman's terms; (2) to render the following model zoning ordinance more understandable to those who may not possess a professional planning background; (3) to briefly present and discuss significant zoning issues facing Indiana communities; (4) to provide a brief summary of the changes in the Indiana statutes concerning planning and zoning since 1990; and (5) to provide a revised model zoning ordinance.

Revision of the *Indiana Model Zoning Ordinance* reminds us of the fact that its use or enactment in whole or part signifies the end of a lengthy process of community planning involving the gathering of data, citizen discussion and input, analysis, education, training, and consensus. A zoning ordinance simply places into law specific tools calculated to shape future growth toward the achievement of community goals. We offer the model zoning ordinance as a guideline; a model to be adapted to the needs of your community as determined by your own planning efforts.

The layman needs to be cautioned and the professional planner reminded that current land use decisions are made in a complex market system representing a multitude of competing economic interests. It is difficult to understand the cumulative and overall impact of land use change in any community. Even so, it is difficult to argue against the efforts of local citizens, acting out of community and a vision for the quality of life for their children, to carefully study the issues and craft incentives to insure that their interests are fairly represented in the market place. Concerned citizens working harmoniously with community leaders and professional planners are afforded the opportunity to identify local problems, a local vision for the future, and a community consensus on the direction of future growth.

The planning and zoning process is greatly facilitated by retaining a professional planner on the staff of your governmental unit, but it is absolutely essential to retain legal counsel knowledgeable about land use law.

Indiana state law requires that the local planning process result in a written comprehensive plan. Indiana Code (IC) 36-7-4-500 series provides for the permissible contents of the plan, notice, and hearing requirements. The IC 36-7-4-

600 series provides for the adoption and amendment of the zoning ordinance. IC 36-7-4-601 states that before a zoning ordinance can be adopted a comprehensive plan must have been approved. The American Planning Association Zoning News (August 1996) lists Indiana as one of the states that not only requires a written comprehensive plan, but that the subsequent zoning ordinance conform to that plan. However, IC 36-7-4-603 clearly states that the legislative body in enacting the zoning ordinance must pay **reasonable regard** to the comprehensive plan.

Successful planning is a long-term process built on the correct assumptions and objectives. Daniels, 1995 lists a number of incorrect assumptions about the planning process:

- *The planning process will result in immediate changes in the community.* Remember that it took time for your community to develop its character that you see today. Planning is a long-term process that deals with future growth.
- *We need to concentrate planning on industrial recruitment at the expense of everything else.* Companies seeking locations for business or industrial plants look for sound balanced community-wide development.
- *Planning is a popular idea at the moment.* Planning is a long-term process. If public support is motivated by infatuation with a new idea, instead of long-term commitment, then support can be expected to rapidly diminish.
- *Planning is just zoning in disguise.* It is against state law to zone first, and plan later. The comprehensive plan allows the zoning ordinance to effect public policy and to shape the future growth of the community. The planning process is larger than just the zoning ordinance.
- *Planning will eliminate specific public nuisances.* The planning process is much less effective than specific single-purpose ordinances in dealing with public nuisance.
- *The planning process will reform our local government.* Voters must turn out to elect government leaders who are responsive to the best interests of the community. Planning is not the tool to deal with voter apathy, warring factions, and unresponsive community leadership.

On the other hand, there are some very good reasons to plan:

- *The planning process is educational and informational.* Planning helps people recognize and deal with the local and regional changes that are

occurring in the community, and the problems that have developed such as the lack of cheap clean water, questionable flood plain development, and/or the lack of local jobs.

- *Planning can help manage future growth.* Future growth can be directed by separating incompatible uses, encouraging quality development where the cost of infrastructure extension is affordable, and by shaping the physical appearance of the community.
- *Planning may facilitate business and industrial development.* Haphazard commercial business or industrial development should not be subsidized with taxpayer funding. Communities can formulate a business and industrial development plan. An effort should be made to identify the businesses and/or industries that should be encouraged to locate in the community. Planning may involve gathering information on the composition of the local workforce, the local transportation system, and the effect of growth on school capacity and recreational facilities. The extent of any effort to use taxpayer funds to encourage the location of business and industrial plants should be part of the planning process.
- Arguably, the best reason to plan is to develop acceptable solutions to your unique local problems. Growth is a reality. It is not difficult to identify many areas of Indiana that have witnessed staggering growth. The dynamic of local growth is complex. The adoption of proposed solutions used in other areas without critical review may not be appropriate to your unique local conditions. This is why local planning is so very important.

After the planning work has been accomplished and adopted, one looks for the set of zoning tools necessary to help accomplish the goals set for your community.

Significant Planning Topics and Issues

The Indiana Model Zoning Ordinance uses zoning districts, development plans, and the planned unit development as zoning tools. The use of zoning districts to accomplish the goals outlined in the comprehensive plan has been common since the 1920's. Zoning districts attempt to standardize development and separate incompatible uses. Major changes in the Indiana Code in 1995 add two new series providing for Development Plans and Planned Unit Development Districts.

Development Plans

The IC 36-7-4-1400 series allows the zoning ordinance to require a development plan for permitted uses in zoning districts. The plan commission has the responsibility of approving/disapproving this development plan. The requirement for

a development plan might involve a specific permitted use in a particular type district. An example might be the requirement for a site development plan for the establishment of a dry cleaning business in a commercial district. Careful consideration must be given to the requirement for development plans. Once the community consensus on the direction of future growth is stated in the comprehensive plan and the proper tools for their implementation developed in the zoning ordinance, the executive branch of county or municipal government is tasked with administration and enforcement. The development plan might take such responsibility from the administrator. It is recommended that development plan only be required for the development of especially sensitive areas. One example might be the siting of a large retail store on the edge of a wetlands. A development plan would assist the administrator by involving the plan commission in the process of mitigating the impact of the business on the wetlands.

Viewed as a single purpose tool, specific development plans were not included in the *Indiana Model Zoning Ordinance*. A community faced with a specific sensitive development issue may wish to place the requirement for a development plan in the zoning ordinance.

Planned Unit Development (planned development)

The IC 36-7-4-1500 series allows a zoning ordinance to provide for Planned Unit Developments (PUD's). The PUD can be defined as a land development project comprehensively planned as an entity using a unitary site plan which permits flexibility in building siting, mixtures of housing types and land uses, usable open spaces, and the preservation of significant natural resources (So, 1973).

The *Indiana Model Zoning Ordinance* incorporates a district approach to the PUD process. PUD Districts are not identified in advance on the zoning maps. Instead, interested parties can petition to rezone a specific parcel(s) to a PUD District on the substance of their specific and particular negotiated plan. The dominant nature of the PUD is classified in accordance with a classification schedule for easy identification of the PUD zone on the zoning maps.

Meshenberg (1976) lists the following advantages to the use of PUD's:

- flexibility and innovation in design;
- mixture of housing types and housing with other uses;
- staging of development;
- cost saving through clustering;

- development of cohesive neighborhoods;
- preservation of desirable lands and buildings;
- closer public scrutiny of plans;
- implementation of special public social and environmental objectives.

However, the very flexibility of the PUD process can lead to misuse or abuse without strong safeguards. Communities should take positive steps in the PUD process to avoid:

- Increased opportunities for racial and economic exclusion;
- an increased incentive for extortion by public officials due to the large window for project negotiations;
- opportunities for corruption that can occur with privacy of negotiations;
- inexperienced public officials failing to adequately handle the administrative demands of the process.
- growing citizen resistance to a PUD, which may develop, if it is not clear that the higher unit densities will be offset by superior design and innovation. Citizens may fear that a poorly conceived and executed PUD project may eventually depreciate their personal investment in nearby suburban real estate.

Developers may also incur greater risks in the PUD process than that encountered in the traditional subdivision:

- The extensive negotiations and processing time can significantly increase the cost of the development.
- Construction of significant common recreational facilities, such as a golf course, can require higher capital outlays before the sale of units can provide needed cash flow and eventual return on investment.

Communities may consider the requirement of a performance bond on the proposed cost of the amenities. Additionally, a phased timetable can be required detailing the ratio of commons development to units in the construction phases.

Airport Protection

Airport protection has emerged as a major concern because the option of the replacement of existing airport facilities may be cost prohibitive even when sufficient blocks of suitable undeveloped land are available. Certain activities have proven to be highly compatible with aircraft operation. An airport creates a demand for warehousing, office space, manufacturing, overnight accommodations, and meeting space. Also, most agricultural activities are relatively unaffected by airport activities and high noise levels. However, close residential development can eventually threaten the future viability and use of the airport due to the high noise levels. Specific areas around an airport are better suited to particular uses. These uses can be specified in a separate airport zone. This use of a separate airport zone is not included in the *Indiana Model Zoning Ordinance*. The use of overlay zones to protect airport approaches is the major tool incorporated in the Ordinance.

Air travel and air freight provides a significant number of direct and indirect jobs for communities with a public airport. Statistics show that the impact of aviation on the local economy is still increasing as more and more people are traveling by air. There is every reason to believe that local public airports are a valuable resource whose value and importance may continue to increase year by year. Zoning is a valuable tool to preserve the value of your public-use airport.

Three areas of protection are of community concern and should be addressed in the comprehensive plan and resulting zoning ordinance. These areas are: 1) the maintenance of obstacle-free flight paths in and out of the airport; 2) restrictions on the use of the land in the hazard areas at each end of the airstrip; 3) and the impact of noise on the community.

Protection of the navigable airspace for traffic patterns and approaches to the airport is accomplished by incorporating the height limitations and imaginary sloped surfaces extending from your class of airport as required by provisions IC 8-21-10-7 and IC 8-21-10-8 (Utilities and Transportation) into your zoning ordinance. This is easily accomplished by placing the height limitations and imaginary sloped surfaces for each type of runway (utility, non-precision, and precision) as definitions in the zoning ordinance. Section 7 on air space control is added to the *Indiana Model Zoning Ordinance* to regulate the height of buildings, structures, and plant growth in the two overlay zones; airport approach area and airport circling area. The dimensions of these two zones are determined by the type of runways existing and planned for each airport. The proper definitions and dimensions are invoked by each airport zoning map included in the zoning ordinance.

The hazardous areas at the ends of the airstrip suffer from the higher probability of aircraft accidents. One possible action is to prohibit any use that results in a concentration of people for a safe distance from each end of the runway

corresponding to the width of the transitional surface area. A sample provision is placed in Section 7 Air Space Control.

Perhaps, the greatest challenge for planners is the potential for public complaints and legal action due to airport noise. IC 8-21-10-4 prohibits the construction of a residential building within an area lying fifteen hundred (1,500) feet on either side of the extended centerline of the runway for a distance of one (1) nautical mile from the airport boundary without a permit. Approval of the permit results in a reduction to the bundle of rights associated with the residential real estate by the right to the avoidance of airport noise. Communities should factor the high probability of continued growth in airport usage per capita into projections. The airport manager should be used as a resource for the projection of growth. Despite constant pressure to zone real estate at its highest potential use to maintain a favorable tax base, the future value of a local public airport may encourage those planning for the long-term to maintain airport buffer zones to mitigate noise problems.

A good discussion of the problem presented by encroaching residential neighborhoods on current and future airport operations is well presented in the American Planning Association Zoning News (May 1996) entitled "The Trouble with Airports".

Business and Industrial Development

The frequently stated goal of encouraging business and/or industries to locate in the community deserves further discussion. The real goal in these cases may be job creation and/or higher property tax valuations. It must be stated that such business or industrial location or expansion may not actually reduce local property tax bills despite a larger revenue collection. The community may have to provide additional services in terms of infrastructure improvements, upgrades, and extension to accommodate the families who move into the area to fill the new jobs. These services can take the form of water and sewer system capacity upgrades, school expansions, transportation system upgrades and expansion, and the provision of additional recreational opportunities. The situation may be aggravated by the reduction in revenues expected from business or industrial location due to negotiated incentives and concessions. The actual net effect of such expansion may be increased tax bills for existing businesses.

Careful planning should identify the contributions of existing business to the community. The use of community public funds in terms of incentives should be predicated on the careful study of business compatibility and impact on the local infrastructure. The positive benefit of job creation may be the stated goal for providing incentives for business and industrial location to the community. Careful and responsible planning creates expectations that can be met.

Industry representatives, in turn, may wish to locate in stable communities with a sound record of careful planning and zoning. Location in a community planning for the future tends to minimize a portion of the risk associated with large plant investments.

Urban Sprawl

Urban sprawl is a phrase used to describe scattered residential housing in the countryside. The term has a negative connotation to those who place a high value on continued agricultural production, the preservation of prime farmland, forests, and open space, and/or those whose taxes pay for the high cost of extending sewer and water through agricultural lands to leap-frog development. Much development is within commuting range of urban areas with jobs. It is difficult to prohibit the movement of people into rural areas in a 'free' society. However, it is necessary to examine the incentives that would encourage people to live in urban centers.

A close look reveals the lack of incentives to encourage people to live in urban areas.

The cost of infrastructure in the countryside is not borne by those who use the improvements. The State highway is paid by the State taxpayer. The local county road by county taxpayers. Rural electrification was subsidized by the Federal Government. The current communications revolution makes it easier to maintain a home occupation in the countryside.

The improved dependability of the modern automobile combined with relatively low gasoline prices make commuting to work from the countryside a viable alternative. Subsidized highways, low fuel prices, and the personal independence offered by the automobile have not encouraged the development of mass transit alternatives. Outside of the aging urban core, the new urban developments frequently can only be accessed by car or bus. These shopping malls and/or strips are no easier to access for the urban dweller than those living in the countryside.

The cost of housing and tax bills are frequently greater for those who live in the urban areas. Land in the countryside is typically valued lower than a lot in town. One could develop more reasons to show that few economic disincentives exist to discourage urban sprawl. The importance of this discussion is to illustrate that urban sprawl is just a subset of a larger set consisting of a market economy affected by public subsidies and tax collection policies. Where are the disincentives for moving into the countryside?

Urban sprawl has become associated with a standard set of problems that face most local communities in varying degrees. The nature of the rural setting can change to the point of threatening agricultural long-term production with the extension of water and sewer through cropland, associated higher taxes, nuisance

complaints and litigation, disrupted drainage patterns adversely affecting cropland drainage, vandalism, and high market-place incentives to sell farmland for non-agricultural purposes.

Nuisance complaints and litigation as the result of the failure to understand the nature of modern farm practice by new neighbors is common. A covenant to each deed for land near agricultural production can restrict the landowner's right to complain about perceived farm nuisances such as odor, slow moving equipment, noise, and equipment lights at night.

Job diversity is recognized as an asset for any local community. Agricultural production may be one of the important economic inputs into your community.

The Hoosier Farmland Preservation Task Force is a 19 member bipartisan committee created by Governor Frank O'Bannon to study and make recommendations concerning the preservation of agricultural land. Recommendations on potential state initiatives is expected late 1999.

A nuisance statute providing some protections has been on the books in Indiana since 1981 as IC 34-1-52-4. Senate Bill 445 added IC 36-7-4-616 to preserve agricultural operations as nonconforming uses in the face of re-zoning as the result of local planning.

Two recommended sources for the study of the issue of preserving prime farmland and agricultural production as an important source of local employment are publications entitled: Holding our Ground and Saving American Farmland; What Works. The complete citations for these publications is provided in the following paragraph entitled 'Sources'.

Private septic systems and water wells make living in the countryside possible. However, private septic systems have a predictable life span made shorter by the lack of system maintenance and system overloading. Most systems will eventually fail providing unsanitary health conditions. At minimum, all new permitting should require additional space and a plan for an alternative system for each residential unit.

Local planning provides an opportunity to determine whether the significant issues of costly infrastructure maintenance and extension, open space and farmland preservation, drainage, farm nuisance, and septic system failures exist in your community.

Right now, you have the opportunity to study the issues and formulate a plan that works for your community.

Improvement Location Permits and Building Permits

The authority for the improvement location permit arises out of Title 36 of the Indiana Statutes dealing with local planning and zoning. On the other hand, the authority to require local building permits arises out of Title 22 of the Indiana Statutes dealing with building safety.

The problem is integrating both at the local level. It can be argued that building permits are actually a subset of the set of all improvement location permits. Building permits primarily deal with structures. The improvement location permit deals with structures as well as the use and condition of the land.

Section 10 of the Revised Indiana Model Zoning Ordinance provides maximum flexibility in requiring the improvement location permit for all activities involving structures and the condition and use of land. A flat fee is proposed for the improvement location permit. Required building permits are applied for in addition to the improvement location permit. This allows each community to structure the relationship between local planning and local building permits and inspections.

Unfortunately, while the Indiana statutes treats local planning and local building permits and inspections as separate entities, the two areas overlap greatly at the local level. It is easy to see that zoning enforcement overlaps the building code enforcement. The building code enforcement is not an issue if the requested construction is not permitted in the area described by the site plan. However, it can also work the other way. One area of concentration for the building code is to reduce the risk of fire spreading to adjacent structures. In this regard, building standards may be promulgated for the near walls of structures located very close to each other to increase the expected combustion time. These building standards may impact the specified setbacks in the local zoning ordinance. This overlap is frequently handled with the caveat that the more stringent regulation will apply in each case. However, the enforcement agent or administrator must have knowledge of both areas to be effective.

The adoption of a zoning ordinance does create zoning enforcement responsibilities. These zoning enforcement responsibilities may be in addition to an existing program of building code enforcement. In these communities, it may be perceived as expedient to add these zoning enforcement responsibilities to those of the local building permit inspection unit, and the administrator of the zoning ordinance be designated as the head of the building permit unit. An alternative is to place zoning and building code enforcement in the office of the plan commission. It is clear that local building code inspectors are more valuable to the community if they understand and can accomplish zoning enforcement. Professional planners are of greater utility if they understand and participate in the adoption of local building codes. The challenge facing local officials and communities is to integrate planning, zoning, and building codes so that the minimum of resources are provided for the

maximum benefit, while maintaining the goodwill and confidence of the citizen in local government.

One important element in the relationship between local government and the citizen is the permit process. Many citizens will define the character of their local government by this interface. Therefore, it is in the best interest of the community to integrate zoning and building code enforcement so that the local citizen can be assisted by knowledgeable, capable, and courteous local officials.

Child Care

Article 17.2 of Title 12 of the Indiana Code is still entitled **Day Care Regulation** even though most references to **day care** have been changed to **child care** in the statutes.

IC 36-7-4-1107 and 1108 place significant restrictions on local zoning with regard to a **Child Care Home** or **Children's Home**. Please see the following section on **Selected Changes in Indiana Local Planning and Zoning Law since 1990** under Series 1100-Miscellaneous Provisions for a discussion of the changes.

Specific Treatments

It is acknowledged that there may exist a difference in needs between unincorporated counties and incorporated cities and towns with respect to the content of a zoning ordinance. The *Indiana Model Zoning Ordinance* is primarily focused toward the needs of municipalities. Specific topic areas may need a different treatment for use by counties. Obvious areas are mentioned below:

Mobile homes are treated as a temporary dwelling within the *Indiana Model Zoning Ordinance* in Section 10.5. This treatment favors the small city or town where it is advantageous to prohibit mobile homes outside mobile home parks. Counties may wish to modify this section to allow siting of mobile homes on rural acreage. An approval process and design criteria have been added in Section 4.6 for Mobile Home Parks.

Home Occupations are likely to demand much more attention by planners due to the ongoing explosion in communications technology and applications, which reduce the dependency of location on business operation. The discussion on home occupations in Section 4 is focused on the needs of cities and towns. Counties may wish to expand the framework by dealing with permitted home occupations in the rural setting.

The *Indiana Model Zoning Ordinance* relies on overlay zones to protect navigable airspace and covenants to reduce the conflict of airport noise and residential development. If your airport manager projects significant growth in airport

operations and residential growth is a significant factor around the airport, then the adoption of an **Airport Zoning District** should be considered.

An **Airport Zoning District** may be an effective tool to ensure that the projected growth around your public-use airport is compatible with airport operations. Such a district can specify the permitted uses in the various areas of the airport district.

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Planning and Zoning Law Changes since 1990

This 1999 revision to the *Indiana Model Zoning Ordinance* includes a selected list of the changes to the planning and zoning law since 1990. These changes may affect the development and enactment of a zoning ordinance for your community. The following is not a complete list of the changes that have occurred. This effort has been made to reference the more significant changes. Changes specific to Metropolitan Development Law or targeted to specific local units with existing planning and zoning mechanisms are not cited. This review is concentrated in Title 36 Local Government, Article 7 Planning and Development, Chapter 4 Local Planning and Zoning of the Indiana Code cited as IC 36-7-4. Selected Sections are discussed below:

Series 100—Applicability and Rules of Construction

This section contains the definitions of “Advisory Planning Law”, “Area Planning Law”, and Metropolitan Development Law” designated as ADVISORY, AREA, and METRO.

The designators ADVISORY, AREA, and METRO are used throughout the Indiana Code to distinguish the three different types of planning law. IC 36-7-4-200 series provides for the memberships of the plan commissions developed under each area of planning law. Our model zoning ordinance is primarily developed for use for ADVISORY planning. Examples of ADVISORY planning are when a municipality or a county undertakes the responsibility of planning and zoning for its respective jurisdiction. AREA planning exists when two or more governmental units cooperate to develop and administer the process to the benefit of all participants. METRO planning is of interest to a consolidated city and its associated county. METRO planning is not treated in this publication.

Unless indicated the statutes cited below apply both to AREA and ADVISORY planning. Where the statute applies only to one type of planning, the citation will be labeled either ADVISORY or AREA.

Series 200—Commission establishment and Membership

Authorizes the establishment of and prescribes membership of the plan commission.

Significant changes:

Section 201.1 added in 1995 prohibits restrictions on satellite receiver antennas and other antennas unless such restrictions have a clear and reasonable health, safety, and aesthetic objective. The zoning ordinance cannot prohibit installation of antennas not more than two feet in diameter.

Section 204 generally describes the process by which municipalities can adopt existing area planning law and disband and modify applicable municipal planning units.

Section 207 (c)(9) AREA. This section was amended in 1997 dealing with the county representation on the Area Plan Commission. The law used to state that if total municipal representation was more than five, then six county representatives should be seated. If the total municipal representation is less than six, then five county representatives should be seated. This is changed to state that if the total number of municipal representatives is **odd**, then six county representatives shall be seated. If the total number of county representatives is **even**, then five county representatives shall be seated.

Section 208 (d) AREA. This subsection was added in 1997 stating that the appointing authority may appoint an alternate member to participate in an Area Plan Commission established by Section 204 of this Chapter. This alternate shall have all the powers and duties of the regular member while participating on the Area Plan Commission.

The law is written so that it is difficult to clearly define the appointing power, whether the alternate is authorized only for the newly participating municipalities, and to understand the reference to the establishment of the Area Plan Commission under Section 204. Legal counsel is recommended for those attempting to apply this statute.

Section 209 (e) AREA. This subsection was added in 1997 to provide for an alternate as was done to Section 208 above.

Section 220 amended in 1991 provides that a vacancy in plan commission membership due to county surveyor shall be filled by the county engineer.

Section 222.5 amended in 1993 provides that the county surveyor or appointee of the county surveyor can receive mileage reimbursement and compensation for services rendered while on the plan commission. The 1997 amendment changes the mileage reimbursement rate from the state rate to the rate of the county fiscal body.

Section 223 amended in 1993 adds that a member of a plan commission or legislative body may not represent another person before that commission or legislative body concerning a zoning matter. A member of the plan commission may

not receive compensation under section 222.5 for attendance while disqualified during any part of the meeting.

Series 300—Commission Organization

Section 311 (b) (2) AREA This section, amended in 1993, affects the procedure whereby the executive director of the planning department is appointed by an Area Planning Commission in a county where the largest city is less than 25,000 or without cities.

Series 400—Commission Powers and Duties

Section 405 amended in 1993 and 1995 to provide a variety of changes:

Section 405(a)(1) Each plan commission shall make recommendations to the legislative body on:

- A text amendment to a zoning ordinance
- A replacement zoning ordinance
- A subdivision control ordinance
- The adoption or amendment to a Planned Unit Development District Ordinance
- Zone map changes

Section 405(a)(2) Each plan commission shall render decisions on amendments to plats, replats, and amendments to plats under the 700 series for subdivisions.

Section 405(b) provides, in part, that if the plan commission does not have the power to name or rename streets, it may recommend the naming or renaming to the executive.

Section 405(c) provides that a governmental unit may provide by ordinance that the plan commission, rather than the executive, name and rename streets.

Section 405(h) expands the list of those notified when streets are named/renamed or lots and structures number/renumbered by adding:

- The administrator of an enhanced emergency telephone system
- The U.S. Postal Service
- Any person or body that the commission or executive considers appropriate to receive notice.

Section 405(I) Each plan commission shall make decisions concerning development plans and amendments to development plans under the 1400 series unless the responsibility is delegated under 1402(c).

Section 405.5 – added in 1995 applies to any county containing territory with rural route addresses. Each plan commission shall develop a plan for converting rural route addresses to numbered addresses. When not under the jurisdiction of a plan commission, the executive shall develop such a plan.

Series 500—Comprehensive Plan

Some Sections modified to reflect new series 1500 Planned Unit Development.

Series 600—Zoning Ordinance

Section 601 (d)(3) amended in 1995 to allow the legislative body to designate zoning districts in which a plan commission shall approve or disapprove development plans. The plan commission also shall ensure that the development plan is consistent with the comprehensive plan and the development requirements specified in the zoning ordinance. The amendment cites the new series 1400 on development plans.

Section 601 (d)(4) amended in 1995 to allow the legislative body may provide for planned unit development through the adoption and amendment of zoning ordinances, including PUD district ordinances. The amendment cites section 503 of the new series 1500 on planned unit development.

Section 604 (b) amended in 1995 to provide that the notice of hearing given by the plan commission, for the public hearing on the proposed zoning ordinance, must specify the **place** the proposal is available for examination before the hearing.

Section 613 amended in 1995 now provides that a commitment takes effect upon approval of a development plan rather than when the zoning ordinance is amended. A commitment can only be modified or terminated by hearing by plan commission after notice.

Section 615 added in 1995 provides that the legislative body shall place in the zoning ordinance the circumstances when written commitments will be allowed in proposed zoning map changes or in Planned Unit Development proposals, their termination, and recordation.

Series 700—Subdivision Control

This series was not part of this review.

Series 800—Improvement Location Permit

No significant changes were noted in this series.

Series 900—Board of Zoning Appeals

Section 902 ADVISORY This section amended in 1995 further clarifies the qualifications for the five member Board of Zoning Appeals.

Section 907 amended in 1997 provides that the alternate for the disqualified member of Board of Zoning Appeals shall have all of the powers and duties of the regular member.

Section 921 amended in 1995 provides that commitments shall take effect upon approval, rather than upon the granting of the exception, use, or variance.

Section 923 amended in 1995 limits the authority of a hearing officer for use variances as follows: Area planning law must not be applicable, and the proposal must meet the following two criteria: (1) the variance of use involves a expansion of a use currently existing on a tract, (2) and the use is consistent with the comprehensive plan.

Series 1000—Remedies and Enforcement

Section 1014 amended in 1993 and 1995 provides that:

- The designated enforcement officials in subsection (a) must also be designated in the zoning ordinance.
- Enforcement actions are to be brought to the circuit or superior court of the county.
- Enforcement actions can include conditions imposed and commitments made under IC 36, subdivision plat covenants, development plans, and or a Planned Unit Development District Ordinance.

- Subdivision (c) provides that the action for the levy of a fine or penalty for enforcement of the zoning ordinance may be brought in any court located within the jurisdiction of the plan commission.

Section 1016 amended in 1995 expands the list of plan commission decisions reviewable by writ of certiorari.

Series 1100—Miscellaneous Provisions

Section 1107 Children's Home amended in 1992, 1993, and 1995. The section applies to a children's home providing residential care for eleven or more children operating in a residential area on January 1, 1992. Improvements to this facility have to meet all zoning requirements, developmental standards, and building codes as residential structures except that improvements cannot be denied based on findings that (a) the children's home is a business or (b) persons residing in the home are not related.

Section 1108 Child Care Home added in 1993 to impose zoning restrictions regarding a child care home used as the primary residence of the person who operates the home.

A zoning ordinance may not:

1. Exclude a child care home from a residential area solely because the child care home is a business.
2. Impose limits on the number of children that may be served that vary from the limits set by IC 12-7-2-33.7 and 33.8.
3. Impose requirements and restrictions upon child care homes that vary from the requirements and restrictions imposed upon child care homes by the rules adopted by the Division of Family and Children or the Fire Prevention and Building Safety Commission.

A child care home may be required to meet the same zoning requirements, developmental standards, and building codes as other similar residential structures in the same residential areas.

Zoning ordinances that discriminate must be amended by July 1, 1994.

Note: Child care home defined by IC 12-7-2-28.6.

Series 1200—Township Joinder

Section 1210.5 ADVISORY. The section added in 1995 specifies the membership on advisory plan commission for a township with a joinder agreement in a county having a population between 108,000 and 108,950. The applicable township would have a population between 9,000 and 10,000.

This section was amended in 1997 to add another township in the above county with a population of more than 8,440, but less than 8,500.

Section 1212 ADVISORY. This section was amended in 1995 to provide that the number of voters necessary to sign the referendum petition shall be the number required under IC 3-8-6-3 to place a candidate on the ballot.

Series 1300—Impact Fees

This entire series was added in 1991. An impact fee is defined as the monetary charge imposed on development. The legislative body of a unit may adopt an ordinance imposing an impact fee on new development in the geographic area over which the unit has planning and zoning control. The requirements for and administration of such an ordinance are detailed.

Series 1400—Development Plans

This entire series was added in 1995. “Development requirement” is defined as a requirement for development in a zoning district for which a development plan is required.

The legislative body must designate zoning districts where a development plan is required. The specific development requirements that must be placed in the zoning ordinance are listed. The legislative body must specify review and appeal procedures if authority is delegated to the Plan Commission, and its agents, to review and approve development plans.

Series 1500—Planned Unit Development

This entire series was added in 1995. A Planned Unit Development (PUD) is established by a PUD District Ordinance.

The zoning ordinance may provide for and regulate PUD’s. Before a PUD Ordinance may be adopted, a text amendment to the zoning ordinance must be approved that specifies the standards, requirements, and procedures that govern the

establishment and administration of PUD districts. Requirements are listed that must be addressed in the development of a PUD and included in a PUD Ordinance.

The Legislative Body can delegate review and approvals of submissions under the PUD Ordinance to the Plan Commission, a hearing examiner designated by the Plan Commission, or a Plan Commission employee.

Section 1

Enactment Provisions

General Provisions and Enforcement

The "enactment" provisions are necessary for establishing the legal basis of the ordinance in relation to the appropriate enabling legislation as it appears in the Indiana Code. They are also necessary to the ordinance itself as an act of the general purpose government (town, city, or county) for enacting the ordinance.

Section 1 deals with those general aspects of the ordinance which affect its legality and means of enforcement.

Subsection 1.1 provides for a single title by which the ordinance shall properly be known.

Subsection 1.2 explains the public purpose of the ordinance and how it is to be interpreted in relation thereto. It explains how the ordinance relates to other ordinances, regulations, or other legal provisions and/or privately agreed obligations so that it does not nullify the effect of the most restrictive rules or highest standards embodied in any of them. The separability statement explains that the nullification of any portion of the ordinance does not constitute the nullification of the other provisions of the ordinance.

Subsection 1.3 explains that nothing related to this ordinance interferes with actions begun before it takes effect nor nullifies actions taken under previous legislation except as specifically provided for in this ordinance.

Subsection 1.4 makes clear that this ordinance does not restrict or regulate state or federal conferred rights to employ the power of eminent domain or the use of state or federal, or state or federal agency-owned or occupied properties, or of state or federal institutions. This would also include powers delegated by units of government to private entities such as utilities, etc.

Subsections 1.5, 1.6, and 1.7 set forth the date on which this ordinance becomes effective, the fact that all previous regulations dealing with zoning matters are thereby repealed and supplanted by this ordinance, and establishes the legal basis and procedures for amending this ordinance.

Subsection 1.8 explains the means by which the provisions of this ordinance shall be enforced and violations prevented, stopped, and/or punished.

Subsection 1.9 establishes the person primarily responsible for administering and implementing this ordinance.

THE ZONING ORDINANCE
OF
THE (TOWN, CITY, COUNTY) OF _____, INDIANA
Ordinance No. _____

AN ORDINANCE ESTABLISHING ZONING REGULATIONS FOR _____, INDIANA AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, AND AMENDMENT THEREOF, IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 138, INDIANA ACTS OF 1957, AS AMENDED, AND FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH.

WHEREAS, Chapter 138, Article V, Indiana Acts of 1957, as amended, empowers the (town, city, county) to enact a zoning ordinance and to provide for its administration, enforcement, and amendment, and

WHEREAS, the _____ Plan Commission, the (Town, City, County) (Council/Commission) of _____, Indiana, deem it necessary for the purpose of promoting the health, safety, convenience, and general welfare of the community to enact such an ordinance, and

WHEREAS, pursuant to the provisions of Chapter 138, Article VII, Indiana Acts of 1957, as amended, a Board of Zoning Appeals has been created to recommend and to carry out its powers and duties as described under Section 77, Article VII, Chapter 138, Indiana Acts of 1957, as amended, and

WHEREAS, the _____ Plan Commission has divided all areas of the (town, city, county) into districts and has prepared regulations pertaining to such districts in accordance with an adopted comprehensive plan designed to lessen congestion in public streets; to secure safety from fire, flood, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements, and

WHEREAS, the _____ Plan Commission has given reasonable consideration, among other things, to the present character of the districts and their peculiar suitability for particular uses, with a view to conserving the value of buildings and lands and encouraging the most appropriate use of land throughout the (town, city, county) and

WHEREAS, the _____ Plan Commission has made studies and held public hearings thereon, pursuant to law, and submitted its final report to the (town, city, county), and

WHEREAS, the _____ Plan Commission has given due public notices of hearings (pursuant to said Chapter 138) relating to zoning districts, regulations, and restrictions, and has held such public hearings, and

WHEREAS, all requirements of Chapter 138, Indiana Acts of 1957, as amended, with regard to the preparation of the report of the _____ Plan Commission and the subsequent action necessary to enact this ordinance by the town have been met.

NOW, THEREFORE, BE IT ENACTED BY THE (TOWN, CITY, COUNTY COUNCIL/COMMISSION) OF THE (TOWN, CITY, COUNTY) OF _____, INDIANA AS FOLLOWS:

1.1 Title

These regulations shall hereafter be known and cited as the Zoning Ordinance of _____, Indiana.

1.2 Interpretation, Conflict and Separability

A. In their interpretation and application the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare.

B. Conflict with Public and Private Provisions

i. **Public Provisions.** The regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. Where any provision of these regulations imposes restrictions different from those imposed by any other provision of these regulations or any other ordinance, rule or regulation, or other provision of law, those provisions which are more restrictive or impose higher standards shall control.

ii. **Private Provisions.** These regulations are not intended to abrogate any easement, covenant or any other private agreement or restriction, provided that where the provisions of these regulations are more restrictive or impose higher standards or regulations than such easement, covenant, or other private agreement or restriction, the requirements of these regulations shall govern. Where the provisions of the easement, covenant, or private agreement or restriction impose duties and obligations more restrictive, or higher standards than the requirements of

these regulations, or the determinations of the Commission in enforcing these regulations, and such private provisions are not inconsistent with these regulations or determinations thereunder, then such private provisions shall be operative and supplemental to these regulations and determinations made thereunder. Private provisions can only be enforced privately unless a public agency such as the (Town, City, County) (Council/Commission) or Plan Commission has been made a party to such agreements.

- iii. **Separability.** If any part or provision of these regulations or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of these regulations or the application thereof to other persons or circumstances. The (Town, City, County) hereby declares that it would have enacted the remainder of these regulations even without any such part, provision or application.

1.3 Saving Provision

This ordinance shall not be construed as abating any action now pending under, or by virtue of, prior existing zoning ordinance, or as discontinuing, abating, modifying, or altering any penalty accruing or about to accrue, or as affecting the liability of any person, firm, or corporation, or as waiving any right of the (Town, City, County) of _____ under any section or provision existing at the time of the effective date of this ordinance, or as vacating or annulling any rights obtained by any person, firm, or corporation, by lawful action of the (Town, City, County) of _____ except as shall be expressly provided for in this ordinance.

1.4 Exclusion

Nothing in this Ordinance or in any rules, regulations or orders issued pursuant to this Ordinance shall be deemed to restrict or regulate or to authorize any unit of government, legislative body, plan commission or board of zoning appeals now or hereafter established, to restrict or regulate the exercise of the power of eminent domain by the State of Indiana or by any state agency, or the use of property owned or occupied by the State of Indiana or any state agency. As used in this section, the term "state agency" shall mean and include all state agencies, boards, commissions, departments, and institutions, including state universities of the State of Indiana.

1.5 Effective Date

This ordinance shall take effect 14 days after the notice of the adoption is published pursuant to IC36-7-4-610 (a) and (e).

1.6 Repealer

Upon the adoption of this ordinance according to law, the [_____ Zoning Regulations adopted on _____] as amended and all prior zoning maps are hereby repealed.

1.7 Amendments

For the purpose of providing for the public health, safety, and general welfare, the Town, on recommendation of the Commission, may from time to time amend the text of this ordinance and/or the zoning map(s) incorporated by reference in this ordinance. Public hearings on all proposed amendments shall be held by the Commission and/or the Town in the manner prescribed by law.

1.8 Enforcement, Violation, and Penalties

- A. It shall be the duty of the Administrator to enforce these regulations and to bring any violations or lack of compliance to the attention of the (Town, City, County) Attorney who may file a complaint against the person and prosecute the alleged violation.
- B. Any person may, by suit in a circuit or superior court of the county, enjoin the violation of this Ordinance.
- C. The (Advisory) Board of Zoning Appeals by mandatory injunction in the circuit court of the county against the owner or possessor of the real estate, may require the removal of a structure erected in violation of this Ordinance, or the removal of any use or condition permitted in violation of this Ordinance.
- D. A use that violates this Ordinance shall be treated as if it were a common nuisance, and the owner or possessor of the structure, land, or premises upon which the use is maintained shall be liable for such nuisance.
- E. Any person whether owner or possessor, who shall violate, or who permits or allows a violation, of any of the provisions of this Ordinance,

or who fails to comply therewith or with any requirements thereunder, or who shall build, reconstruct, or structurally alter any building in violation of any detailed statement or plan submitted upon which an approval or grant is given under this Ordinance, shall, upon complaint filed in any court of the county and upon judgment finding such violation, be fined not less than ten dollars (\$10.00) and not more than three hundred dollars (\$300.00), and each day that such violation or noncompliance shall be permitted to exist, shall constitute a separate violation.

- F. No Improvement Location Permit or Building Permit required under the Uniform Building Code or this ordinance shall be issued on any property subject to this ordinance in violation of the provisions of this ordinance.
- G. Attorney's Fees. Notwithstanding anything contained in this Ordinance to the contrary or appearing to be to contrary, and in addition and supplementary to other provisions of this Ordinance, if the Board of Zoning Appeals or the (Town, City, County) is required to utilize the services of the (Town, City, County) attorney or any other attorney in investigating a possible violation of this ordinance or enforcing the provisions of this Ordinance pursuant to Section 1.8C, 1.8D or 1.8E, or any other Section, before any board or court (including appeals), and such investigation results in a determination that a violation has occurred or if the Board of Zoning Appeals or (Town, City, County) is successful in its enforcement of the Ordinance by way of suit, appeal or other appropriate proceeding, the respondent, defendant or party investigated for a violation shall pay the (Town's, City's, County's) reasonable attorney fees and all costs related to the investigation of the violation and/or the enforcement of this Ordinance, unless such attorney fees or costs are specifically waived by the (Council/Commission) of the _____ (Town, City, County)
- H. Costs on Appeal. As to any appeal from a decision of the Board of Zoning Appeals, costs may not be allowed against the Board of Zoning Appeals unless it appears to the court that the Board acted with gross negligence or in bad faith in making the decision brought up for review.
- I. The Administrator, his staff or any person or persons assisting the Administrator in the application and enforcement of this Ordinance is hereby authorized to go onto private property for the purpose of conducting inspections required by the Ordinance or any order of the Plan Commission and Board of Zoning Appeals, or required to determine if this Ordinance is being violated, or required to enforce this Ordinance. Such inspection or inspections shall occur at reasonable times and shall be conducted in a manner not to disturb the peace.

1.9 Designation Of The Administrator

The _____ (town, city, county) hereby designates its _____ as the Administrator for the purposes of implementing this ordinance and has the principal responsibility for enforcing this ordinance.

Section 2 Definitions

Preface

The purpose of this section is to explain the meaning of the more important terms used in the text of this model zoning ordinance. By making these meanings explicit, the risk of arbitrary administrative decisions through lack of understanding is reduced and fair administration of the ordinance enhanced; also, those preparing applications will have their tasks made easier if the purposes, processes, and requirements of the ordinance are more clearly comprehended. Common understanding of the ordinance will facilitate adherence to it and the accomplishment of the stated public purposes for all parties affected by the ordinance in regard to adherence to its provisions and to the means of amending its text and maps.

It is extremely important that the definitions in the zoning ordinance be in agreement with the definitions in the subdivision regulations and other development-related ordinances in order to avoid conflicts between them. The lists of definitions need not be the same but those appearing in several ordinances should be in agreement although not necessarily equally comprehensive because of the differences of purpose of the various development-related ordinances.

The definitions given here are designed to give maximum protection to the local governments in their regulation of land uses and should not be modified or abridged without sufficient reasons and careful consideration in the light of local conditions. Some additional terms may need to be defined if they are used frequently locally. It is also essential that the definitions finally used in the adopted ordinance reflect and not conflict with the actual terminology used in the text of all sections. This, of course, may vary somewhat in accordance with conditions unique to the unit of local government adopting an ordinance based on this model.

Only terms having a specific or narrow meaning will be defined. The dictionary definition will be used for terms not specifically defined in this ordinance.

2.1 Definitions

Accessory Building. A subordinate, detached and roofed structure, not designed or used for human habitation (other than as an on-site caretaker's residence), which serves a function incidental to and associated with that of the **primary use** on the same lot.

Accessory Child Care. An occupant's use of a dwelling to provide child care for five (5) or fewer children at any time for less than 24 hours a day. The State exempts this use from licensing requirements.

Accessory Use. A subordinate use which is incidental to that of the primary use and is a use other than human occupancy.

Actual Construction. (See Section 4.3 (c)).

Administrator. The officer appointed by and/or delegated the responsibility for the administration of these regulations by the planning commission. The _____ (town, city, county officer) is hereby designated as the Administrator for the purposes of implementing this ordinance and is the (town, city, county) officer referred to herein wherever the term Administrator appears.

Advisory Plan Commission. A planning commission serving a single local government jurisdiction established as defined under Indiana Code 36-7-1-2. The _____ Plan Commission is an Advisory Plan Commission.

Airport Approach Area. Those parts of the Airport Zone, established by this ordinance for any **public-use airport**, which lie generally below the flight path of aircraft approaching or taking off from the runways of such airport and, specifically, below the defined **airport reference surfaces: the airport approach surface, the airport primary surface, and the airport transitional surfaces.**

Airport Approach Surface. A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the **airport primary surface** of a **public-use airport**. An **airport approach surface** is applied to each end of each runway based upon the type of approach available or planned for that runway end. The following conditions also apply to the **airport approach surface**:

1. The inner edge of the **airport approach surface** is the same width as the **airport primary surface** and it expands uniformly to a width of the following:

- a. 1,250' for that end of the runway with only visual approaches;
 - b. 1,500' for that end of a runway other than a utility runway with only visual approaches;
 - c. 2,000' for that end of an **airport utility runway** with a non-precision instrument approach;
 - d. 3,500' for that end of an **airport non-precision instrument runway** other than utility, having visibility minimums greater than $\frac{3}{4}$ of a statute mile; and
 - e. 4,000' for that end of an **airport non-precision instrument runway**, other than utility, having a non-precision instrument approach with visibility minimums as low as $\frac{3}{4}$ of a statute mile;
 - f. 16,000' for **airport precision instrument runways**.
2. The **airport approach surface** extends for the following horizontal distance:
 - a. 5,000' at a slope of 20:1 for all **airport utility and visual runways**;
 - b. 10,000' at a slope of 34:1 for all **airport non-precision instrument runways** other than utility; and
 - c. 10,000' at a slope of 50:1 with an additional 40,000' at a slope of 40:1 for all **airport precision instrument runways**.
 3. The outer width of an **airport approach surface** to an end of a runway will be that width prescribed in this ordinance for the most precise approach existing or planned for that runway end.

Airport Circling Area. Those parts of the Airport Zone, established by this ordinance for any **public-use airport**, which lie generally below the flight path of aircraft circling such airport and, specifically, below the **airport horizontal surface** and the **airport conical surface**.

Airport Conical Surface. A surface extending outward and upward from the periphery of the **airport horizontal surface** of a **public-use airport** at a slope of 20:1 for a horizontal distance of 4,000.

Airport Horizontal Surface. A horizontal plane 150' above the **established**

airport elevation of a public-use airport, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the **airport primary surface** of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is 5,000' for all **airport runways** designated as **utility** or **visual**, and 10,000' for all other runways. The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000' arc is encompassed by tangents connecting two adjacent 10,000' arcs, the 5,000' arc shall be disregarded on the construction of the perimeter of the **Airport Horizontal Surface**.

Airport Non-precision Instrument Runway. A runway of a **public-use airport** having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in non-precision instrument approach procedure has been approved, or planned, and for which no precision approach facilities are planned, or indicated on a Federal Aviation Administration planning document.

Airport Precision Instrument Runway. A runway of a **public-use airport** having an existing instrument approach procedure utilizing an instrument landing system (ILS) or other precision approach system approved by the Federal Aviation Administration. It also means a runway for which a precision approach system is planned and is so indicated by a Federal Aviation Administration approved airport layout plan or other planning documents.

Airport Primary Surface. A surface longitudinally centered on a runway of a **public-use airport**. When the runway has a specially prepared hard surface, the **Airport Primary Surface** extends 200' beyond each end of the runway, but when the runway has no specially prepared hard surface, or planned hard surface, the **Airport primary surface** ends at each end of that runway. The elevation at any point on the **Airport Primary Surface** is the same as the elevation of the nearest point on runway centerline. The width of an **Airport Primary Surface** is the following:

1. 250' for **airport utility runways** having only visual approaches;
 2. 500' for **airport utility runways** having non-precision instrument approaches;
- and
3. for other than **airport utility runways**, the width is the following:
 - a. 500' for **airport visual runways** having only visual approaches;
 - b. 500' for **airport non-precision instrument runways** having visibility minimums greater than $\frac{3}{4}$ of a statute mile;

- c. and 1000' for **airport non-precision instrument runways**, having a non-precision instrument approach with visibility minimums as low as $\frac{3}{4}$ of a statute mile, and for **airport precision instrument runways**.

The width of the **Airport Primary Surface** of a runway will be that width prescribed in this ordinance for the most precise approach existing or planned for either end of that runway.

Airport Reference Point. A point within the boundaries of a public-use airport established for each airport listed below:

1. _____ airport—the center of the intersection of runways (Longitude W, and Latitude N), _____ feet above sea level.

Airport Referenced Surfaces. The airport horizontal surface, the airport conical surface, the airport approach surface, the airport transitional surfaces, and the airport primary surface associated with a public-use airport.

Airport Transitional Surfaces. These surfaces extend outward and upward at right angles to the runway centerline and the runway centerline extended at a slope of 7:1 from the sides of the airport primary surface and from the sides of the airport approach surface. Transitional surfaces for those portions of the precision airport approach surface which project through and beyond the limits of the airport conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the airport approach surface and at right angles to the runway centerline.

Airport Utility Runway. A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight or less.

Airport Visual Runway. A runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on a Federal Aviation Administration approved airport layout plan or any other planning document.

Alley. A public or private way primarily designed to serve as a secondary access to the side or rear of those properties whose principal frontage is on some other street.

Applicant. The fee simple owner of land who makes application to the _____ Plan Commission for action by said commission thereby affecting that land.

Arterial Street. Either a primary arterial or secondary arterial as defined in this

section.

Baby-sitting. Care provided at the home of one or more children when their parents are away.

Bed and Breakfasts: Home-stay. A small establishment, having one to three bedrooms for rent to transients as an activity which is subordinate and incidental to the main residential use of the building. These are generally treated as tourist homes.

Bed and Breakfast Inns. Establishments ranging from four to twenty guestrooms and may include restaurants that cater to the general public as well as to overnight guests. These are treated as commercial enterprises.

Billboard. See Sign, Outdoor Advertising.

Block. An area that abuts a street and lies between two successive streets.

Block. A tract of land bounded by streets, or by a combination of streets and public parks, cemeteries, railroad rights-of-way, shorelines of waterways, or boundary lines of municipalities.

Board. The Advisory Board of Zoning Appeals of the (town, city, county) of _____.

Boarding Kennel. A place primarily for keeping four or more dogs, or other small animals that are ordinarily kept as pets, and are at least four months old.

Buffer Landscaping. Any trees, shrubs, walls, fences, berms, or related landscaping features required under this ordinance or the Subdivision Regulations to be placed on private property and privately maintained or in public rights-of-way for the purpose of buffering lots from adjacent properties, for esthetic purposes, and/or for creating sound barriers and/or visual privacy.

Section 1

Enactment Provisions

General Provisions and Enforcement

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Subsection 1.4 makes clear that this ordinance does not restrict or regulate state or federal conferred rights to employ the power of eminent domain or the use of state or federal, or state or federal agency-owned or occupied properties, or of state or federal institutions. This would also include powers delegated by units of government to private entities such as utilities, etc.

Subsections 1.5, 1.6, and 1.7 set forth the date on which this ordinance becomes effective, the fact that all previous regulations dealing with zoning matters are thereby repealed and supplanted by this ordinance, and establishes the legal basis and procedures for amending this ordinance.

Subsection 1.8 explains the means by which the provisions of this ordinance shall be enforced and violations prevented, stopped, and/or punished.

Subsection 1.9 establishes the person primarily responsible for administering and implementing this ordinance.

THE ZONING ORDINANCE
OF
THE (TOWN, CITY, COUNTY) OF _____, INDIANA
Ordinance No. _____

AN ORDINANCE ESTABLISHING ZONING REGULATIONS FOR _____, INDIANA AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, AND AMENDMENT THEREOF, IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 138, INDIANA ACTS OF 1957, AS AMENDED, AND FOR THE REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH.

WHEREAS, Chapter 138, Article V, Indiana Acts of 1957, as amended, empowers the (town, city, county) to enact a zoning ordinance and to provide for its administration, enforcement, and amendment, and

WHEREAS, the _____ Plan Commission, the (Town, City, County) (Council/Commission) of _____, Indiana, deem it necessary for the purpose of promoting the health, safety, convenience, and general welfare of the community to enact such an ordinance, and

WHEREAS, pursuant to the provisions of Chapter 138, Article VII, Indiana Acts of 1957, as amended, a Board of Zoning Appeals has been created to recommend and to carry out its powers and duties as described under Section 77, Article VII, Chapter 138, Indiana Acts of 1957, as amended, and

WHEREAS, the _____ Plan Commission has divided all areas of the (town, city, county) into districts and has prepared regulations pertaining to such districts in accordance with an adopted comprehensive plan designed to lessen congestion in public streets; to secure safety from fire, flood, and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements, and

WHEREAS, the _____ Plan Commission has given reasonable consideration, among other things, to the present character of the districts and their peculiar suitability for particular uses, with a view to conserving the value of buildings and lands and encouraging the most appropriate use of land throughout the (town, city, county) and

WHEREAS, the _____ Plan Commission has made studies and held public hearings thereon, pursuant to law, and submitted its final report to the (town, city, county), and

WHEREAS, the _____ Plan Commission has given due public notices of hearings (pursuant to said Chapter 138) relating to zoning districts, regulations, and restrictions, and has held such public hearings, and

WHEREAS, all requirements of Chapter 138, Indiana Acts of 1957, as amended, with regard to the preparation of the report of the _____ Plan Commission and the subsequent action necessary to enact this ordinance by the town have been met.

NOW, THEREFORE, BE IT ENACTED BY THE (TOWN, CITY, COUNTY COUNCIL/COMMISSION) OF THE (TOWN, CITY, COUNTY) OF _____, INDIANA AS FOLLOWS:

1.1 Title

These regulations shall hereafter be known and cited as the Zoning Ordinance of _____, Indiana.

1.2 Interpretation, Conflict and Separability

A. In their interpretation and application the provisions of these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare.

B. Conflict with Public and Private Provisions

i. **Public Provisions.** The regulations are not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law. Where any provision of these regulations imposes restrictions different from those imposed by any other provision of these regulations or any other ordinance, rule or regulation, or other provision of law, those provisions which are more restrictive or impose higher standards shall control.

ii. **Private Provisions.** These regulations are not intended to abrogate any easement, covenant or any other private agreement or restriction, provided that where the provisions of these regulations are more restrictive or impose higher standards or regulations than such easement, covenant, or other private agreement or restriction, the requirements of these regulations shall govern. Where the provisions of the easement, covenant, or private agreement or restriction impose duties and obligations more restrictive, or higher standards than the requirements of

these regulations, or the determinations of the Commission in enforcing these regulations, and such private provisions are not inconsistent with these regulations or determinations thereunder, then such private provisions shall be operative and supplemental to these regulations and determinations made thereunder. Private provisions can only be enforced privately unless a public agency such as the (Town, City, County) (Council/Commission) or Plan Commission has been made a party to such agreements.

- iii. **Separability.** If any part or provision of these regulations or application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision, or application directly involved in all controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of these regulations or the application thereof to other persons or circumstances. The (Town, City, County) hereby declares that it would have enacted the remainder of these regulations even without any such part, provision or application.

1.3 Saving Provision

This ordinance shall not be construed as abating any action now pending under, or by virtue of, prior existing zoning ordinance, or as discontinuing, abating, modifying, or altering any penalty accruing or about to accrue, or as affecting the liability of any person, firm, or corporation, or as waiving any right of the (Town, City, County) of _____ under any section or provision existing at the time of the effective date of this ordinance, or as vacating or annulling any rights obtained by any person, firm, or corporation, by lawful action of the (Town, City, County) of _____ except as shall be expressly provided for in this ordinance.

1.4 Exclusion

Nothing in this Ordinance or in any rules, regulations or orders issued pursuant to this Ordinance shall be deemed to restrict or regulate or to authorize any unit of government, legislative body, plan commission or board of zoning appeals now or hereafter established, to restrict or regulate the exercise of the power of eminent domain by the State of Indiana or by any state agency, or the use of property owned or occupied by the State of Indiana or any state agency. As used in this section, the term "state agency" shall mean and include all state agencies, boards, commissions, departments, and institutions, including state universities of the State of Indiana.

1.5 Effective Date

This ordinance shall take effect 14 days after the notice of the adoption is published pursuant to IC36-7-4-610 (a) and (e).

1.6 Repealer

Upon the adoption of this ordinance according to law, the [_____ Zoning Regulations adopted on _____] as amended and all prior zoning maps are hereby repealed.

1.7 Amendments

For the purpose of providing for the public health, safety, and general welfare, the Town, on recommendation of the Commission, may from time to time amend the text of this ordinance and/or the zoning map(s) incorporated by reference in this ordinance. Public hearings on all proposed amendments shall be held by the Commission and/or the Town in the manner prescribed by law.

1.8 Enforcement, Violation, and Penalties

- A. It shall be the duty of the Administrator to enforce these regulations and to bring any violations or lack of compliance to the attention of the (Town, City, County) Attorney who may file a complaint against the person and prosecute the alleged violation.
- B. Any person may, by suit in a circuit or superior court of the county, enjoin the violation of this Ordinance.
- C. The (Advisory) Board of Zoning Appeals by mandatory injunction in the circuit court of the county against the owner or possessor of the real estate, may require the removal of a structure erected in violation of this Ordinance, or the removal of any use or condition permitted in violation of this Ordinance.
- D. A use that violates this Ordinance shall be treated as if it were a common nuisance, and the owner or possessor of the structure, land, or premises upon which the use is maintained shall be liable for such nuisance.
- E. Any person whether owner or possessor, who shall violate, or who permits or allows a violation, of any of the provisions of this Ordinance,

or who fails to comply therewith or with any requirements thereunder, or who shall build, reconstruct, or structurally alter any building in violation of any detailed statement or plan submitted upon which an approval or grant is given under this Ordinance, shall, upon complaint filed in any court of the county and upon judgment finding such violation, be fined not less than ten dollars (\$10.00) and not more than three hundred dollars (\$300.00), and each day that such violation or noncompliance shall be permitted to exist, shall constitute a separate violation.

- F. No Improvement Location Permit or Building Permit required under the Uniform Building Code or this ordinance shall be issued on any property subject to this ordinance in violation of the provisions of this ordinance.
- G. Attorney's Fees. Notwithstanding anything contained in this Ordinance to the contrary or appearing to be to contrary, and in addition and supplementary to other provisions of this Ordinance, if the Board of Zoning Appeals or the (Town, City, County) is required to utilize the services of the (Town, City, County) attorney or any other attorney in investigating a possible violation of this ordinance or enforcing the provisions of this Ordinance pursuant to Section 1.8C, 1.8D or 1.8E, or any other Section, before any board or court (including appeals), and such investigation results in a determination that a violation has occurred or if the Board of Zoning Appeals or (Town, City, County) is successful in its enforcement of the Ordinance by way of suit, appeal or other appropriate proceeding, the respondent, defendant or party investigated for a violation shall pay the (Town's, City's, County's) reasonable attorney fees and all costs related to the investigation of the violation and/or the enforcement of this Ordinance, unless such attorney fees or costs are specifically waived by the (Council/Commission) of the _____ (Town, City, County)
- H. Costs on Appeal. As to any appeal from a decision of the Board of Zoning Appeals, costs may not be allowed against the Board of Zoning Appeals unless it appears to the court that the Board acted with gross negligence or in bad faith in making the decision brought up for review.
- I. The Administrator, his staff or any person or persons assisting the Administrator in the application and enforcement of this Ordinance is hereby authorized to go onto private property for the purpose of conducting inspections required by the Ordinance or any order of the Plan Commission and Board of Zoning Appeals, or required to determine if this Ordinance is being violated, or required to enforce this Ordinance. Such inspection or inspections shall occur at reasonable times and shall be conducted in a manner not to disturb the peace.

1.9 Designation Of The Administrator

The _____ (town, city, county) hereby designates its _____ as the Administrator for the purposes of implementing this ordinance and has the principal responsibility for enforcing this ordinance.

Section 2 Definitions

Preface

The purpose of this section is to explain the meaning of the more important terms used in the text of this model zoning ordinance. By making these meanings explicit, the risk of arbitrary administrative decisions through lack of understanding is reduced and fair administration of the ordinance enhanced; also, those preparing applications will have their tasks made easier if the purposes, processes, and requirements of the ordinance are more clearly comprehended. Common understanding of the ordinance will facilitate adherence to it and the accomplishment of the stated public purposes for all parties affected by the ordinance in regard to adherence to its provisions and to the means of amending its text and maps.

It is extremely important that the definitions in the zoning ordinance be in agreement with the definitions in the subdivision regulations and other development-related ordinances in order to avoid conflicts between them. The lists of definitions need not be the same but those appearing in several ordinances should be in agreement although not necessarily equally comprehensive because of the differences of purpose of the various development-related ordinances.

The definitions given here are designed to give maximum protection to the local governments in their regulation of land uses and should not be modified or abridged without sufficient reasons and careful consideration in the light of local conditions. Some additional terms may need to be defined if they are used frequently locally. It is also essential that the definitions finally used in the adopted ordinance reflect and not conflict with the actual terminology used in the text of all sections. This, of course, may vary somewhat in accordance with conditions unique to the unit of local government adopting an ordinance based on this model.

Only terms having a specific or narrow meaning will be defined. The dictionary definition will be used for terms not specifically defined in this ordinance.

2.1 Definitions

Accessory Building. A subordinate, detached and roofed structure, not designed or used for human habitation (other than as an on-site caretaker's residence), which serves a function incidental to and associated with that of the **primary use** on the same lot.

Accessory Child Care. An occupant's use of a dwelling to provide child care for five (5) or fewer children at any time for less than 24 hours a day. The State exempts this use from licensing requirements.

Accessory Use. A subordinate use which is incidental to that of the primary use and is a use other than human occupancy.

Actual Construction. (See Section 4.3 (c)).

Administrator. The officer appointed by and/or delegated the responsibility for the administration of these regulations by the planning commission. The _____ (town, city, county officer) is hereby designated as the Administrator for the purposes of implementing this ordinance and is the (town, city, county) officer referred to herein wherever the term Administrator appears.

Advisory Plan Commission. A planning commission serving a single local government jurisdiction established as defined under Indiana Code 36-7-1-2. The _____ Plan Commission is an Advisory Plan Commission.

Airport Approach Area. Those parts of the Airport Zone, established by this ordinance for any **public-use airport**, which lie generally below the flight path of aircraft approaching or taking off from the runways of such airport and, specifically, below the defined **airport reference surfaces: the airport approach surface, the airport primary surface, and the airport transitional surfaces.**

Airport Approach Surface. A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the **airport primary surface** of a **public-use airport**. An **airport approach surface** is applied to each end of each runway based upon the type of approach available or planned for that runway end. The following conditions also apply to the **airport approach surface**:

1. The inner edge of the **airport approach surface** is the same width as the **airport primary surface** and it expands uniformly to a width of the following:

- a. 1,250' for that end of the runway with only visual approaches;
 - b. 1,500' for that end of a runway other than a utility runway with only visual approaches;
 - c. 2,000' for that end of an **airport utility runway** with a non-precision instrument approach;
 - d. 3,500' for that end of an **airport non-precision instrument runway** other than utility, having visibility minimums greater than $\frac{3}{4}$ of a statute mile; and
 - e. 4,000' for that end of an **airport non-precision instrument runway**, other than utility, having a non-precision instrument approach with visibility minimums as low as $\frac{3}{4}$ of a statute mile;
 - f. 16,000' for **airport precision instrument runways**.
2. The **airport approach surface** extends for the following horizontal distance:
 - a. 5,000' at a slope of 20:1 for all **airport utility and visual runways**;
 - b. 10,000' at a slope of 34:1 for all **airport non-precision instrument runways** other than utility; and
 - c. 10,000' at a slope of 50:1 with an additional 40,000' at a slope of 40:1 for all **airport precision instrument runways**.
 3. The outer width of an **airport approach surface** to an end of a runway will be that width prescribed in this ordinance for the most precise approach existing or planned for that runway end.

Airport Circling Area. Those parts of the Airport Zone, established by this ordinance for any **public-use airport**, which lie generally below the flight path of aircraft circling such airport and, specifically, below the **airport horizontal surface** and the **airport conical surface**.

Airport Conical Surface. A surface extending outward and upward from the periphery of the **airport horizontal surface** of a **public-use airport** at a slope of 20:1 for a horizontal distance of 4,000.

Airport Horizontal Surface. A horizontal plane 150' above the **established**

airport elevation of a public-use airport, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the **airport primary surface** of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is 5,000' for all **airport runways** designated as **utility** or **visual**, and 10,000' for all other runways. The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000' arc is encompassed by tangents connecting two adjacent 10,000' arcs, the 5,000' arc shall be disregarded on the construction of the perimeter of the **Airport Horizontal Surface**.

Airport Non-precision Instrument Runway. A runway of a **public-use airport** having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in non-precision instrument approach procedure has been approved, or planned, and for which no precision approach facilities are planned, or indicated on a Federal Aviation Administration planning document.

Airport Precision Instrument Runway. A runway of a **public-use airport** having an existing instrument approach procedure utilizing an instrument landing system (ILS) or other precision approach system approved by the Federal Aviation Administration. It also means a runway for which a precision approach system is planned and is so indicated by a Federal Aviation Administration approved airport layout plan or other planning documents.

Airport Primary Surface. A surface longitudinally centered on a runway of a **public-use airport**. When the runway has a specially prepared hard surface, the **Airport Primary Surface** extends 200' beyond each end of the runway, but when the runway has no specially prepared hard surface, or planned hard surface, the **Airport primary surface** ends at each end of that runway. The elevation at any point on the **Airport Primary Surface** is the same as the elevation of the nearest point on runway centerline. The width of an **Airport Primary Surface** is the following:

1. 250' for **airport utility runways** having only visual approaches;
 2. 500' for **airport utility runways** having non-precision instrument approaches;
- and
3. for other than **airport utility runways**, the width is the following:
 - a. 500' for **airport visual runways** having only visual approaches;
 - b. 500' for **airport non-precision instrument runways** having visibility minimums greater than $\frac{3}{4}$ of a statute mile;

- c. and 1000' for **airport non-precision instrument runways**, having a non-precision instrument approach with visibility minimums as low as $\frac{3}{4}$ of a statute mile, and for **airport precision instrument runways**.

The width of the **Airport Primary Surface** of a runway will be that width prescribed in this ordinance for the most precise approach existing or planned for either end of that runway.

Airport Reference Point. A point within the boundaries of a public-use airport established for each airport listed below:

1. _____ airport—the center of the intersection of runways (Longitude W, and Latitude N), _____ feet above sea level.

Airport Referenced Surfaces. The airport horizontal surface, the airport conical surface, the airport approach surface, the airport transitional surfaces, and the airport primary surface associated with a public-use airport.

Airport Transitional Surfaces. These surfaces extend outward and upward at right angles to the runway centerline and the runway centerline extended at a slope of 7:1 from the sides of the airport primary surface and from the sides of the airport approach surface. Transitional surfaces for those portions of the precision airport approach surface which project through and beyond the limits of the airport conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the airport approach surface and at right angles to the runway centerline.

Airport Utility Runway. A runway that is constructed for and intended to be used by propeller driven aircraft of 12,500 pounds maximum gross weight or less.

Airport Visual Runway. A runway intended solely for the operation of aircraft using visual approach procedures, with no straight-in instrument approach procedure and no instrument designation indicated on a Federal Aviation Administration approved airport layout plan or any other planning document.

Alley. A public or private way primarily designed to serve as a secondary access to the side or rear of those properties whose principal frontage is on some other street.

Applicant. The fee simple owner of land who makes application to the _____ Plan Commission for action by said commission thereby affecting that land.

Arterial Street. Either a primary arterial or secondary arterial as defined in this

section.

Baby-sitting. Care provided at the home of one or more children when their parents are away.

Bed and Breakfasts: Home-stay. A small establishment, having one to three bedrooms for rent to transients as an activity which is subordinate and incidental to the main residential use of the building. These are generally treated as tourist homes.

Bed and Breakfast Inns. Establishments ranging from four to twenty guestrooms and may include restaurants that cater to the general public as well as to overnight guests. These are treated as commercial enterprises.

Billboard. See Sign, Outdoor Advertising.

Block. An area that abuts a street and lies between two successive streets.

Block. A tract of land bounded by streets, or by a combination of streets and public parks, cemeteries, railroad rights-of-way, shorelines of waterways, or boundary lines of municipalities.

Board. The Advisory Board of Zoning Appeals of the (town, city, county) of _____.

Boarding Kennel. A place primarily for keeping four or more dogs, or other small animals that are ordinarily kept as pets, and are at least four months old.

Buffer Landscaping. Any trees, shrubs, walls, fences, berms, or related landscaping features required under this ordinance or the Subdivision Regulations to be placed on private property and privately maintained or in public rights-of-way for the purpose of buffering lots from adjacent properties, for esthetic purposes, and/or for creating sound barriers and/or visual privacy.

Building. Any roofed structure built for the support, shelter, enclosure, or protection of persons, animals, chattels or moveable property of any kind (each part of such a structure that is separated from the rest by unbroken party walls is considered to be a separate building for the purposes of this ordinance).

Building Area. The horizontal projected area of the buildings on a lot, excluding open areas or terraces, unenclosed porches not more than one story high, and architectural features that project no more than two feet.

Building Line. The line that establishes the minimum permitted distance on a lot between the front line of a building and the street right-of-way line.

Building Permit. See Improvement Location Permit.

Business. The purchase, sale, or exchange of goods or services, or the maintenance for profit of offices or recreational or amusement enterprises.

Business District. Refers to the Highway Service (HS), Local Business (LB), General Business (GB), Central Business (CB), and Office Districts (OD).

Campground. Any site, lot, field, or tract of land under single ownership, or ownership of two or more people, designed with facilities for short term occupancy by recreational vehicles and other camping equipment but not including mobile homes.

Caretaker's Residence. An accessory dwelling on a nonresidential premise occupied by the person who oversees the nonresidential operation 24 hours a day, and his or her family.

Cemetery. Includes any columbarium, crematory, mausoleum, or mortuary operated in conjunction with and on the same tract as the cemetery.

Certificate of Compliance. An occupancy permit, as cited in Indiana Code 36-7-4-801 and 802. A certificate of compliance is commonly understood to be final approval resulting from satisfying all the terms of the applicable permits.

Child Care. Custodial, supervisory, recreational or institutional care, designed to supplement parental care, given children (other than the provider's), who are under eleven (11) years old. Child care facilities are either licensed by the State or exempted from licensing requirements. Child Care does not include: public or parochial schools, baby-sitting, day camps, summer camps, foster homes, group homes or cooperative reciprocating care by a group of parents in their own homes. See ACCESSORY CHILD CARE, CHILD CARE CENTER, CHILD CARE HOME.

Child Care Center. A State licensed (or exempted) facility in a nonresidential structure where one or more individuals provide child care for any number of children; or such a facility in a residentially occupied residential structure where individuals provide child care for eleven (11) or more children at any time; or in a non-residentially occupied residential structure for six (6) or more children at any time.

Child Care Home. A State licensed (or exempted) facility in a residential structure where one or more individuals provide child care for six (6) to ten (10) children, for more than four hours but less than twenty-four hours, for ten or more consecutive working weekdays. The structure shall be occupied as a residence.

Clinic. An establishment in which patients are admitted for medical or dental

study or treatment and in which the services of at least two physicians or dentists are provided.

Cluster Housing. Developments in which dwelling units are clustered close to their access streets or drives in order to permit aggregation of yard space into larger common recreational spaces.

Collector Street. A street intended to move traffic from local streets to secondary arterials as designated by and shown on the Thoroughfare Plan. (A collector street serves a neighborhood or large subdivision and shall if at all possible be designed so that no residential properties face onto it and no driveway access to it is permitted except if the property is to be in multi-family use for three (3) or more dwelling units.)

Commission. The _____ Advisory Plan Commission.

Condominium. Real estate lawfully subjected to IC 32-1-6 (the Horizontal Property Law) by the recordation of condominium instruments, in which undivided interests in the common areas and facilities are vested in the condominium unit owners.

County. _____ County, Indiana.

Design Review Committee. A panel established by the City or Town to provide technical services to the Plan Commission in the administration of this ordinance.

Detached Building. A building that has no structural connection with another building.

Drive-in. An establishment selling foods, frozen desserts, or beverages to consumers, the establishment being designed, intended or used for the consumption of such items on the premises outside of the building in which they were prepared.

Drives, Private. Vehicular streets and driveways, paved or unpaved, which are wholly within private property except where they intersect with public streets within public rights-of-way.

Dwelling. A building or part of a building that is used primarily as a place of abode, but not including a hotel, motel, lodging house, boarding house, or tourist home.

Dwelling Unit. A dwelling or part of a dwelling used by one family as a place of abode.

Easement. An authorization grant made by a property owner for use by another

of any designated part of his property for a clearly specified purpose and officially recorded.

Family. One or more persons sharing meals and living as a single housekeeping unit.

Farm. An area used for agricultural operations, including truck gardening, forestry, the operating of a tree or plant nursery, or the production of livestock and poultry.

Flood Hazard Areas. Those flood plains which have not been adequately protected from flooding caused by the regulatory flood, and are shown on the zoning map and/or on the Flood Hazard or Floodway-Flood Boundary Maps of the Federal Insurance Administration or maps provided to the Commission from the Indiana Natural Resources Commission.

Flood Plain. The area adjoining the river or stream, which has been or may hereafter be covered by floodwater from the Regulatory Flood.

Flood Protection Grade. The elevation of the lowest floor of a building, including the basement, which shall be two feet above the elevation of the regulatory flood.

Floodway. See Regulatory Floodway.

Floodway Fringe. That portion of the flood plain lying outside the floodway, which is inundated by the regulatory flood.

Foundation. The supporting member of a wall or structure situated in the ground.

Front Line. With respect to a building, means the foundation line that is nearest the front lot line.

Front Lot Line.

1. For an interior or through lot, means the line marking the boundary between the lot and the abutting street or a lake or watercourse; and
2. For a corner lot, means the line marking the boundary between the lot and the shorter of the two abutting street segments.

Note: except as deed restrictions specify otherwise.

Front Yard. The horizontal space between the nearest foundation of a building to the right-of-way line and that right-of-way line, extending to the side lines of the lot, and measured as the shortest distance from that foundation to the right-of-way line. The front yard of a corner lot shall be that yard abutting the street upon which the lot has its least frontage, except as deed restrictions specify otherwise.

Garage or Yard Sale. (See Section 4.4).

General Industrial Use. Manufacturing, processing, extraction, heavy repairing, dismantling, storage, or disposal of equipment, raw materials, manufactured products or wastes, in which some operations, other than transportation, are performed in open area.

Group Home. A single self-contained children's home, established in a residence, and operated by the county department of welfare, licensed private child placement agency or licensed incorporated group established for the purpose of receiving and caring for up to eight (8) children who are attended by resident adults. Nothing in this ordinance shall regulate any residential facility in a residential zone within the definition of IC 12-7-2-165, as amended, or any such facility operated and existing within the applicable state and federal laws.

Ground Floor Area. The area of a building in square feet, as measured in a horizontal plane at the ground level within its largest outside dimensions, exclusive of open porches, breezeways, terraces, garages, and exterior stairways.

Hardship. A perceived difficulty with regard to one's ability to improve land stemming from the application of the development standards of this Ordinance, which may or may not be subject to relief by means of variance. In and of themselves, self-imposed situations and claims based on a perceived reduction of or restriction on economic gain shall not be considered hardships. Self-imposed situations include: the purchase of land with actual or constructive knowledge that, for reasons other than physical characteristics of the property, the development standards herein will inhibit the desired improvement; any improvement initiated in violation of the standards of this Ordinance; any result of land division requiring variance from the development standards of this Ordinance in order to render that site buildable.

Height. With respect to a building, means the vertical distance from the lot ground level to the highest point, for a flat roof; to the deck line, for a mansard roof; and to the mean height between eaves and ridges, for a gable, hip, or gambrel roof.

Home Occupation/Service. An Accessory Use to a dwelling unit, carried out for gain by one or more residents, conducted as a customary and incidental use to the resident's dwelling unit, within the use requirements of Section 4.5 and authorized in

Section 4.6. Home Occupation/Service is commonly understood to be the use of a home for a business or professional service.

Improvement Location Permit. Written permission issued by the Administrator or Administrator's designee to permit a person, firm, or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish, or add to any building or structure within its jurisdiction, or cause the same to be done or change the use or condition of the land.

Interior Lot. A lot other than a corner lot or a through lot.

Interested Parties. Those parties who are owners of properties adjoining or adjacent to the property for which a zoning change is being sought.

Junk Yard. A place, usually outdoors, where waste or discarded used property other than organic matter, including but not limited to automobiles, farm implements and trucks, is accumulated and is or may be salvaged for reuse or resale; this shall not include any industrial scrap metal yard.

Light Industrial Use. Manufacturing, processing, extraction, heavy repairing, dismantling, storage, or disposal of equipment, raw materials, manufactured products or wastes, in which all operations, other than transportation, are performed entirely within enclosed buildings and for which all loading and unloading facilities are enclosed.

Local Street. A street intended to provide access to other streets from individual properties and to provide right-of-way beneath it for sewer, water, and storm drainage pipes.

Lodging House. A building, not available to transients, in which lodgings are regularly provided for compensation for at least three persons in addition to the owner occupant.

Lot. A tract, plot, or portion of a subdivision or other parcel of land intended as a unit for the purpose, whether immediate or future, of transfer of ownership or of building development.

Lot, Corner. A lot situated at the intersection of two (2) streets, the interior angle of such intersection not exceeding 135 degrees. A lot with streets abutting more than two (2) sides shall also be a corner lot.

Lot Coverage. The horizontal area of all buildings on a lot as a percentage of lot area.

Lot Ground Level.

1. For a building having walls abutting (that is, generally parallel to and not more than five feet from) one street only, means the elevation of the sidewalk at the center of the wall abutting the street;
2. For a building having walls abutting more than one street, means the average of the elevations of the sidewalk at the centers of all walls that face streets; and
3. For a building having no wall abutting a street, means the average level of the ground adjacent to the exterior walls of the building.

Lot Width. The distance between the side lot lines as measured on the building line.

Maneuvering Aisle. A maneuvering space which serves two or more parking spaces, such as the area between two rows of parking spaces and/or the driveway leading to those spaces.

Maneuvering Space. An open space in a parking area which: 1) is immediately adjacent to a parking space; 2) is used for and/or is necessary for turning, backing or driving forward a motor vehicle into such parking space, but 3) is not used for the parking or storage of motor vehicles.

Manufactured Home. A single-family dwelling unit designed and built in a factory, installed as a permanent residence, which bears a seal certifying that it was built in compliance with the federal Manufactured Housing Construction and Safety Standards Law (1974 (U.S.C. 5401 et seq.), and which also complies with the following specifications:

1. shall have been constructed after January 1, 1981 and must exceed nine hundred fifty (950) square feet of occupied space per IC 36-7-4(d);
2. is attached to a permanent foundation of masonry construction and has a permanent perimeter enclosure constructed in accordance with the One and Two Family Dwelling Code;
3. has wheels, axles and towing chassis removed;
4. has a pitched roof with a minimum rise of 2/12; and,
5. consists of two (2) or more sections which, when joined, have a minimum dimension of 20' x 47.5' in length or width enclosing occupied space.

Major Subdivision. Any subdivision not classified as a minor subdivision, including but not limited to subdivisions of four (4) or more lots, or any size subdivision requiring any new street or extension of the local government facilities, or the creation of any public improvements.

Mineral Extraction. (1) Mining or quarrying; and (2) removal of earth materials.

Minor Subdivision. Any subdivision containing not more than three (3) lots fronting on an existing street which is an improved right-of-way maintained by the County (or other local government,) not involving any new street or the extension of municipal facilities, or the creation of any public improvements, and not adversely affecting the remainder of the parcel or adjoining property, and not in conflict with any provision or portion of the Comprehensive Plan, Official Map, or Zoning Ordinance.

Mobile Home. Any vehicle without motive power designated by the manufacturer or maker with hitch and undercarriage to permit attachment of axles and wheels, and so designed to permit its being used as a conveyance upon public streets and highways and so designed, constructed or reconstructed as will permit the vehicle to be used as a single-family dwelling and not qualifying under the definition of manufactured home.

Mobile Home Park/Manufactured Home Community (MHP/MHC). A site with required improvements and utilities containing two (2) or more mobile home park/manufactured home park lots, which may include services and facilities for its residents, and within which recreational vehicles and tents shall not be used as places of abode.

Multi-Family Dwelling. A dwelling, on a separate lot, containing more than two dwelling units.

Nonconforming Use. A building, structure or use of land existing at the time of enactment of this ordinance, which does not conform to the regulations of the district in which it is situated.

Occupied Space. The total area of earth horizontally covered by the structure, excluding garages, patios and porches and other accessory structures.

One and Two Family Dwelling Code, Indiana. The nationally recognized model building code adopted by the Indiana Department of Fire Prevention and Building Safety as mandated by 675 I.A.C 14, and, which includes those supplements and amendments promulgated by this agency.

Open Use. The use of a lot without a building, or a use for which a building with a floor area no larger than five percent of the lot area is only incidental.

Parking Area. A group of parking spaces, exclusive of any part of a street or alley, designed or used for the temporary parking of motor vehicles.

Parking Garage. A garage, where parking but not repairs are available to the public.

Parking Space. An open space exclusive of maneuvering aisle and driveway for the parking of a motor vehicle.

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

Permanent Perimeter Enclosure. A permanent perimeter structural system completely enclosing the space between the floor joists of the home and the ground, except for necessary openings, constructed in accordance with the One and Two Family Dwelling Code.

Person. A corporation, firm, partnership, association, organization, unit of government, or any other group that acts as a unit, as well as a natural person.

Plat. A map indicating the subdivision or re-subdivision of land filed or intended to be filed for record with the County Recorder.

Planned Unit Development. A unified development meeting the requirements for zoning approval under the provisions of Section 6 of this ordinance.

Primary Arterial. A street intended to move through-traffic to and from such major attractors as central business districts, regional shopping centers, colleges and/or universities, military installations, major industrial areas, and similar traffic generators within the Town or County; and/or as a route for traffic between communities; a major intra- or inter-city thoroughfare as designated by and shown on the Thoroughfare Plan.

Primary Use. The principal predominate use of real estate.

Primary Use Building. A building (including any other building attached in a substantial way, such as by a roof), in which the primary use of the lot or parcel is conducted. For single-family and two-family residential uses, it is the main dwelling or dwellings. For multi-family residential uses, it is all dwelling units. Only one PRIMARY USE BUILDING is permitted per lot or parcel. If multiple buildings on a

lot or parcel are engaged in the same primary use, the building housing that use's operating or managing office is considered the PRIMARY USE BUILDING; all others are considered **accessory buildings**. Where multiple primary use buildings occupy the same lot or parcel, but are all operated or managed from the same building(s), the building(s) housing the managing office(s) shall be the PRIMARY USE BUILDING(S), and all others shall be accessory to it (them), but only if these multiple use buildings are in single ownership.

Private Garage. A garage whose principal use is to house motor vehicles for the accommodation of related dwelling units or related business establishments.

Private Camp. An area of land used or designed to be used to accommodate groups or organized camping parties, including cabins, tents, food service, and recreational facilities.

Professional Office. An office used by members of a recognized profession including but not limited to architects, artists, dentists, engineers, lawyers, musicians, physicians, surgeons or pharmacists, and realtors or insurance agents and brokers.

Public Improvement. Any drainage ditch, street, highway, parkway, sidewalk, pedestrian-way, tree, lawn, off-street parking area, lot improvement, or other facility for which the local government may ultimately assume the responsibility for maintenance and operation, or which may affect an improvement for which local government responsibility is established. (All such improvements shall be properly bonded.)

Rear Lot Line. For an interior or corner lot, this means the lot line that is opposite the front lot line and farthest from it, except that for a triangular or other irregularly-shaped lot it means the line ten feet long, parallel to the front lot line, and wholly within the lot, that is farthest from the lot line.

Rear Yard. A yard as defined herein, encompassing the horizontal space between the nearest foundation of a building to a rear lot line and that rear lot line, extending to the side lines of the lot, and measured as the shortest distance from the foundation to the rear lot line. The rear yard of a corner lot shall be that yard at the opposite end of the lot from the front yard.

Recreational Vehicle. A portable vehicular structure designed as a temporary dwelling for travel and vacation uses which:

1. is identified on the unit by the manufacturer as a travel trailer or a motor home; and
2. of a size that is street legal;

OR

1. is a structure mounted on an automobile or truck; and
2. is designed to be used for sleeping and human habitation.

Regulatory Flood. That flood having a peak discharge which can be equaled or exceeded on the average of once in a one hundred (100) year period, as calculated by a method and procedure which is acceptable to and approved by the Indiana Natural Resources Commission; this flood is equivalent to a flood having a probability of occurrence of one percent (1%) in any given year.

Regulatory Floodway. The channel of a river or stream and those portions of the flood plains adjoining the channel which are reasonably required to efficiently carry and discharge peak flow of the regulatory flood of any river or stream and, is that area covered by floodwaters in significant downstream motion or covered by significant volumes of stored water during the occurrence of the regulatory flood.

Residential Care. Establishments engaged in the provision of residential social and personal care for persons who require some level of care, but medical care is not the major need. These persons include those who demonstrate limits to ability for self-care such as children, the aged, the destitute, the deaf, the blind, the mentally handicapped, and physically handicapped. These establishments do not include child care centers, child care homes, or group homes which have separate definitions in this section.

Residential District. Those districts, R-1, R-2, and R-3 as described under Section 3, Districts.

Scrap Metal Yard. A general industrial use established independent or ancillary to and connected with another general industrial use, which is concerned exclusively in new and salvaged metal pipes, wire, beams, angles, rods, machinery, parts, filings, clippings, and all other metal items of every type, and which acquires such items incidental to its connection with the other general industrial use or by purchase, consignment or bailment which stores, grades, processes, melts, cuts, dismantles, compresses, cleans, or in any way prepares said items for reuse by the connected other general industrial use or for sale and shipment and use in other industries or businesses including open hearth, electric furnaces and foundry operations; such an establishment shall not include junk yards, dumps, or automobile graveyards.

The storage, dealing in or the permitting of the accumulation of significant quantities of combustible, organic or nonmetal scrap materials such as wood, paper, rags, garbage, bones and shattered glass on the premises of such an establishment will disqualify it from being classified as a scrap metal yard, and the same will be classified as either a junk yard, a sanitary fill or refuse dump depending on the content of the accumulated matter.

Secondary Arterial. A street intended to collect and distribute traffic in a manner similar to primary arterials, except that these streets service minor traffic generating areas such as community-commercial areas, primary and secondary educational plants, hospitals, major recreational areas, churches, and offices, and/or designed to carry traffic from collector streets to the system of primary arterials as designated by and shown on the Thoroughfare Plan.

Section. A unit of a manufactured home at least ten (10) feet in width and thirty (30) feet in length.

Setback. A line parallel to and equidistant from the relevant lot line (front, back, side) between which no buildings may be erected as prescribed in this ordinance.

Side Lot Line. Any line separating two lots other than front or rear lot lines.

Side Yard. The horizontal space between the nearest foundation of a building to the side lot line and that side lot line, unoccupied other than by architectural appurtenances projecting not more than twenty-four (24) inches into that space; steps or terraces not higher than the level of the first floor of the building; and open lattice-enclosed fire escape, fireproof outside stairways and balconies projecting not over twenty-four (24) inches into that space.

Single-family dwelling. A building, on a separate lot, containing one dwelling unit.

Sign. A visual device or structure used for advertising, display, or publicity purposes.

Sign, Outdoor Advertising. A structural poster panel or painted sign, either freestanding or attached to a building, for the purpose of conveying information, knowledge, or ideas to the public about a subject unrelated to the activities on the premises upon which it is located.

Sign, Portable. A free-standing, on-premise advertising device which is designed to be moved from one location to another and is not permanently affixed to the ground or to a structure, or is only affixed by means of tiedown straps or stakes.

Special Use. The authorization of a use that is designated as such by this ordinance as being permitted in the district concerned if it meets special conditions, and upon application, is specifically authorized by the Advisory Board of Zoning Appeals.

Street. A right-of-way that is purchased by a governmental unit or is established by a recorded plat and publicly maintained to provide the principal means of

access to abutting property.

Structural Alteration. Any change in the supporting members of a building, such as bearing walls, columns, beams, or girders, or in the dimensions or configurations of the roof or exterior walls.

Structure. Anything constructed or erected that requires location on or in the ground or attachments to something having a location on or in the ground.

Subdivision. The division of a parcel of land into two (2) or more lots, parcels, sites, units, plats, or interests for the purpose of offer, sale, lease, or development, either on the installment plan or upon any and all other plans, terms, and conditions, including re-subdivision.

Through Lot. A lot fronting on two parallel or approximately parallel streets and includes lots fronting on both a street and a watercourse or lake.

Tourist Home. See Bed and Breakfast: Home-stay.

Trade or Business School. A secondary or higher education facility teaching usable skills that prepares students for jobs in a trade, business, or vocation.

Use. The employment or occupation of a building, structure, or land for a person's service, benefit, or enjoyment.

Use Variance. The approval of a use other than that prescribed by this zoning ordinance. Changes of allowed uses are not permitted by this ordinance except by zoning map amendment.

Variance. A specific approval granted by the Advisory Board of Zoning Appeals in the manner prescribed by this Ordinance, to deviate from the development standards (such as height, bulk, or area) that the Ordinance otherwise prescribes.

Yard. A space on the same lot with a principal building that is open and unobstructed except as otherwise authorized by this ordinance.

Section 3 Districts

Preface

This section lists and describes two kinds of districts: 1) "as of right" districts in which a limited range of similar, compatible uses are permitted under the restrictions given for each district and in which a limited number of special uses may also be permitted on application to the Board of Zoning Appeals which may also set further restrictions and conditions, and, 2) "planned development districts" which conditionally allow various mixes of uses provided the development in these districts conforms precisely to a detailed comprehensive development plan agreed by the owner and the plan commission and local legislative body to have been designed to eventuate in a compatible, mutually beneficial arrangements of uses on the land.

This section and its subsections importantly set the stage for the one that follows, Authorized Uses, describing in detail those uses permitted in each district and the standards which must be met by each of these uses in order for them to be compatible with other uses and, hence, allow them to be permitted.

The "planned unit development" technique is especially applicable where a variety of mixed, mutually-supportive uses can be made to be compatible through carefully organized design processes or for a site that is environmentally or topographically sensitive. This is a tool for flexible control of complex use arrangements.

3.1 Kinds Of Districts: Establishment

The (town, city, county) is divided into the following districts:

- (A) **Agriculture Districts** are established to include areas where agricultural production and operations are expected. Little or no urbanization has occurred or is likely to occur in these areas to avoid jeopardizing agricultural production.
- (FP) **Flood Plain Districts** are established to include lowland areas adjacent to lakes and ponds, and areas that are within the flood plains of rivers or creeks and are thus subject to inundation and damage from flood waters up to the elevation of the regulatory flood.
- (R1) **Residence Districts** are established to include areas for low-density single-family residences with a density of two (2) dwelling units or less per gross acre.
- (R2) **Residence Districts** are established to include areas for medium density single-family residences with a density of four (4) dwelling units or less per gross acre.
- (R3) **Residence Districts** are established to include areas for relatively high-density single-family, two-family, and multi-family residential development with a density of eight (8) dwelling units or less per gross acre.
- (HS) **Highway Service Districts** are established to include areas that are close to interstate interchanges and intersections of two state highways and are appropriate to the limited shopping and service needs of those locations.
- (LB) **Local Business Districts** are established to include areas that are close to residential areas and appropriate to meeting their shopping and service needs.
- (GB) **General Business Districts** are established to include areas that are appropriate to all kinds of business, services and light industrial uses.
- (CB) **Central Business District** is established to include the (town's, city's, county's) core business area.
- (OD) **Office Districts** are established to include office park facilities, and related office and business services.

- (I) **Industrial Districts** are established to include most of the existing industrial facilities and areas best suited for future industrial use because of location, accessibility and other conditions.
- (PD) **Planned Unit Development Districts**, designated **PDRS, PDNR, PDMX, PDCC**, are established for the purposes and under the conditions set forth in Section 6 hereof.

3.2 **Boundaries: In General**

- A. The boundaries of the districts established by section 3.1 are as shown on the zone map which is a part of this Ordinance, and hereafter known as the Official Zoning Map for the (Town, City, County) of _____. Said Official Zoning Map shall hereafter be kept in the custody of the Administrator of _____, Indiana. Except as provided by section 3.3, such boundaries and the Official Zoning Map shall be changed only by amendment to the Official Zoning Map. Upon such amendment the (Town, City, County) of _____ shall within (5) days of passage of such amendment, certify a copy of such amendment to the Administrator, who shall immediately change the Official Zoning Map in accordance with such amendment. The Administrator shall cause the Official Zoning Map to show the ordinance number and date of adoption of all such amending ordinances.
- B. When the exact boundaries of a district are uncertain, they shall be determined by use of the scale of the zoning map.
- C. When the maps are caused to be changed by amendment the change shall be to the center of any and all abutting rights-of-way.
- D. If the boundary line of a district divides a lot having frontage on a street so that the front part of the lot lies in one district and the rest of the lot lies in another, use requirements and restrictions that apply to the front part of the lot apply to the entire lot.

3.3 **Boundaries: Flood Plain Districts**

The boundary of an FP District may be changed if the Indiana Natural Resources Commission, after investigating the land involved, determines (1) that the requested change would not endanger the public welfare, and (2) that the elevation of such land is at or above the elevation of the regulatory flood. Such determination shall be made in writing upon the request of the applicant who shall provide the Indiana Natural Resources Commission with a scale drawing identifying the location,

dimensions and elevations related to the acceptable vertical datum.

If the land within the boundary of an FP District is certified by a Registered Land Surveyor or Registered Professional Engineer as having an elevation at or above the regulatory flood elevation, as determined by the Indiana Natural Resources Commission, that area of land so certified will be removed from the FP designation and will become zoned as the adjacent areas on the zoning map. Should the adjacent areas contain more than one zoning district, the line dividing those existing districts shall be extended through the land so removed from the FP District. Should an area, certified as having natural ground elevation at or above that of the regulatory flood, be adjacent to no district other than flood plain (i.e., surrounded by flood plain), it will be designated A, Agriculture, until or unless the legislative body alters that designation by ordinance. However, in the case of islands created by fill material only those islands located in the floodway fringe will be redesignated. Islands created in the floodway will still be considered part of the floodway. However, in no case shall an area derive A zoning from its adjacency to land removed by certification from the FP district if the area also abuts another zoning classification. It shall derive its zoning from the adjacent district.

Buildings permitted on lands within one hundred (100) feet of the FP District shall be required to comply with the flood protection grade as established by the Indiana Natural Resources Commission.

All lands, within the flood plain having an elevation below that elevation determined by the Indiana Natural Resources Commission to be the regulatory flood elevation for that location shall be in the FP District.

3.4 Subdivisions, Cluster Developments, Planned Unit Developments, Condominiums and Zero Lot Line Developments

The subdivision of land pursuant to the requirements of the _____ Subdivision Ordinance shall be permitted in these districts: A, FP, R1, R2, R3, CB, HS, LB, GB, I, and OD. The intended principal use of each of the proposed lots within a proposed subdivision shall govern the specific district or districts appropriate to the land to be subdivided, as per 4.1 of this ordinance.

However, the following classifications of subdivisions shall only be permitted in R1, R2, or R3 districts: major subdivisions intended entirely for residential use, and any portions of major subdivisions intended for residential use;

Planned Unit Developments shall be permitted only in these districts: PDRS, PDNR, PDMX, PDCC as per Section 6.3 of this ordinance. In order to provide greater design flexibility, and to encourage innovative land development techniques

and a more efficient use of land, the design and development of uses within these districts may deviate from the standards prescribed by the _____ Subdivision Ordinance and sections 5.1 through 5.14 of this ordinance.

Condominiums, as defined and regulated in IC 32-1-6 (the Horizontal Property Law), cluster developments, and zero lot line developments shall be considered for zoning purposes to be Planned Unit Developments, and consequently shall be permitted only in these districts: PDRS, PDNR, PDMX, and PDCC, as per Section 6.3 of this Ordinance.

Section 4 Authorized Uses

Preface

The purpose of this section is to describe the uses which are permitted, either by right or by special exception, and the conditions under which they are authorized in the districts described in the previous Section.

Subsection 4.1 deals with "primary" as opposed to secondary, ancillary or "accessory" uses. Subsection 4.2 lists those accessory uses which are permitted. Subsection 4.3 deals with the problem of non-conforming uses and structures. It describes the various kinds of non-conformance and the limitations placed on such uses and structures in order to discourage their continued existence. Subsection 4.4 deals with the conditions for allowing garage or yard sales as a temporary use. Section 4.5 deals with home service/occupation. Section 4.6 deals with the establishment of Mobile Home Parks/Manufactured Home Communities. The chart which concludes this chapter provides a convenient means of determining which uses are authorized in each of the districts described in Section 3.

It is in this section that local governments can express local experience and attitudes in regard to preserving and enhancing the quality of development in a manner appropriate to the character of their communities and regions.

4.1 Primary Uses

Primary uses are authorized in the districts established by or under section 3.1 as shown by an "X" in the table at the end of this section. Where the use is designated for the district with an "S", the use is permitted in that district only if a special use has been approved under section 9.3.

4.2 Accessory Uses

Accessory uses such as the following are authorized in all districts subject to the provisions of any and all recorded restrictive covenants running with the land:

- Bird Baths and bird houses
- Accessory buildings
- Curbs
- Driveways
- Fences and Hedges*
- Lamp posts
- Mail boxes
- Name plates
- Parking spaces
- Private swimming pools enclosed by a 5-foot high fence or, 5-foot vertical enclosure integral with an above ground pool
- Public utility installations for local service (such as poles, lines, hydrants, and telephone booths)
- Retaining walls
- Trees, shrubs, plants and flowers
- Walks

* Provided that, in any residence district, ornamental fences and hedges shall not exceed three feet in height in the required front yard, except that open chain link fences may be erected to four feet in height, or as provided in section 5.7.

4.3 Nonconforming Uses and Structures

A. Intent.

Within the districts established by this ordinance or by amendments that may later be adopted, there may exist:

- i. Nonconforming lots;
- ii. Nonconforming structures;
- iii. Nonconforming uses of land;

- iv. Nonconforming uses of land and structures in combination; and
- v. Nonconforming characteristics of use.

These were lawful before this ordinance was passed or amended, but they are prohibited, regulated or restricted under the terms of this ordinance or may be under future amendments hereto. It is the intent of this ordinance to permit these nonconforming uses to continue until they are removed, but not to encourage their survival. It is further the intent of this ordinance that nonconforming uses shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses which are prohibited elsewhere in the same district. [Note: Illegal uses existing at the time this ordinance is enacted shall not be validated by virtue of its enactment.]

The restrictions on nonconforming uses stated in this section do not apply to agricultural land in a nonconforming use status if the land was used for agricultural production before classified as a nonconforming use. The land must remain in agricultural production for any three year period out of a five year period.

B. Incompatibility of Nonconforming Uses.

Nonconforming uses are declared by this ordinance to be incompatible with permitted uses in the districts in which such use is located. A nonconforming use of a structure, a nonconforming use of land, or a nonconforming use of a structure and land in combination shall not be extended or enlarged after passage of this ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses of a nature which would be generally prohibited in the district in which such use is located.

C. Avoidance of Undue Hardship.

To avoid undue hardship, nothing in this ordinance shall be deemed to require a change in the plans, construction, or designated use of any building or development on which actual construction was lawfully begun prior to the effective date of adoption or amendment of this ordinance and upon which actual building construction has been carried on diligently. Where demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such demolition or removal shall be deemed to be actual construction, provided that the work shall be carried on diligently. Actual construction is hereby defined as work done which is beyond the preparation stage and into that stage where the changes or additions are made permanent.

D. Single Nonconforming Lots of Record.

In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record after the effective date of adoption or amendment of this ordinance notwithstanding limitations imposed by other provisions of this ordinance. Such lots must be in separate ownership or included in a subdivision of record in the office of the County Recorder at the time of passage of this ordinance. This provision shall apply even though such lots fail to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than those applying to area or width, or both, of the lots shall conform to the regulations for the district in which such lots are located. (Also see Section 5.3(c)). Variances of requirements listed in Section 5 of this ordinance, other than lot area or lot width shall be obtained only through action of the Board of Zoning Appeals as provided in Sections 9.4. [Note: This section shall apply only to single-family residences.]

E. Nonconforming Lots of Record in Combination.

If two or more lots or a combination of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this ordinance and if all or part of the lots with no buildings do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purposes of this ordinance and no portion of said parcel shall be used or sold in a manner which diminishes compliance with the lot width and area requirements established by this ordinance, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this ordinance.

F. Nonconforming Uses of Land.

Where, at the time of adoption of this ordinance, lawful uses of land exist which would not be permitted by the regulations imposed by this ordinance, the uses may be continued so long as they remain otherwise lawful, provided:

- i. No such nonconforming uses shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance.

- ii. No such nonconforming uses shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such uses at the effective date of adoption or amendment of this ordinance.
- iii. If any such nonconforming uses of land are discontinued or abandoned for more than one year (except when government action impedes access to the premises), any subsequent use of such land shall conform to the regulations specified by this ordinance for the district in which such land is located.
- iv. No additional structure not conforming to the requirements of this ordinance shall be erected in connection with such nonconforming use of land.

G. Nonconforming Structures.

Where a lawful structure exists at the effective date of adoption or amendment of this ordinance that could not now be built under the terms of this ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, bulk, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions.

- i. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.
- ii. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to the extent of more than 50 percent of the fair market value of the building immediately prior to the damage, it shall not be reconstructed except in conformity with the provisions of this ordinance. Structures made nonconforming by the action of government are not subject to this restriction. For example, a right-of-way purchase may reduce the required setback making the structure on the lot nonconforming. Later a fire damages the structure to the extent of more than 50 percent of the fair market value. Since the nonconforming status of the structure was created by government for the general welfare and good of the community, the request of the party who sustained the damage to rebuild shall not be denied on the basis of the nonconforming status.
- iii. Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

H. Nonconforming Uses of Structures or of Structures and Land in Combination.

If a lawful use involving individual structures, or if a structure and land in combination, exists at the effective date of adoption or amendment of this ordinance that would not now be allowed in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

- i. No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.
- ii. A nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy any land outside such building.
- iii. Any structure, or structure and land in combination, in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed.
- iv. When a nonconforming use of a structure, or structure and land in combination is discontinued or abandoned for more than one year (except when government action impedes access to the premises), the structure or structure and land in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located.
- v. Where nonconforming use status applies to a structure and land in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

I. Repairs and Maintenance.

On any nonconforming structure or portion of a structure containing a nonconforming use, work may be done in any period of twelve consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring or plumbing, to an extent not exceeding 30 percent of the current replacement cost (in any three year period) of the nonconforming structure and market value of real estate,

or nonconforming portion of the structure, whichever the case may be, provided that the cubic content existing when it became nonconforming shall not be increased. Nothing in this section shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official. If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired or rebuilt except in conformity with the regulations of the district in which it is located.

4.4 Garage or Yard Sale

- A. As used herein "garage or yard sale" is defined as a public or private sale conducted by the owner or occupier of a premise, and conducted within a residence, garage, other accessory buildings or outside thereof, which sale is of six or more items of personal property owned or in the possession of the owner or occupier of the premises, which personal property was not acquired by the owner or occupier for the purpose of resale.
- B. A garage or yard sale may be conducted one time in any one calendar year on any premises located in any R1, R2, or R3 zone, but no such sale shall be conducted for more than five (5) consecutive days.
- C. All items of personal property sold at such garage or yard sale shall be owned by the owner or occupier of the premises, unless permission for sale of items not owned is given at the time of issuance of the permit provided for herein by the person issuing the permit.
- D. Such garage or yard sale shall only be conducted during the hours from sunrise to sunset.
- E. All personal property exhibited for sale outside any structure during such garage or yard sale shall be removed from the outside and placed within a structure immediately following the last day of such sale. All signs erected for such garage or yard sale shall likewise be removed.
- F. No such garage or yard sale shall be held without the owner or occupier of the premises having first obtained a permit therefor. Such permit shall be obtained by applying therefor from the Administrator who shall issue such permit upon payment of a fee of One Dollar (\$1.00). Such permit shall specify the address and date of such sale.

4.5 Home Service/Occupations

- A. **Intent:** This section authorizes as home occupations all uses that conform its standards. In general, a home occupation is an accessory use located and conducted in such a way that neighbors, under normal circumstances, would be unaware of its existence except for a sign. Home occupations conforming to the requirements of section B and C below, are permitted in any non-rural zone which authorizes the dwelling unit to which the home occupation is accessory, and in rural zones on lots up to 2 acres in area.
- B. **Home Occupation Requirements:** In addition to all other requirements applicable in the zone in which located, all home occupations are subject to the following:
- No alteration shall be made to the exterior of the primary use building or to the lot which changes the residential character of the building or lot.
 - The operator of a home occupation shall be a resident of the dwelling unit and no employees are allowed who are not residents of that dwelling unit.
 - A home occupation shall not involve construction features or the use of any electrical or mechanical equipment or combustible materials, any of which would change the fire separation requirements of the primary use building.
 - There can be no activity or storage of any kind related to the home occupation outside the primary use building.
 - A home occupation shall provide an additional off-street parking area adequate to accommodate needs created by the home occupation. This area shall contain at least one parking space, which shall be in addition to the parking spaces required for the dwelling unit. This parking space shall be provided on the same lot as the home occupation, and may be located in the front setback (but not in the right-of-way).
 - A home occupation shall not create noise, dust, vibration, smell, smoke, glare, electrical interference, fire or chemical hazard, traffic hazard, or any other hazard or nuisance to any greater or more frequent than would be expected from a normally occupied dwelling unit in that zone that has no home occupation.

- Except for articles grown or crafted on the premises, no stock in trade shall be displayed, stored, or sold. A home occupation is neither a retail nor wholesale establishment.

C. **Permitted Home Occupations.** Home occupations may include, but are not necessarily limited to the following:

- Artist or sculptor
- Author or composer
- Dressmaker, seamstress or tailor
- One-station barber or beauty shop
- Composer, programmer, and business consultant
- Home craft, such as model making, rug weaving, lapidary work, cabinet and furniture making, antique restoration, and furniture upholstery.
- Office facility of a member of the clergy
- Office facility of a sales representative, salesperson, or manufacturer's representative, provided no retail or wholesale goods are stored or exchanged.
- Office facility of an accountant, architect, artist, broker, engineer, insurance agent, land surveyor, lawyer, musician, real estate agent, telecommuter, or member of the recognized counseling professions.
- Class of special instruction whose class size does not exceed four (4) pupils and not more than one class per day, or group counseling session whose group size does not exceed five clients and not more than one session per day.
- A home occupation not listed may be permitted by the Administrative Officer upon the finding that its characteristics are (1) consistent with the purpose and description of the zoning district, and (2) compatible with the permitted primary uses in the zone regarding hours of operation, traffic generation, outdoor lighting, noise, vibration, dust, odor, glare, and heat producing properties.

D. **Prohibited Home Occupations.** For reasons of incompatibility with permitted uses, and/or violations of neighborhood character, permitted home occupations shall not include the following:

- Antique shop.
- Automobile, truck, or motorcycle service, repair, salvage, customizing, or restoration.
- Barber or beauty shop with two or more stations.
- Gift shop.
- Physician, dentist, optometrist, podiatrist, chiropractor, naturopathic doctor, hypnotherapist, acupuncturist, or any medical or dental clinic, office, or hospital.
- Restaurant, bakery, or catering service.
- Kennel.
- Veterinarian or any veterinary clinic, office, or hospital.
- Welding shop.
- Bed and Breakfast, tourist home, or boarding home.
- Other activities having similar characteristics.

4.6 Mobile Home Parks / Manufactured Home Communities

A. **Intent.**

This section details the process by which mobile home parks / manufactured home communities (MHP/MHC) are approved, and regulations that are applied to them. MHP/MHCs are residential facilities and involve the creation of individual use sites (called mobile home park / manufactured home community lots). MHP/MHCs contain internal circulation patterns, much like subdivisions and some kinds of planned unit developments. What distinguishes them is that no mobile home park/ manufactured home community lots are created that need to be platted. To ensure adequate design and circulation, and to ensure that state mandated health-related standards (See *Indiana Code* 16-41-27-1 to 34) are met, plans detailing the proposed MHP/MHC shall be submitted for approval by the Advisory Plan Commission at a public hearing before the required permits can be issued for work to begin.

B. MHP/MHC Approval Process.

- i. Before improvement location permits can be sought or any on-site work can begin, plans for a new MHP/MHC, or an expansion of an existing MHP/MHC, shall be approved by the Advisory Plan Commission in a public hearing at its regular meeting. All such new plans and expansions are subject to the public notice and filing requirements of subsection C and D below. Any change to a site plan shall also be approved by the Advisory Plan Commission in a public hearing at its regular meeting. Note: The elements of the site plan are outlined in subsection E (xiv) below. However, this does not apply to a reconfiguration of the same number of lots, or the paving of previously unpaved internal streets, nor the upgrading other on-site structures and facilities. But, a change to an internal street name does require approval of the Administrator, the US Post Office, and the 911 Emergency Response System.
- ii. The filing deadline for a complete application for MHP/MHC approval is thirty (30) calendar days prior to the date of the regular meeting at which the petitioner intends to have the request heard. The requirements for a complete application are listed in subsection D below.
- iii. Notice of this public hearing shall appear in at least two (2) local newspapers of general circulation at least ten (10) days before the hearing. Also, one or more signs, notifying the public, need to be posted on the affected property at least ten (10) days before the hearing. Details of public hearing notification appear below in subsection C.
- iv. At the hearing, the Advisory Plan Commission may either approve, conditionally approve or deny the MHP/MHC plans presented by the petitioner. If the petitioner or the petitioner's representative is not present at the hearing, the Advisory Plan Commission shall dismiss the request.
- v. MHP/MHC lots may be vacated using the means described in *Indiana Code 36-7-3* or its successors, which describes the process for vacating lots in a subdivision.

C. Public Notice Requirements.

- i. A petitioner shall file two (2) "Notices of Public Hearing on Mobile Home Park/Manufactured Home Community" and two (2) "Notices of Public Hearing Release Forms" as part of a

complete application for MHP/MHC plan approval. The Release Forms authorize the Administrator to give the Notices of Public Hearing to two (2) local newspapers of general circulation for publication at least ten (10) days before the date of the public hearing. Publication is at the petitioner's expense. Each newspaper will then bill the petitioner. Upon payment of the bills, the petitioner will receive each newspaper's Proof of Publication. The petitioner shall present both Proofs to the Advisory Plan Commission prior to the public hearing, or the request for plan approval cannot be heard.

- ii. At least ten (10) days before the date of the public hearing, the petitioner shall post one or more signs on (or in some cases near) the property for which MHP/MHC approval is being sought, advising the public of the impending hearing. These signs shall be purchased at the office of the Administrator. The Administrator will determine the number and location of signs to be posted. On the day of the public hearing, the petitioner shall execute a "Sign Posting Affidavit" attesting that the required signage has been in place for at least the previous ten (10) days. The petitioner shall present the notarized affidavit to the Advisory Plan Commission prior to the public hearing, or the request for plan approval cannot be heard.
- iii. At least ten (10) days before the date of the public hearing, the petitioner shall send a "Notice to Interested Parties" to the owners of all property located adjacent to, and directly across the street, alley, or railroad right-of-way from the property for which MHP/MHC plan approval is being sought. These shall be sent by Certified Mail. The petitioner shall execute an "Affidavit of Notice to Interested Parties" attesting that all interested parties have been notified by Certified Mail. The petitioner shall present the notarized affidavit and all post office receipts from the certified mailing to APC prior to the public hearing, or the request for plan approval cannot be heard.

D. Filing Requirements.

- i. Before an application for MHP/MHC plan approval can be submitted, the petitioner shall arrange to meet with the Administrator and representatives of checkpoint agencies to review filing and design requirements. These checkpoint agencies are:

- Design Review Board
- Director of Public Works and Safety
- Police Department
- Fire Department
- Parks and Recreation Department
- School Corporation
- County Soil and Water Conservation District

The petitioner shall bring to this meeting a proposed MHP/MHC plan drawn in sufficient detail so that the staff can determine if design requirements are being met.

- ii. For a request for a MHP/MHC plan approval to be considered complete, the following items shall be presented to the Administrator no less than thirty (30) calendar days before the regular meeting at which the petitioner intends to have the request heard:
 - a. a signed and notarized “Application for Approval of Mobile Home Park/Manufactured Home Community” with metes and bounds legal description of the property for which approval is being sought; and if FP-zoned land is present, a metes and bounds legal description of that portion of the property situated at or above the regulatory flood elevation certified by a Registered Land Surveyor or Registered Professional Engineer;
 - b. a signed and notarized “Affidavit of Consent” from the owner(s) of the property if the petitioner is not the owner;
 - c. a non-refundable processing fee in the amount established by the Advisory Plan Commission for MHP/MHC plan approval;
 - d. a list of names and addresses of all interested persons (all owners of property located adjacent to, and directly across the street, alley or railroad right-of-way from the property named in the application), including the Auditor’s Parcel Number for each interested person’s property;
 - e. two (2) “Notices of Public Hearing on Mobile Home Park / Manufactured Home Community” each with a metes and bounds description of the property for which approval is being sought, and two (2) signed “Notice of Public Hearing Release Forms”;

- f. a letter from the Indiana State Department of Health indicating review and approval of the proposed plans in compliance with IC 16-41-27 and Rules 410 IAC 6-6 and 327 IAC 8-8-1 for MHP/MHCs;
- g. letters from the County Highway Department and Drainage Board indicating review and approval of the proposed plans, plus evidence that providers have sufficient capacity and have approved the proposed plans regarding connection to public sewer and water supply systems;
- h. ten (10) sets of MHP/MHC plans, fulfilling all requirements of all agencies listed in subsection f. and g. above; no deviations from minimum state standards shall be permitted;
- i. signatures indicating that a full set of MHP/MHC plans have been received by the County Sheriff, the appropriate fire department, the appropriate school corporation, and appropriate Soil and Water Conservation District. If these agencies wish to comment to the Administrator on these plans, they shall do so within two (2) weeks of having received them; and
- j. surety, if public improvements are to be installed either on-site or off-site.
- k. A complete application for MHP/MHC plan approval shall be placed for public hearing on the Advisory Plan Commission's next regular meeting agenda. If the application is not placed on the next agenda because it is incomplete, the Administrator shall notify the petitioner in writing of the application's deficiencies.

E. MHP/MHC Plan Requirements.

A complete MHP/MHC plan is certified by a Registered Engineer or Architect licensed to practice in the State of Indiana and meets all the design standards of subsection F and G below. (A Registered Land Surveyor may certify those portions of MHP/MHC plans that deal with gravity sanitary sewers, storm sewers and drain tiles.) A complete plan contains all of the following elements:

- i. a cover sheet;
- ii. a vicinity map drawn to an appropriate scale;
- iii. the name of the proposed MHP/MHC;
- iv. a metes and bounds legal description of the area for which approval is being sought, including its location by quarter section, township and range, city, town or civil township;
- v. the name and address of the petitioner;
- vi. the name, address and seal of the Registered Engineer, Architect or Land Surveyor certifying any parts of the plan;
- vii. and the scale of the plan, north point, and date;
- viii. an analysis of current conditions: boundary, ownership and zoning of the proposed site and all adjoining properties; if FP-zoned land is present, a metes and bounds legal description of that portion of the property situated at or above the regulatory flood elevation, certified by a Registered Land Surveyor or Registered Professional Engineer;
- ix. topography in intervals of not less than one (1) foot and not more than two (2) feet.
- x. location of all structures with an indication of their current condition, both on site and on adjoining properties;
- xi. location, dimensions and names of all dedicated public streets, private streets, and railroad and utility rights-of-way, both on-site and on adjoining properties;
- xii. location and size of all existing storm and sanitary sewers, water mains, electrical, gas, telephone and cable television lines, culverts, drainage tiles and underground facilities both on-site and adjacent to the site;
- xiii. identification and location of soil types and vegetation; and natural features, such as water courses, ponds, marshes, rock outcroppings, etc.
- xiv. a proposed site plan providing the location, dimensions and names of all proposed streets; the location, dimensions by bearings and distances of all rights-of-way, sidewalks,

crosswalks, alleys and easements; the location, dimensions and area of all proposed MHP/MHC lots; these are to be numbered consecutively; plus the dimensions of the largest Mobile Home or Manufactured Home that will fit each proposed MHP/MHC lot within the requirements of subsection F below; the location of all proposed buildings or structures, such as an office and community center, a storage facility, a laundry room, a swimming pool, etc.; the location and use of all land to be used in common by residents or temporary occupants; and all MHP/MHC and MHP/MHC lot setback lines.

xv. a grading plan

xvi. a utility plan showing location and connection of all electrical, gas, telephone, cable, water, sanitary sewer and drainage facilities;

xvii. plan and profile sheets of all proposed improvements, including streets (with typical cross-section showing pavement and sidewalk design) and the full range of underground utilities.

Note: All internal streets shall be privately owned and maintained, and all stormwater drainage facilities shall be privately owned and maintained.

F. MHP/MHC Design Requirements.

The following design elements shall be incorporated into the proposed site plan of a complete proposed MHP/MHC plan:

i. The minimum area for a new MHP/MHC shall be five acres. There will be no minimum for the addition to an existing MHP/MHC.

ii. The minimum MHP/MHC setbacks within which no MHP/MHC lots or structures shall be located are:

Along a local street or place – 25’

Along a collector street – 30’

Along a secondary arterial – 40’

Along a primary arterial – 60’

Abutting a residential, commercial, industrial, or rural zone – 20’

- iii. The maximum height of structure within the MHP/MHC shall be 25 feet.
- iv. The minimum parking shall be two (2) paved parking spaces per MHP/MHC lot, either on the lot or within 300' of the lot being served; on-street parking spaces may be substituted if an 8 foot paved parking lane is provided, in addition to the minimum street width requirement.
- v. A minimum of ninety (90) cubic feet of storage shall be provided for each Mobile Home or Manufactured Home in a separate building, or as storage under each Mobile Home or Manufactured Home. This storage shall be secured and shielded from public view.
- vi. Minimum protection against severe weather shall be a reinforced building(s) having an open floor area of at least fifteen (15) square feet per MHP/MHC lot. This protection may be provided by a combination of community building, rental office laundry, shower, and restroom facilities.
- vii. The minimum MHP/MHC lot area shall be 2500 sq. ft. The minimum MHP/MHC lot width shall be 30'. The maximum MHP/MHC lot coverage by Mobile Home or Manufactured Home shall be 45%. The minimum MHP/MHC lot vegetative cover shall be 30%.
- viii. The minimum MHP/MHC lot setbacks shall include any expanded portion of the Mobile Home or Manufactured Home.
- ix. The minimum setbacks along a front line are:
 - Internal street without sidewalk – 15 feet from pavement edge (or back of curb where required)
 - Internal street with sidewalk – 12 feet from sidewalk edge
- x. The minimum setbacks along a rear lot line:
 - Mobile home/manufactured home – 15 feet
 - Accessory building – 6 feet
- xi. The minimum setback along a side lot line shall be six (6) feet.

xii. The minimum distance between MHP/MHC lot line and any off-lot building or structure shall be fifteen (15) feet.

xiii. All MHP/MHC lots shall have direct access to an internal street. There can be no direct access to a public street except at points of entry/exit to/from the MHP/MHC.

xiv. Internal street specifications shall be:

- A minimum one-way pavement width of twelve (12) feet.
- A minimum two-way pavement width of twenty-four (24) feet.
- The minimum width of eight (8) feet for the additional pavement for a parking lane.
- The maximum dead-end street length of 150 feet.
- The minimum turnaround pavement diameter of sixty feet.
- The sidewalks shall have a minimum paved width of three feet and be found on at least one side of each street, and connect all common facilities.
- Where required by the County Surveyor to properly carry surface water, curb and gutter shall be two (2) feet and installed on each side of the street. The width of installed curb and gutter shall not be used in the determination of minimum street width.
- Minimum lighting shall be 0.3 foot-candles on streets and walkways, or individual yard lights on each MHP/MHC lot with illumination equivalent to at least a 40-watt incandescent bulb.

G. MHP/MHC Restriction.

The owner, occupant, or lessor of a mobile home in a mobile home park/manufactured home community shall not build any permanent additions that attach to that mobile home that would add living space within.

PRIMARY USE	DISTRICT IN WHICH PERMITTED										
	R1	R2	R3	HS	LB	GB	CB	OD	I	A	FP
RESIDENTIAL USES											
Boarding or lodging house			X		X	X	X			X	
Dwelling, single-family	X	X	X		X		X			X	
Dwelling, two-family			X		X		X			X	
Dwelling, multi-family			X		X		X				
Mobile Home (NOTE 1)	X	X	X		X		X			X	
Nursing Home			X		X					X	
Manufactured Home	X	X	X		X		X			X	
Residential care except group homes	S	S	S		X	X	X			S	
Group Homes	S	S	S		X		X				
AGRICULTURAL USES											
Artificial lake of 3 or more acres	S	S	S	S	S	S			S	S	S
Commercial greenhouse						X			X	X	
Farm					X	X			X	X	X
INDUSTRIAL USES											
Bottled gas storage & distribution									X	S	
Industry, general						X		X	X		
Industry, light									X		
Junk yard						X			S	S	
Recycling center									X		
Liquid Fertilizer storage and distribution (commercial)									S	S	
Manufacturing, storage or use of explosives									S		
Mineral extraction, borrow pit, topsoil removal & storage areas									X	S	S
Petroleum tank farm (commercial)									X	S	
Communication relay tower						X			X	S	
Scrap metal yard									X	S	
Slaughter house									S	S	
Truck terminal				S		S			X		
Other uses not specified						S			S		

For Establishment of Districts - SEE SECTION 3.1

R1, R2, R3	Residential Districts	CB	Central Business District	FP	Flood Plain Districts
HS	Highway Service Districts	OD	Office Districts		
LB	Local Business Districts	I	Industrial Districts	X - Permitted Use (See Section 4.1)	
GB	General Business Districts	A	Agricultural Districts	S - Special Use (See Section 4.1, 9.3)	

PRIMARY USE	DISTRICT IN WHICH PERMITTED											
	R1	R2	R3	HS	LB	GB	CB	OD	I	A	FP	
PUBLIC FACILITIES												
Airport											S	
Church or temple		X	X		X	X	X				X	
Governmental offices					X	X	X				X	
Child care home	X	X	X	X	X	X	X	X	X	X	X	
Child care center			S		X	X	X	X				
Penal or correctional institution				S	S	S	S	S	X		S	
Police station or fire station	S	S	X	X	X	X	X	X	X	X	X	
Public library or museum		S	S		X	X	X	X			S	
Public park	X	X	X	X	X	X	X	X	X	X	X	X
Public or private swimming pool	S	S	S	X	X	X	X	X			S	
Public or commercial sanitary fill, refuse dump, garbage disposal, plat, or trash transfer station										S	S	
Public or commercial sewage disposal plant				S	S	S				S	S	S
Parking lot or parking garage (NOTE 2)				X		X	X	X				
School: public, parochial, private	X	X	X	X	X	X	X				X	
Telephone exchange or public utility substation	S	S	S	X	X	X	X	X	X	X	X	
Trade or business school					X	X	X	X	X	X		
Post office			S	X	X	X	X	X	X	X		
BUSINESS USES: APPLIANCES												
Electric appliance service & sales					X	X	X					
Radio, TV & music service & sales					X	X	X					
Satellite dish sales and service					X	X	X					
Other similar uses						X	X					
BUSINESS USES: AUTOMOBILE SERVICES												
Car wash				X	S	X						
Automobile sales and service						X	X					
RV and camper sales and service				X		X	X					
Motor vehicle repair				X		X	X					
Gasoline station, with repair				X		X	X					
Gasoline station, without repair				X	S	X	X					
Other similar uses				X		X	X					

For Establishment of Districts - SEE SECTION 3.1

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|------------|----------------------------|----|---------------------------|----|-----------------------|
| R1, R2, R3 | Residential Districts | CB | Central Business District | FP | Flood Plain Districts |
| HS | Highway Service Districts | OD | Office Districts | | |
| LB | Local Business Districts | I | Industrial Districts | | |
| GB | General Business Districts | A | Agricultural Districts | | |
- X - Permitted Use (See Section 4.1)
S - Special Use (See Section 4.1, 9.3)

PRIMARY USE	DISTRICT IN WHICH PERMITTED										
	R1	R2	R3	HS	LB	GB	CB	OD	I	A	FP
BUSINESS USES: CLOTHING SERVICES											
Dressmaking shop					X	X	X				
Drycleaning & laundry establishment					X	X	X				
Millinery shop					X	X	X				
Self-service laundry				X	X	X	X				
Shoe repair shop					X	X	X				
Tailor and pressing shop					X	X	X				
Other similar uses					X	X	X				
BUSINESS USES: FOOD SALES & SERVICE											
Baker - retail					X	X	X	X			
Dairy - retail					X	X	X				
Delicatessen				X	X	X	X	X			
Drive-in				X		X					
Grocery, including convenience stores				X	X	X	X	X			
Meat market					X	X	X				
Restaurant, w/o alcoholic beverage				X	X	X	X	X			
Restaurant, with alcoholic beverage						X	X	X			
Roadside food sales stand				X	S	X	X			X	
Wholesale produce terminal						X	X		X		
Other similar uses				X	S	X	X	S			
BUSINESS USES: PERSONAL SERVICES											
Barber Shop					X	X	X				
Beauty shop					X	X	X				
Health spa or fitness center (NOTE 3)					X	X	X	X			
Other similar uses					X	X	X	S			
BUSINESS USES: RECREATION											
Bait sales						X	X			S	
Billiard room (NOTE 3)						X	X				
Bowling alley (NOTE 3)						X	X				
Country club or golf course	S	S	S							X	S

For Establishment of Districts - SEE SECTION 3.1

R1, R2, R3	Residential Districts	CB	Central Business District	FP	Flood Plain Districts
HS	Highway Service Districts	OD	Office Districts		
LB	Local Business Districts	I	Industrial Districts	X - Permitted Use (See Section 4.1)	
GB	General Business Districts	A	Agricultural Districts	S - Special Use (See Section 4.1, 9.3)	

PRIMARY USE	DISTRICT IN WHICH PERMITTED										
	R1	R2	R3	HS	LB	GB	CB	OD	I	A	FP
BUSINESS USES: RECREATION (CONT.)											
Dancing, aerobic, gymnastic studio (NOTE 3)					X	X	X	X			
Lodge or private club					S	X	X			S	
Night club (NOTE 3)						X	X				
Outdoor commercial recreational enterprise				S	S	S	S	S		S	S
Private recreational development	S	S	S	S	S	S	S	S		S	S
Private camp										S	S
Riding stable and trails										S	S
Theater, indoor (NOTE 3)					S	X	X				
Theater, outdoor						S				S	
Campground (NOTE 4)				S						S	S
Other similar uses				S	S	S	S	S		S	
BUSINESS USES: RETAIL SALES											
Liquor store					S	X	X				
Apparel shop					X	X	X				
Department store					X	X	X				
Drugstore				X	X	X	X				
Flower shop (NOTE 5)					X	X	X				
Gift shop				X	X	X	X				
Hardware store					X	X	X				
Jewelry store					X	X	X				
Newsdealer					X	X	X				
Record shop					X	X	X				
Antique shop				X	X	X	X				
Stationery and book store					X	X	X				
Sporting goods					X	X	X				
Furniture store					X	X	X				
Other similar uses				S	X	X	X				

For Establishment of Districts - SEE SECTION 3.1

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|------------|----------------------------|----|---------------------------|--|-----------------------|
| R1, R2, R3 | Residential Districts | CB | Central Business District | FP | Flood Plain Districts |
| HS | Highway Service Districts | OD | Office Districts | | |
| LB | Local Business Districts | I | Industrial Districts | X - Permitted Use (See Section 4.1) | |
| GB | General Business Districts | A | Agricultural Districts | S - Special Use (See Section 4.1, 9.3) | |

PRIMARY USE	DISTRICT IN WHICH PERMITTED										
	R1	R2	R3	HS	LB	GB	CB	OD	I	A	FP
BUSINESS USES: MISCELLANEOUS											
Boat sales, service & storage				X		X	X			S	S
Cemetery or crematory										S	
Clinic			S	X	X		X	X			
Commercial facility for breeding & raising non-farm fowl & animals						X	X			S	
Farm equipment, sales & service						X	X			S	
Home service		S	S		X		X			S	
Hospital					X	X	X				
Hotel, motel, bed & breakfast inns				X		X	X	X			
Kennel, boarding										S	
Building trades contractors						X			X	S	
Mortuary						X	X				
Outdoor advertising sign, billboard				X		X	X		X		
Bus station				X		X	X				
Photographic studio					X	X	X				
Sales barn for livestock sale										S	
Tourist home or bed and breakfast: homestay			S		X	X	X			S	
Veterinary hospital, including boarding						X	X			S	
Warehouse				S		X			X	S	
Wholesale business				S		X			X	S	

For Establishment of Districts - SEE SECTION 3.1

R1, R2, R3	Residential Districts	CB	Central Business District	FP	Flood Plain Districts
HS	Highway Service Districts	OD	Office Districts		
LB	Local Business Districts	I	Industrial Districts	X - Permitted Use (See Section 4.1)	
GB	General Business Districts	A	Agricultural Districts	S - Special Use (See Section 4.1, 9.3)	

NOTES

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| 1.) Permitted only as a temporary use subject to the requirement of Section 10.5. | 4.) Only if the plans have first been approved by the Indiana Board of Health. Campgrounds are also permitted in FP zones only if also approved by the Indiana Department of Natural Resources, but shall be permitted within a regulatory floodway. |
| 2.) Parking lots & parking garages as primary uses are also subject to the landscaping requirements in section 5.13 (F)(iii and iv) for required accessory parking lots. | 5.) Including a greenhouse not larger than two thousand (2,000) square feet in area. |
| 3.) Only if conducted in a noise-proof building | |

Section 5

Use Requirements and Restrictions

Preface

The purpose of this section is to set forth in detail the development standards and restrictions for those uses which are authorized and on which their continued authorization depends.

Each subsection deals with a particular development standard. These standards have been calculated to make good neighbors of different uses, to prevent nuisances, to promote the preservation of property values, and to provide sound, safe, compatible development for the general public good.

5.1 Height of Structures

- A. The height specifications in this section shall be limited by the height requirements in Section 7, Airport Protection when the latter are more restrictive to preserve the integrity of the approaches to each public use airport.
- B. Except as otherwise provided by this section, no structure may be erected or changed so as to make its height greater than twenty-five (25) feet if it is in an R1 or R2 District, or thirty-five (35) feet if it is in an A, R3, HS, LB, GB, or OD District, or one hundred (100) feet if it is in a CB or I District.
- C. A clinic that is authorized as a special use under section 4.1 may be erected or changed to a height not greater than forty (40) feet.
- D. In a GB District, a business, or light industrial structure may be erected or changed to a height not greater than seventy-five (75) feet. In a CB or I District, a business or industrial structure may be erected or changed to any height. This height exception does not extend to signs permitted for these uses.
- E. An agricultural structure may be erected or changed to any height necessary for its operation.
- F. The following structures may be erected or changed to any height not greater than thirty-five (35) feet when permitted in an R1 or R2 District:

List of Types

- Churches or temples (excluding signage)
 - Public Libraries or museums
 - Schools
 - Government Buildings
- G. Spires, church steeples, chimneys, cooling towers, elevator bulkheads, fire towers, scenery lofts, penthouses for mechanical equipment, stacks, tanks, water towers, transmission towers for electric lines, and necessary mechanical appurtenances may be erected or changed to any height that is not otherwise prohibited elsewhere in this ordinance.

5.2 Maximum Lot Coverage: Residential Uses

The residential buildings on any lot may not exceed in coverage the following percentages of total lot area:

Maximum Lot Coverage						
District	R1	R2	R3	LB	CB*	A
Percentage of Coverage	25%	30%	40%	25%	60%	25%

* There is no maximum lot coverage if the entire first story contains non-residential uses.

5.3 Minimum Lot Size: Residential Uses

- A. Except as provided for in 5.3(c), a lot on which a dwelling is erected or changed may not be smaller in area, in square feet per dwelling unit, than that prescribed for it in the following table. ("Changed" shall mean "increased in number of dwelling units contained therein," but shall not be construed to mean only refurbished, rehabilitated or expanded in size.)

Lot Size In Square Feet And District						
Dwelling Type	R1	R2	R3	LB	CB*	A
Single-family	20,000	10,000	6,000	6,000	6,000	20,000
Two-family	--	--	3,000	3,000	3,000	5,000
Multi-family	--	--	*2,000	*2,000	800	--

* This figure applies for each of the first three dwelling units - add 1,000 square feet for each additional unit.

- B. Except as provided for in 5.3(c), a lot on which a dwelling is erected or changed may not be smaller in width, in linear feet, than that prescribed for it by the following table. ("Changed" shall mean "increased in number of dwelling units contained therein," but shall not be construed to mean only refurbished, rehabilitated or expanded in size.)

Kind of Dwelling	Lot Width In Feet and District					
	R1	R2	R3	LB	CB*	A
Single-family	100'	75'	60'	60'	--	100'
Two-family	--	--	60'	60'	50'	100'
Multi-family	--	--	70'	70'	70'	--

C. A single-family dwelling may be located on any lot in any district in which single-family dwellings are permitted if the lot was in separate ownership or included in a subdivision of record in the office of the County Recorder at the time of the passage of this ordinance, even though the lot does not have the minimum lot width or the minimum lot area, or both, specified for the district by this ordinance.

D. Lots not served by sanitary sewer:

1. Minimum lot areas and lot widths in the Tables above are only for primary uses served by sanitary sewer. Minimum lot areas and lot widths for primary uses not served by sanitary sewer:

a. shall be as approved by the _____ County Health Department on a lot to lot basis. Except for single and two family residences, additional approval is required from the Division of Sanitary Engineering, Indiana State Department of Health.

b. shall in no case be less than the minimums required for uses served by sanitary sewer

5.4 Minimum Lot Size: Other Uses

A lot on which one of the following uses is located may not be smaller in area than the area prescribed for that use opposite it in the following table:

Minimum Lot Sizes By Use

Use	Minimum Lot Area
Airport	80 acres
Cemetery or crematory*	20 acres
Clinic	15,000 sq. ft.
Commercial facilities for raising and Breeding non-farm fowl and animals	1 acre
Junk yard	10 acres
Penal or correctional institution**	320 acres
Police station or fire station	15,000 sq. ft.
Private camp or campground	5 acres
Public or commercial garbage disposal plant	5 acres
Public or commercial sanitary fill, refuse dump or trash transfer station	10 acres

Riding stable 20,000 sq. ft. plus 5,000 sq. ft. for every horse over a total of four horses.

- *Does not apply to old town or city cemeteries.
- **Does not apply to a town, city, or county jail.

5.5 Standard Setbacks

A. In any district except the CB district, where there is no such requirement, minimum depth of front yard for a lot abutting a street shall be as follows:

Street Type	Minimum Front Yard
Local	25 feet
Collector	30 feet
Secondary Arterial	40 feet
Primary Arterial	60 feet

Arterials are designated by the Adopted Thoroughfare Plan. Collectors are designated by resolution of the Advisory Plan Commission.

Along a local street in a residence district or business district other than Central Business (CB), where fifty percent of lots in that block face are occupied by principal use buildings, the minimum depth of front yard for that block face shall be the average depth of front yard for those buildings, provided that such front yard shall be no less than 10 feet. However, buildings to be removed to make way for a new building shall not be included when calculating average depth of front yard to be applied to the new building.

A through lot has a front yard on each abutting street.

For any corner lot, these front yard setback standards shall also apply to the side yard(s) abutting a primary or secondary arterial, collector, local street, or place.

Where a lot does not abut a street, minimum depth of front yard shall be 25 feet, measured from a designated front lot line.

For any accessory building, minimum depth of front yard shall be the same as for the principal use building.

B. Minimum depth of rear yard, in feet, for primary and accessory building shall be as follows:

Zoning District	Residential Use		Nonresidential Use	
	Primary	Accessory	Primary	Accessory
R1, R2, R3, A	25	10	25	10
LB, OD	15	15	15	15
GB/HS	15	15	15/40*	15/40*
CB	0	0	0	0
I	--	--	15/40*	15/40*

* Where rear lot line abuts a residential district.

- C. Minimum depth of side yard, in feet, for primary or accessory buildings shall be as follows:

Zoning District	Residential Use	Nonresidential Use
R1, R2, R3, A	6	6
LB, GB, OD, HS	0	0/10*
I	--	0/30*

* Where side lot line abuts a residential district.

5.6 Setbacks: Accessory Buildings in Residential Districts

- A. In a residential district, an accessory building may be located no closer to a side lot line than six (6) feet and no closer to the front lot line than the minimum front yard for a principal building.
- B. If an interior lot abuts a corner lot or an alley separating them and the front yards of the two lots are perpendicular to each other, an accessory building on the rear lot line of the corner lot may be located no closer to the street abutting the interior lot than the principal building on the interior lot.

5.7 Setbacks: Vision Clearance at Intersections

At the street intersection of each corner lot, the triangular space determined by the two lot lines at that corner and by a diagonal line connecting the two points on those lot lines that are twenty-five (25) feet respectively from the corner shall be kept free of any obstruction to vision between the heights of two and one-half (2 1/2) and twelve (12) feet above the established grade.

5.8 Setbacks: Uses Allowed As Special Uses

When permitted by grant of special use per Section 9.3, the following uses are subject to the special setbacks prescribed, in feet, by the following table. If no figure appears for a front yard setback, the standard setback prescribed by Subsection 5.6 applies.

Use	Setbacks In Feet By Use		
	Front	Side	Rear
Bottles gas storage & distribution	300'	300'	300'
Cemetery or crematory	50'	50'	--
Clinic	--	10'	30'
Commercial facilities for raising & breeding non-farm fowl & animals	100'	100'	100'
Junk Yard	300'	150'	150'
Kindergarten or child care center	20'	15'	--
Liquid fertilizer storage & distribution	300'	300'	300'
Mineral extraction, borrow pit or top soil removal and their storage areas	150'	150'	150'
Outdoor theater	100'	40'	40'
Outdoor commercial recreational enterprise	40'	40'	--
Penal or correctional institution	100'	100'	100'
Petroleum tank farm	300'	300'	300'
Private recreational development	40'	40'	--
Private camp or campground	100'	40'	40'
Public or commercial sanitary fill, refuse dump garbage disposal plant or trash transfer center	300'	300'	300'
Public or commercial sewage disposal plant	300'	300'	300'
Riding stable	100'	100'	100'
Sales barn for livestock sale	300'	300'	300'

5.9 Buffering: Minimum Distances from Residential District

- A. A mineral extraction area, borrow pit, or topsoil removal area (including storage area), penal or correctional institution, public or commercial sewage disposal plant, sales barn for livestock sale, truck terminal, or wholesale produce terminal may not be located closer to an R1, R2, or R3, District than three hundred (300) feet. A junkyard may not be located closer to such a district than thirteen hundred twenty (1320) feet.

- B. A parking area or loading berth for any of the following uses may not be located closer to a residential district than the distance, in feet, listed opposite it in the following table:

Minimum Distance in Feet From a Residential District

Use	Parking Area	Loading Berth
Airport	25'	100'
Commercial facilities for raising and breeding non-farm fowl & animals	25'	100'
Commercial greenhouse		50'
Junk yard	1320'	1320'
Mineral extraction, borrow pit, or topsoil removal, and their storage areas		300'
Outdoor commercial recreational enterprise	25'	50'
Penal or correctional institution	300'	300'
Private recreational development	25'	
Sales barn for livestock sale	50'	100'
Truck terminal	100'	100'
Wholesale produce terminal	100'	100'

5.10 Buffering: Fences and Walls

The following uses shall be fenced or walled as respectively prescribed by the following table:

Use Category	Enclosure
Airport or heliport (where located at ground level).....	6'0" chain link fence
Artificial lake of three or more acres, if accessible to public.....	6'0" chain link fence
Kindergarten or child care center (play area only).....	4'0" wire mesh fence
Junk yard	Solid wall or solid painted fence sufficient to hide from view
Mineral extraction, borrow pit, topsoil removal, and their storage areas.....	6'0" chain link fence
Outdoor commercial recreational enterprise	6'0" chain link fence
Outdoor theater.....	8'0" solid opaque fence
Private swimming pool.....	6'0" chain link fence
Public or commercial sewage disposal plant.....	6'0" solid painted fence
Wholesale produce terminal.....	6'0" wire mesh fence

5.11 Buffering: Screen Planting Abutting Residential Use

Tight screen planting, effective at all times to block the view from abutting residential uses, shall be provided for the following uses in accordance with the following table, the dimensions of the screen to be the minimum five years after the use is established.

Screening Of Uses

Use	Screen
Artificial lake of three acres or more.....	6'0" high; 3'0" wide
Commercial facilities for raising and breeding non-farm fowl and animals.....	6'0" high; 3'0" wide
Mineral extraction, borrow pit, topsoil removal, and their storage areas.....	8'0" high; 3'0" wide
Private recreational development.....	6'0" high; 3'0" wide
Private swimming pool.....	6'0" high; 3'0" wide
Private camp or campground.....	6'0" high; 3'0" wide
Public or commercial sanitary fill, refuse dump, garbage disposal plant or trash transfer station.....	8'0" high; 6'0" wide
Riding stable.....	6'0" high; 3'0" wide
Truck terminal.....	6'0" high; 6'0" wide
Wholesale produce terminal.....	6'0" high; 6'0" wide

5.12 Entrances

- A. This subsection limits the number of entrances to an arterial street or a state or federal highway. However, it does not apply to entrances for emergency use only.
- B. Each of the following uses, for which special uses are prescribed by section 4.1, is limited to one entrance:

Use List

- Artificial lake of three or more acres
- Clinic
- Commercial facility for raising and breeding non-farm fowl and animals
- Country club or golf course
- Junk yard
- Mineral extraction, borrow pit, topsoil removal, and their storage areas
- Outdoor theater
- Penal or correctional institution
- Private recreational development
- Private camp or Campground

Public or commercial sanitary fill, refuse dump, garbage disposal plant
or trash transfer station
Public or commercial sewage disposal plant
Railroad right-of-way and uses essential to railroad operation
Riding stable
Sales barn for livestock sale
Telephone exchange or public utility substation
Tourist home or bed and breakfast
Truck terminal
Wholesale produce terminal

- C. Each of the following uses, for which special uses are prescribed by section 4.1, is limited to two entrances for public access:

Use List

Airport
Cemetery
Outdoor commercial recreational enterprise

5.13 Minimum Off-Street Parking and Loading Requirements

A. Purpose.

In order to reduce traffic problems and hazards by eliminating unnecessary on-street parking, every use of land must include on-premises parking sufficient for the needs normally generated by the use, as provided for in this subsection. Parking spaces or bays contiguous to the street, required by subdivision or other town ordinances, are in addition to and not in place of the spaces so required.

B. Applicability.

No new building or structure shall be constructed or used in whole or in part, and no building 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:

- i. No existing off-street parking spaces shall be eliminated by the replacement or enlargement of an existing building or structure, unless they are replaced by spaces provided in accordance with this subsection.
- ii. Enlargements or alterations which result in an increase in the ground coverage or the usable floor area of a building or

structure shall require additional off-street parking spaces in accordance with the provisions of this subsection, but only to the extent that such increase exceeds 5% of the ground coverage or 15% of the floor area existing at the time this subsection becomes effective.

iii. Changes in the use of existing buildings, structures, or of land shall require additional off-street parking spaces in accordance with the provisions of this subsection, but only to the extent of such change.

iv. Restoration of an existing building or structure that has been damaged or destroyed by fire or other disaster shall be permitted without conforming to the requirements of this subsection if said restoration or rebuilding complies with the following requirements:

- The restoration of the building does not increase the ground coverage that was occupied by the structure being replaced by more than 5%,
- The restoration does not increase the usable floor space by more than 15% over that which was in the building being replaced,
- The restoration does not reduce the number of parking spaces that were available to the subject structure, and were in existence, prior to the restoration.
- The structure became nonconforming through government action such as the purchase of right-of-way.

v. Buildings, structures, or land uses, in existence, or structures or uses for which improvement location permits have been issued at the time this Ordinance becomes effective shall not be subject to the requirements of this subsection except as provided above.

vi. Parking spaces are not required within the boundaries of the Historic District as shown and described in The _____ Comprehensive Plan.

C. Required Parking Spaces.

i. Parking spaces shall be provided as follows:

Parking Requirements by Use

Uses	Required Parking Spaces
Airport or heliport	1 per 2 employees plus 1 per based on daily transient aircraft
Artificial lake of 3 acres or more	1 per 2 users
Automobile, RV and camper sales	1 per 400 sq. ft. of gross floor area
Motor vehicle repair	1 per 200 sq. ft. of gross floor area
Banks, business offices, professional offices, similar business uses, post office and similar service uses	1 per 200 sq. ft. of gross floor area
Boarding or lodging house	1 per occupant plus 2 for the resident owner
Bowling alley	3 per lane
Cemetery or crematory	1 per 2 employees plus 1 per 4 seats in chapel, if provided
Church or temple	1 per 2 seats in main auditorium
Clinic	1 per employee plus 3 per doctor for patients
Communication relay tower	1 plus 1 per 3 employees
Country club or golf course	1 per 2 employees plus 3 per golf hole
Dancing, aerobics or gymnastics	1 per 200 sq. ft., of gross studio floor area
Department store, antique shop, apparel shop, flower shop, drugstore, hardware store, stationery and book store, newsdealer, record shop, photo studio, barber shop, beauty shop, health spa or fitness center, bakery, restaurant, delicatessen, liquor store, meat market, grocery (including convenience stores), roadside food sales stand, electrical appliance shop, radio-TV shop, dress-maker, millinery, tailor and pressing shop, self-service laundry, dry-cleaning and laundry establishment, billiard room, night club, furniture and large appliance sales	1 per 200 sq. ft. gross floor area
Greenhouse (commercial), facilities for raising or breeding non-farm fowl or animals (commercial)	1 per 2 employees plus 1 per 125 sq. ft. of sales area
Home service	1 in addition to residence requirement
Hospital	1 per 4 beds plus 1 per doctor plus 1 per 3 employees plus 1 per hospital vehicle

Hotel or motel	1 per 3 employees plus 1 per sleeping room
Industrial uses generally	1 per employee on largest shift
Junk Yard or recycling center	1 per employee
Kindergarten or Child care center	1 per 2 employees plus 1 per 5 children
Mortuary	1 per 3 seats in main auditorium
Nursing home	1 per 7 persons plus 1 per employee on largest shift
Outdoor commercial recreational use	1 per employee plus 1 per 500 sq. ft. of use area
Penal or correctional institution	1 per 3 employees plus 1 per 10 inmates (capacity)
Police station or fire station	1 per employee on largest shift
Private club or lodge	1 per 6 active members
Private recreational development	1 per 2 customers or members
Private camp or campground	1 per camp site plus 1 per cabin plus 1 per employee
Public library or museum	2 per 1,000 sq. ft. gross floor area
Public or commercial sewage disposal plant	1 per employee on largest shift
Bus station	1 per 10 seats in waiting room plus 1 per 2 employees of connected retail use
Residential use, including apartments	2 per dwelling unit
Riding Stable	1 per 5,000 square feet.
School	1 per staff member plus 1 per 5,000 sq. ft. plus 1 per 4 students enrolled if a high school
Shopping center	
25,000 to 400,000 sq. ft. gross leasable area	4 per 1,000 sq. ft. gross leasable area
400,000 to 600,000 sq. ft. gross leasable area	4.5 per 1,000 sq. ft. gross leasable area
600,000 sq. ft. and over gross leasable area	5 per 1,000 sq. ft. gross leasable area
Swimming pools	1 per 100 sq. ft. of pool area
Telephone exchange or public utility substation	1 per employee
Theater (indoor)	1 per 2 seats
Theater (outdoor)	1 per 2 employees
Tourist home or bed and breakfast	1 per employee plus 1 per guest bedroom
Trade or business school	1 per 3 students and staff
Truck terminal	1 per 2 employees plus 4 for customers
Veterinary hospital or clinic or boarding kennel	1 per 3 animal spaces (cages or

Wholesale produce terminal

pens)
1 per 2 employees

- ii. Drive-up services, including but not limited to bank teller, photo pick-up, car washes, fast food order and pick-up, shall provide waiting space for queuing of vehicles awaiting use of drive-up windows. The requirements are: two (2) twenty (20) foot car-length waiting spaces for each drive-up lane (including the space where the transaction takes place), plus one additional space per drive-up lane where such waiting space can be in a common lane for multiple drive-up windows. Drive-up waiting space requirements are in addition to any off-street parking requirement.

D. General Regulations.

- i. Parking spaces may not be located in the required front yard except in business and industrial districts.
- ii. Some parking areas must conform to the location requirements prescribed in Subsection (5.9(B)).
- iii. Two or more buildings or uses may collectively provide the required off-street parking in which case the required number of parking spaces shall be not less than the sum of the requirements for the several individual uses computed separately. This provision shall apply to a building having space occupied by two or more uses.
- iv. When determination of the number of off-street parking spaces required by subsection C. results in a requirement of a fractional space, any fraction of one-half or less may be disregarded while a fraction in excess of one-half shall be counted as one parking space.
- v. Every company car, truck, tractor, and trailer normally stored at a business site shall be provided with off-street parking space. Such space shall be in addition to the parking requirements of subsection C.

E. Off-Site Parking Facilities.

Required parking for a non-residential development may be located off-site under certain circumstances. Requests for variances allowing the substitution of off-site for on-site parking must meet the following requirements:

- i. The off-site parking shall be located so that it will adequately serve the use for which it is intended. In making this determination the following factors, among other things, shall be considered:
 - a. Proximity of the off-site parking facilities;
 - b. Ease of pedestrian access to the off-site parking facilities;
 - c. The type of use the off-site parking facilities are intended to serve, i.e. off-site parking may not be appropriate for high turnover uses such as retail.
- ii. A written agreement shall be drawn to the satisfaction of the legal counsel of the Administrator and executed by all parties concerned assuring the continued availability of off-site parking facilities for the use they are intended to serve.

F. Development Standards.

Each parking area shall comply with the standards as hereinafter set forth:

- i. **Design.**
 - a. Parking spaces and maneuvering aisles shall have the minimum dimensions set forth in the following table:

Minimum Parking Space and Aisle Dimensions for Parking Areas (in feet)

Angle of Parking	Width of Parking Space	Length of Parking Space	Maneuvering Aisle (1way)	Maneuvering Aisle (2way)
76-90	9'	18'	22'	22'
61-75	9'	18'	18'	22'
46-60	9'	18'	17'	22'
0-45	8'	22'	12'	22'

Measurement of parking space width and length, aisle width and parking angle shall be made as per the following diagram:

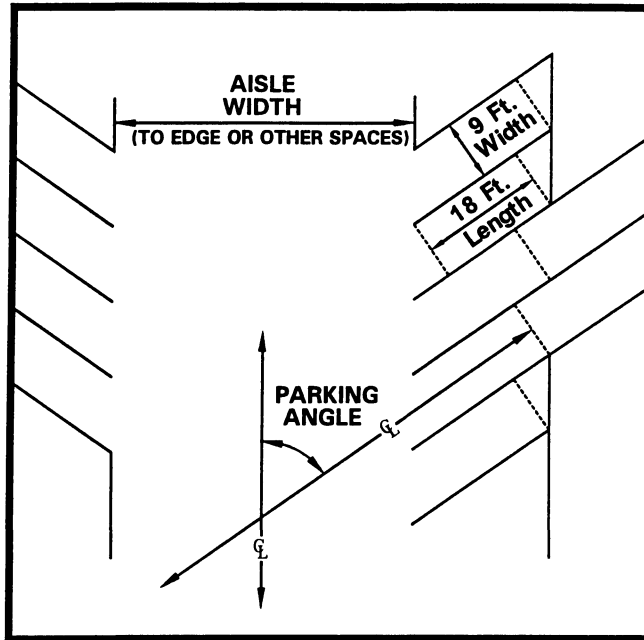


Figure 5-1: Parking Space Measurements

- b. Driveways shall be arranged for the free flow of vehicles at all times, and all maneuvering spaces and aisles shall be so designed that all vehicles may exit from and enter into a public street by being driven in a forward direction, except that residential and employee parking spaces may back-in from alleys. See Figure 5-1 above.
 - c. Each required off-street 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 other vehicle or by passing over any other parking space, except where the parking area is limited to employees.
 - d. On any parking area in any district, all paved portions of all parking spaces and maneuvering aisles shall be set back five (5) feet from any wall of a building, and five (5) feet from any private or public way, or any lot line of any land in residential districts or used for residential purposes.
- ii. **Construction.**
- a. All required parking spaces, maneuvering aisles, and driveways except in A & FP districts and on farms in any district, shall have a durable, dustless, all-weather

surface, such as asphaltic or portland cement concrete, and shall provide for a satisfactory disposal of surface water by grading and drainage in such a manner that no surface water shall drain onto any lot in other ownership and such surfaces shall be well maintained.

- b. Parking areas in all districts shall be provided with curbing, wheel stops, or other devices to prevent motor vehicles from being parked or driven within required setback areas or onto the required landscaped open space.
- c. In any parking area the surface shall be painted, marked, or otherwise delineated so that each parking space is apparent.

iii. **Landscaping.**

- a. For an outdoor parking area containing twenty (20) or more parking spaces, at least one (1) tree shall be planted for every ten (10) parking spaces on any side of the perimeter of such parking area that abuts the side line of a private or public way, or abuts the lot line of land in residential districts or land used for residential purposes.
- b. In any outdoor parking area, a landscaped open space having an area of not less than 10% of the outdoor parking area on the lot shall be provided. A minimum of one half of the required landscaped open space shall be located in the interior of the parking area and contain ornamental or shade trees and/or shrubs and/or other appropriate plant materials to provide shade and color easily visible when the lot is full of cars.
- c. Trees required by the provisions of this subsection shall be at least two (2) inches in diameter at a height of five (5) feet at the time of planting and shall be of a species characterized by rapid growth and by suitability and hardiness for location in a parking lot. To the extent practicable, existing trees shall be retained and used to satisfy the provisions of this subsection.

iv. **Screening.**

Any parking area which abuts residential districts or uses shall be screened from such residential districts or uses and any

parking area shall be screened from a public or private way in accordance with the following requirements:

a. **Materials.**

Plant materials characterized by dense growth which will form an effective year-round screen shall be planted, or a fence or a wall shall be constructed, to form the screen except as prohibited in Section 4.2 and 5.7. Where a grill or openwork fence or wall is used, it shall be suitable in appearance and materials. Screening may consist of both natural and man-made materials. To the extent practicable, existing trees shall be retained and used to satisfy the provisions of this subsection. Plant material shall also be of a type whose roots will not interfere with utilities.

b. **Height.**

Screening shall be at least three (3) feet in height. Plant materials when planted, may be not less than 2 1/2 feet in height if of a species or variety which shall attain the required height and width within two (2) years of planting. Height shall be measured from the finished grade.

c. **Width.**

Screening shall be in a strip of landscaped open space at least five (5) feet wide, and so located as not to impair visibility of or from approaching traffic or create potential hazards for pedestrians.

d. **Maintenance.**

All required plant materials shall be maintained in a healthy condition and whenever necessary replaced with new plant materials to insure continued compliance with screening requirements. All required fences and walls shall be permanently maintained in good repair and presentable appearance and whenever necessary they shall be repaired or replaced.

e. **Lighting.**

All artificial lighting used to illuminate a parking area, maneuvering space or driveway shall be arranged and shielded so as to prevent direct glare from the light sources into any public street or private way or onto adjacent property.

- f. Where appropriate and recommended by the Design Review Board, landscaped earth berms may be used to help in screening or separating uses or for other useful purposes.

G. **Off-Street Loading.**

There shall be provided off-street loading berths not less than the minimum requirements specified in this subsection in connection with any building or structure which is to be erected or substantially altered, and which requires the receipt or distribution of materials or merchandise by trucks or similar vehicles.

i. **Location.**

All required off-street loading berths shall be located on the same lot as the use to be served, and no portion of the vehicle shall project into a street or alley. No permitted or required loading berth shall be located within twenty-five (25) feet of the nearest point of intersection of any two streets, nor shall it be located in a required front yard, or side yard adjoining a street. Some uses are also subject to Section 5.8 and/or 5.9.

ii. **Size.**

Off-street loading berths for over-the-road tractor-trailers shall be at least fourteen (14) feet in width by at least sixty (60) feet in length with a sixty (60) foot maneuvering apron, and shall have a vertical clearance of at least fifteen (15) feet.

For local pick-up and delivery trucks, off-street loading berths shall be at least twelve (12) feet in width by at least thirty (30) feet in length with a thirty (30) foot maneuvering apron, and shall have a vertical clearance of at least twelve (12) feet.

iii. **Access.**

Each required off-street loading berth shall be designed with appropriate means of vehicular access to a street or alley in a manner which will least interfere with traffic movements.

iv. **Surfacing.**

All open off-street loading berths shall be improved with a compacted base not less than eight (8) inches thick, or equal, surfaced with not less than four (4) inches of asphaltic concrete or some comparable all-weather, dustless material.

v. **Space Allowed.**

Space allowed to any off-street loading berth shall not, while so allocated, be used to satisfy the space requirements of any off-street parking areas or portions thereof.

vi. **Off-street Loading Space Requirements.**

One off-street loading berth shall be provided for every 10,000 square feet of gross floor area but no more than a total of two spaces up to 40,000 square feet of gross floor area, one space for each additional 40,000 square feet up to 160,000 square feet, and one space for every 80,000 additional square feet.

5.14 Signs

A. **Purpose.**

The purpose of this subsection is to permit such signs that will not, by their reason, size, location, construction, or manner of display, endanger the public safety of individuals, confuse, mislead, or obstruct the vision necessary for traffic safety, or otherwise endanger public health, and morals; and to permit and regulate signs in such a way as to support and complement land-use objectives set forth in the zoning ordinance. All signs except those exempted in Section 5.14(B) will require an improvement location permit as prescribed in Section 10.1 (Applicability).

B. **Exempt signs.**

The following types of signs shall be exempted from the requirements of this subsection:

- i. Signs not exceeding one square foot in area and bearing only property numbers, post box numbers, names of occupants of premises or home service.
- ii. Flags and insignia of any government.
- iii. Legal notices, identification information, or directional signs erected by or by order of governmental bodies.
- iv. Integral decorative or architectural features of buildings, except letters, trademarks, logos, moving parts or moving lights.
- v. Signs directing and guiding traffic and parking on private property, but bearing no advertising matter, including logos.

C. On-Premise Signs.

- i. In any district, except as noted, the provisions of this subsection shall be applied to effect the safety of motorists and facilitate traffic movement.
 - a. No sign shall be erected or maintained at any location where, by reason of its position, wording, illumination, size, shape, or color, it may obstruct, impair, obscure, interfere with the view of, or be confused with any authorized traffic control sign, signal, or device.
 - b. No sign shall contain or make use of any phrase, symbol, shape, form, or character in such a manner as to interfere with, mislead, or confuse moving traffic.
 - c. No exterior sign shall be permitted to display flashing, intermittent, revolving, rotating or animated lighting or illumination, nor any illumination which simulates or displays motion.
 - d. Except as permitted in subsection viii., Portable Signs are prohibited.
 - e. All signs not expressly exempted or permitted by this ordinance are prohibited.
- ii. In all districts, the provisions of this subsection shall apply.

- a. No part of any sign which is attached to the exterior wall of a building shall be erected to a height in excess of six feet above the roof or parapet line of such building.
- b. No illuminated sign shall be permitted within fifty feet of property in any residence district unless the illumination of such sign is so designed that it does not reflect or shine light onto such property.
- c. No part of any free-standing sign shall be erected to a height greater than that specified for other structures in the district in which the sign is located; rooftop sign structures shall not extend more than six feet above the roof line nor shall such sign structures extend beyond or overhang any exterior wall of the building upon which they are secured.
- d. The minimum setback of freestanding signs from street rights-of-way shall not be less than those given below. Setback shall be measured to the nearest point of the sign to the edge of the right-of-way.

Minimum Sign Setbacks

Area of Sign per Face	Minimum Setback
5 square feet or less	2 feet
5 to 14.9 square feet	10 feet
15 to 49.9 square feet	20 feet
50 to 99.9 square feet	30 feet
100 or more square feet	60 feet

- e. The area of a sign shall be determined by the smallest circle, triangle, or rectangle that can be used to enclose the sign, exclusive of supporting members that bear no message.
 - f. No freestanding sign shall be erected or maintained on or within any easement or right-of-way, public or private, without special permission in writing from that person or persons entitled to give such permission.
- iii. In any residence district, the provisions of this subsection shall apply.

- a. Multi-family developments may display identification signs indicating nothing other than name and/or address of the premises and/or the name of the management. Such sign shall not exceed nine square feet in area.
- b. Nonresidential uses are permitted one bulletin board or identification sign, indicating nothing other than name and/or address of the premises, and schedule of services or other information relevant to the operation of the premises. Such sign shall not exceed twelve square feet in area unless erected along an abutting street or road having a speed limit in excess of 40 miles per hour; then the area of such sign shall not exceed 30 square feet.
- c. For each use listed in paragraphs a. and b. eligible to display a sign, only one sign per street frontage shall be permitted, except that uses occupying extended frontages shall be permitted one such sign per five hundred (500) feet of frontage.

iv. In any business district, except as herein provided, the provisions of this subsection shall apply.

- a. Multi-family developments shall be subject to the provisions of subsection iii.
- b. Signs shall be permitted as accessory uses for nonresidential uses according to the number and net area of signs set forth below:

Business Use Signs and Sign Area		
District	Number of Signs	Net Sign Area (each sign)
GS	3	60 sq. ft.
LB & OD	2	30 sq. ft.
GB & CB	3	40 sq. ft.

No building-mounted sign shall project over a lot line and no sign shall project into a required yard by more than two feet.

v. In any industrial district, each business or industrial use shall be permitted identification signs on the lot only as incidental uses, not to exceed two such signs or a total net area of three hundred square feet.

vi. To encourage design excellence, the maximum sign areas for business and industrial signs, as set forth in paragraphs iv. and v. above, may be increased by the percentages as provided for herein. A separate bonus is granted for compliance with each of the criteria and the area is cumulative, but the percentage increase is based on the original sign area limitation.

a. Freestanding signs may be increased as follows:

- Twenty percent (20%) when the sign is constructed of solid wood and uses only colors approved by the Design Review Committee.
- Ten percent (10%) when a directory sign utilizes uniform coloring and lettering for all establishments listed in the directory, except the one (1) major facility.
- Twenty percent (20%) when the sign is installed in a landscaped planter having an area four (4) times the area of the resultant sign and the entire design is approved by the Design Review Committee.
- Ten percent (10%) if the sign is not designed or used with illumination.
- Five percent (5%) if the sign face is made from unbreakable material.

b. Wall or facade signs may be increased as follows, but only if the projection of the sign does not exceed twelve (12) inches:

- Ten percent (10%) when all the lettering and background are uniform in style and color for signs in a shopping center or for any three (3) consecutive separate establishments.
- Ten percent (10%) if the sign is not designed or used with illumination.
- Ten percent (10%) if the wall sign is the only sign identifying the establishment or its principal product. This bonus provision is not applicable

in Local Business Districts (LB), Central Business (CB) Districts, and for stores in a shopping center.

- Ten percent (10%) if the sign is designed to contain only the identification of the establishment without advertisement of any products sold on the premises.
- Five percent (5%) if the sign face is made from unbreakable material.

vii. In any agriculture district, the provisions of this subsection shall apply:

- a. Agricultural uses shall be permitted one (1) sign not to exceed thirty (30) square feet.
- b. Industrial uses shall be permitted a maximum of two (2) signs not to exceed a combined area of one hundred (100) square feet.
- c. Business uses shall be permitted two (2) signs not to exceed thirty (30) square feet each.
- d. Other nonresidential uses shall be permitted, one bulletin board or identification sign, indicating nothing other than name and/or address of the premises, and schedule of services or other information relevant to the operation of the premises. Such sign shall not exceed twelve square feet in area unless erected along an abutting street or road having a speed limit in excess of 40 miles per hour; then the area of such sign shall not exceed 30 square feet. Only one sign per street frontage shall be permitted, except that uses occupying extended frontages shall be permitted one such sign per five hundred (500) feet of frontage.
- e. Residential uses are subject to the provisions of subsection iii.

viii. The signs permitted by this subsection shall be allowed in any district.

- a. One "For Sale" or "For Rent" sign not more than twelve square feet in area for each dwelling unit, garage, or other

quarters where appropriate.

- b. One sign, not more than twelve square feet in area, for construction and development, giving the name of the contractors, engineers, or architects, shall be permitted but only during the time that construction or development is actively underway.

Also, one (1) portable sign on premise, not in excess of the number or size provisions of subsection iv (b) may be permitted by the Administrator up to, but not to exceed, forty-five (45) days, if the portable sign is being used in lieu of a permanent sign, or during the period while commercial construction or remodeling is actively underway, to be removed when the permanent sign is erected in the first case, or when construction is completed under that Improvement Location Permit in the second case.

- c. For an event of public interest sponsored by a church, governmental agency, school, political organization, or charitable organization, one (1) portable sign not over fifty (50) square feet in area, on the premises on which the event will take place, shall be permitted; such sign shall not be erected more than thirty (30) days before the event in question and shall be removed immediately after such event. Also, directional signs, may be permitted not more than three (3) square feet in area, showing only a directional arrow and the name of the event of public interest; such signs shall not be erected more than fourteen (14) days before the event in question and shall be removed immediately after such event.

- d. For each real estate subdivision that has been recorded in accordance with the subdivision regulations, one sign, not over fifty (50) square feet in area, advertising the sale of property in such subdivision shall be permitted, but only when located in some portion of the subdivision being advertised for sale. Such sign shall not encroach upon any required yard. Such sign may be illuminated, but no flashing, intermittent or animated illumination is permitted. Such sign shall be maintained only during such time as some portion of the land advertised for sale remains unsold. Permits for such sign shall be issued for one-year periods and may be renewed for additional one-year periods to allow time for reasonable display.

- e. Political advertisement signs, on private property, may be erected no more than thirty (30) days prior to the election and are to be removed within five (5) days after said election.
- f. For each major entrance to a real estate subdivision one (1) sign containing the name of the subdivision only shall be permitted. Such sign shall not exceed twenty (20) square feet and shall have a maximum height of six (6) feet. In addition, such sign shall comply fully with subsection 5.7 Setbacks: Vision Clearance at Intersections and subsection 5.14(c) ii.f., but shall not be subject to subsection 5.14(c) ii.d.

D. Outdoor Advertising Signs (Billboards).

- i. Outdoor advertising signs shall be allowed in HS, GB, CB and I Districts only, as authorized by or under Section 4.1.
- ii. Outdoor advertising signs shall be separated by one thousand (1,000) feet in all directions, and pertaining to the Interstate and limited access highways, no outdoor advertising sign may be located adjacent to or within five hundred (500) feet of an interchange, at-grade intersection, or rest area; said five hundred (500) feet shall be measured from the right-of-way line.
- iii. No outdoor advertising sign shall be permitted if it is located within three hundred (300) feet of land that is in residential use or is zoned R1, R2, R3, LB, GB, CB, A, PDRS, or PDCC.
- iv. No outdoor advertising sign structure shall contain more than two facings and no facing shall display more than two (2) signs.
- v. The maximum area for any one sign shall be 1,000 square feet and the maximum width 25 feet and maximum length of 60 feet, exclusive of any border, trim, ornamental base, apron, supports, embellishments, and other structural members, if the exclusions do not exceed 20 percent of the sign area. The area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof which will encompass the area affected.

5.15 Restrictions Along Streams

- A. The following buildings and structures are the only ones that may be erected within a floodway fringe: recreational apparatus and unenclosed shelters; parking spaces, detached unenclosed carports and the driveways serving them; water wells and fountains, and transmission lines for water, sewer, gas, oil, electric, telephone and cable television; fences; mailboxes; bridges and public and private streets.
- B. When required by the Indiana Department of Natural Resources, the buildings and structures listed in subsection A. above may be erected within a regulatory floodway only if a permit to construct in a floodway has been issued.
- C. Water wells, water lines, and sewage facilities located within a flood plain shall be constructed to eliminate contamination of or by, floodwater.

5.16 Water Pollution

No authorization of a use under this Ordinance includes the authority to discharge liquid or solid wastes into public waters except as permitted under the National Pollutant Discharge Elimination System (NPDES) permit program. The administration of the NPDES program in Indiana is the responsibility of the Office of Waste Management within the Department of Environmental Management under memorandum of agreement with the United States Environmental Protection Agency. Plans and specifications for proposed sewage and other waste treatment and disposal facilities must be approved by the Indiana Department of Environmental Management and/or the State Department of Health, and any other Indiana department or agency authorized to review and approve such facilities.

5.17 Industrial Performance Standards

A. Intent.

The purpose of these performance standards in the regulation of industrial activities is as follows:

- i. to permit potential industrial nuisances to be measured factually and objectively;
- ii. to ensure that all industries will provide methods to protect the

community from hazards and nuisances which can be prevented by processes of control and nuisance elimination and:

- iii. to protect industries from arbitrary exclusion or persecution based solely on the nuisance production by any particular type of industry in the past.

B. Application.

- i. These performance standards apply to land use activity in industrial and manufacturing areas. However, the standards do not apply to machinery, equipment, and facilities which were at the site on the effective date of the ordinance. If there are questions about when items were brought to the site, documentation is the responsibility of the industry.
- ii. Any use established or changed to, and any building, structure or tract of land developed, constructed or used for, any permitted or permissible primary or accessory use shall comply with all the performance standards set forth in this section for the zone involved.
- iii. If any existing use or building or other structure is extended, enlarged, moved, structurally altered or reconstructed, or any existing use of land is enlarged or moved, the performance standards for the zone involved will be applied to that extended, enlarged, moved, structurally altered or reconstructed building or other structure or portion of it, and to that use of the land which is enlarged or moved.

C. Air Pollution.

- i. Any use that emits any air contaminant as defined in Indiana Code 13-1-1-2(d) shall comply with applicable State standards concerning air pollution, as set forth in Title 326 of the Indiana Administrative Code.
- ii. No Improvement Location Permit shall be issued with respect to any improvement covered by (i.) above until the Indiana Air Pollution Control Board has certified to the Administrator that the appropriate State permits have been received by the petitioner, or that the petitioner will be eligible to receive these permits and that the improvement is otherwise in compliance with applicable air pollution laws.

D. Glare and Heat.

- i. Glare is illumination caused by incandescent, fluorescent or arc lighting, or from high temperature processes such as welding or metallurgical refining.
- ii. In industrial zones (I), any operation or activity producing glare shall be conducted so that direct or indirect light from the source shall not cause illumination in excess of 0.5 foot candles when measured in any residential zone.
- iii. No heat from furnace or processing equipment can be sensed at the zone boundary line that raises the temperature of ambient air or materials more than 5 degrees Fahrenheit.
- iv. As used in this subsection, the term "foot candle" means a unit of illumination equal to the illumination at all points that are one foot from a uniform point source of one candle-power.

E. Vibration.

- i. No continuous, frequent, or repetitive vibrations shall be produced which exceed 0.002g peak (acceleration of gravity) on non-industrial zoned lands.
- ii. Vibrations from temporary construction and vehicles which leave the site (such as trucks, airplanes, and helicopters) are excluded. Vibrations from primarily on-site vehicles and equipment are included.
- iii. Vibrations of no more than five (5) minutes in any one day will not be considered continuous, frequent, or repetitive for this regulation.
- iv. Seismic or electronic vibration measuring equipment may be used for measurements.

F. Noise.

- i. Noise shall be measured in decibels with a sound level meter meeting the latest standards of the American National Standards Institute (ANSI). The instrument shall be set to the A-weighting scale and the meter to slow response. Measurements shall be conducted in accordance with the latest ANSI method for the physical measurement of sound.

- ii. The table below specifies noise limits that apply on or beyond the adjacent lot lines or zone boundaries outside the user’s property. Noises shall not exceed the maximum sound levels specified in the table, except as designated in (iv.) and (v.) below. Where more than one specified sound level applies, the most restrictive will govern. Measurements shall be taken at points of maximum noise intensity.

Table of Noise Limits

Performance Standard Category	Maximum Permitted Sound Level (dbA)	Point of Measurement
A	55/45 *	On adjacent rural and residential land uses
B	60	On adjacent commercial land uses
C	65	Across industrial (I) zone boundary line

Note: In any residential zone, the maximum permitted sound level shall not exceed fifty-five (55) dbA between 7:00 am and 9:00 pm and forty-five (45) dbA between 9:00 pm and 7:00 am.

- iii. The levels specified in (ii.) above may be exceeded by 10 dbA for a single period, no longer than fifteen (15) minutes, in any one day.
- iv. For impact noise levels, the values in (ii.) above, increased by twenty (20) dbA, will apply. Impact noises will be considered to be noises having peak values more than six (6) dbA higher than values indicated on the sound level meter.
- v. Noises not under the direct control of an industrial operation (such as independent transportation facilities) are excluded from the above limitations.
- vi. As used in this subsection, the term “decibel (or abbreviated ‘dbA’)” means a unit, expressed on a logarithmic scale, for measuring the relative intensity of sounds, ranging from 0 to 130, for the average pain level experienced by the human ear. Also, the term “sound level meter” means an electronic instrument that includes a microphone, output meter and amplifier, and measures sound pressure levels.

H. Fire Hazards.

- i. Solid substances ranging from free or active burning to intense burning may be stored, used or manufactured only within completely enclosed buildings having incombustible exterior walls and protected throughout by an automatic fire extinguishing system.
- ii. The storage, utilization, or manufacture of flammable liquids or materials which produce flammable vapors or gases shall be permitted in accordance with the rules and regulations of the State Fire Marshall. A certificate of compliance, issued by the State Fire Marshall's Office, stating that the plans and specifications for a light or general industrial use comply with the rules and regulations of the State Fire Marshall shall accompany the application for an Improvement Location Permit.
- iii. As used in this subsection, the term:

"free burning" means a rate of combustion described by a substance that burns actively and easily supports combustion.

"intense burning" means a rate of combustion described by a substance that burns with a high degree of activity and is consumed rapidly.

I. Detonation Materials.

No activity involving the storage, use or manufacture of materials that decompose by detonation may be carried on except in accordance with the rules issued by the State Department of Fire Prevention and Building Safety.

These materials include primary explosives such as lead azide, lead styphnate, fulminates, and tetracene; high explosives such as TNT, RDX, HMX, PETN, and picric acid; propellants and their components, such as dry nitrocellulose, black powder, boron hydrides, hydrazine and its derivatives; pyrotechnics and fireworks such as magnesium powder, potassium chlorate, and potassium nitrate; blasting explosives such as dynamite and nitroglycerine; unstable organic compounds such as acetylides, tetrazoles, and ozonides; strong oxidizing agents such as liquid oxygen, perchloric acid, perchlorates, chlorates, and hydrogen peroxide in concentrations greater than thirty-five percent; and nuclear fuels, fissionable materials and products, and reactor elements such as uranium 235 and plutonium 239.

Section 6

Planned Unit Developments

Preface

The purpose of this section is to allow innovative and diverse design in land development that is consistent with the adopted Comprehensive Plan and the intent of this Zoning Ordinance and the Subdivision Ordinance. The goal is to provide a variety of environmentally appropriate residential, nonresidential, and mixed-use developments to meet the needs of the community. PUD zoning is encouraged in the following contexts:

- to accommodate compatible development in environmentally sensitive locations.
- to enhance compatibility with surrounding land uses.
- to permit a harmonious variety of uses within a single development.
- to promote efficiency and thus economy by clustering structures and/or by using shared facilities or services.
- to foster new site treatments not contemplated in other kinds of zones.

6.1 Planned Unit Development Process

PD zones are not identified on the zoning maps in advance. PD zones are the result of a public hearing to rezone a specific parcel(s) to a new PD zone based on the negotiated development plan between the petitioner(s), Advisory Plan Commission, the administrator, and representatives of the checkpoint agencies. The provisions of Sections 5.1 through 5.14 of this Ordinance shall not be applied, or be applicable, to a PD zone or district since the negotiated development plan determines the nature of the PUD district.

The remainder of Section 6 explains this process in further detail.

6.2 Origination of Proposals

1. A request to rezone from any other zoning classification to a PD zone may be initiated by: (a) all owners of the property in question; or (b) any group of owners united in interest acting jointly under an agreement to carry out the proposal in separate ownership.
2. The negotiated agreement is the substance of a PD zone. Therefore, a request to reclassify the PD zone shall include among the petitioners either: (a) all owners of the property within the current planned unit development; or (2) the owner's association acting on behalf of a majority of property owners in the current planned unit development, as constituted in the recorded bylaws.
3. PD zoning is mandatory for any new condominium construction or condominium conversion.

6.3 Classifications of Planned Unit Development

To identify the nature of planned unit developments on zoning maps, they shall be classified as one of the following four zones:

- A. **PDRS**, in which all buildings and land are developed for residential use and those activities customarily accessory to residential use;
- B. **PDNR**, in which no building or land is developed for residential use, but rather for commercial and/or industrial and/or recreational and/or some other nonresidential use;
- C. **PDMX**, in which buildings and land are developed as a mix of both residential and nonresidential uses.
- D. **PDCC**, in which the only change proposed, involves either:

- (1) the conversion to condominium ownership of a development which has received occupancy permits for all parts no less than three years prior; or
- (2) the conversion to condominium ownership of an existing building in a CB or in a PD zone adjoining or surrounded by a CB zone; where there is no further division of land involved.

Those PD zones and overlays approved prior to the adoption of this zoning ordinance shall be reclassified to one of the above four categories.

6.4 Pre-Submission Conference

- A. Before filing a request for a rezoning petition to either PDRS, PDNR, or PDMX, the petitioner arrange a meeting with the Administrator. A pre-submission conference is not required for a rezoning request to PDCC.
- B. The petitioner shall bring a scaled site plan of the proposed planned unit development to the meeting. The site plan should show the location of proposed uses and major buildings, layout and classification of roads, all entrances and exits, and any environmental sensitive areas. Also, the petitioner shall bring a chart detailing the phasing and a time frame for development.
- C. Discussion at the meeting shall include:
 1. The proposed treatment of environmentally sensitive areas;
 2. The petitioner's intentions and objectives regarding land use, street improvements, and utilities;
 3. The petitioner's intentions assuring compatibility between uses proposed for the perimeter of the PUD and surrounding land uses and zoning classifications;
 4. The general availability of utilities to the site;
 5. The area's current zoning pattern;
 6. The classification of the proposed rezoning to a PD category.

6.5 Filing Procedure

- A. After the pre-submission meeting, or to initiate a PDCC action, the petitioner may file a rezoning request to one of the PD classification categories.

- B. This submission shall contain the following:
1. A non-refundable processing fee as set by the Advisory Plan Commission.
 2. A signed and notarized Petition to Rezone containing a metes and bounds legal description, the PD classification category sought, and signed by the owner or owners of all property involved; or with a notarized affidavit of consent of all owners attached;
 3. A list of names, addresses and tax assessment parcel numbers of all property owner's located adjacent to and directly across the street, alley, or railroad right-of-way from the subject property;
 4. Two (2) notices of Public Hearing, each with a metes and bounds or other legal description and the common address or location of the subject property.
 5. Two (2) release letters authorizing the staff to submit Notices of Public Hearings to the designated newspapers;
 6. A typed original and 16 copies of the proposed ordinance to rezone the property, using the sample format provided by the Administrator;
 7. Three sets of drawings, labeled Draft Plan, to include a recorded boundary survey satisfying the requirements of IAC Title 865 Article 1 Rule 12
 8. If dividing land, three (3) copies of the preliminary plat prepared by a Registered Land Surveyor. Detailed instructions on the information to be provided on said preliminary plat can be obtained from the Administrator.
 9. Three (3) copies of any proposed covenants and horizontal property ownership and owner's association documents written in plain language with a table of contents.
 10. Signatures from the representatives of all checkpoint agencies, or post office receipts of certified mailing indicating receipt of one set of items listed as (7) through (9) above. The Checkpoint agencies are:
 - Design Review Board
 - Director of Public Works and Safety
 - Police Department

- Fire Department
- Parks and Recreation Department
- School Corporation
- County Soil and Water Conservation District

and other agencies having jurisdiction in areas potentially affected by the petitioner's proposed development.

- C. If the petitioner fails to meet the filing requirements of Subsection 6.5 (B) above within six (6) months of the pre-submission meeting, the petitioner shall reschedule a new pre-submission meeting in order to continue the project.

6.6 Required Review Meeting

- A. The purpose of the Required Review Meeting is to give the Administrator and checkpoint agency representatives an opportunity to recommend revisions to the Draft Plan Submission and to discuss these recommendations with the petitioner and the petitioner's representatives.
- B. The Administrator shall determine if the petitioner's submission is complete. Within 30 days of the finding of a complete submission, the Required Review Meeting shall be held. Written notice shall be sent to the petitioner, the petitioner's representatives, the checkpoint agencies, and the Advisory Plan Commission stating the time and place of the Required Review Meeting.
- C. If the submission is incomplete, the petitioner shall be provided written notice of the deficiencies. The Required Review Meeting shall not be scheduled until the deficiencies are addressed by the petitioner.

6.7 Preliminary Plan Submission Requirements

- A. Following the Required Review Meeting, the petitioner shall submit a Preliminary Plan no later than three weeks before the proposed public hearing of the rezoning petition. A complete Preliminary Plan submission shall contain the following:
 1. Eight (8) sets of drawing labeled Preliminary Plan. These drawings must contain all the elements of the Draft Plan plus the changes resulting from the Required Review Meeting.
 2. If dividing land, eight (8) copies of the preliminary plat shall be included within the Preliminary Plan. The plat shall be prepared by a Registered Land Surveyor.

3. Eight copies of any covenants and horizontal property ownership and owner's association documents written in plain language with a table of contents.
- B. If the petitioner fails to meet the Preliminary Plan submission requirement within six months of the Required Review Meeting, his rezoning petition shall be void. If the petitioner wishes to continue the project, a new pre-submission meeting is required.

6.8 Preliminary Plan Hearing and Disposition

- A. The rezoning petition and Preliminary Plan shall be heard by the Advisory Plan Commission as a petition for zoning ordinance amendment. Upon hearing the request the Plan Commission may recommend either approval, amendment, or disapproval of the Preliminary Plan.
- B. The Commission may impose reasonable conditions with its recommendation. However, if the Commission requires changes in design, regarding the proposed site, utilities, or landscape plans, then the Commission shall vote to recommend amendment. In this case, the petitioner may resubmit a second Preliminary Plan for rehearing by the Commission at a later date.
- C. If the Commission recommends approval or disapproval, the eight (8) sets of the Preliminary Plan shall be stamped with that recommendation and signed by the President and Secretary of the Commission. Distribution of the plan sets shall be as follows: One (1) set shall be retained in the office of the Commission; Two (2) sets shall be returned to the petitioner, Four (4) sets shall be distributed to the affected gas, electric, telephone, and cable television utilities, and One (1) set shall be certified to the Legislative Body for adoption as a Planned Unit Development zone.
- D. The Legislative Body may adopt or defeat the certified Preliminary Planned Unit Development, but shall not amend the Plan. If adopted by the Legislative Body, the petitioner may prepare Final Detailed Plans.

6.9 Approval of Final Detailed Plans for PDCC Zones

- A. The petitioner may submit Final Detailed Plans after rezoning to PDCC by the legislative body. The Administrator shall approve the Final Detailed Plans before recordation.
- B. A complete PDCC Final Detailed Plan submission shall contain:

1. Evidence that any conditions imposed at the hearing of the Advisory Plan Commission have been met.
 2. A minimum of eight (8) sets of drawings labeled Final Detailed Plan –Condominium Conversion shall be submitted. The content of the submission shall be the same as the Approved Preliminary Plan except that any imposed conditions will be addressed.
 3. A minimum of eight (8) signed copies of any covenants and horizontal property agreement and owner’s association documents.
- C. The Administrator shall review the PDCC Final Detailed Plan Submission. If the submission is complete and the conditions imposed by the Advisory Plan Commission are met, then the Administrator shall approve the Final Plan. A copy of the Final Plan shall be provided to the Advisory Plan Commission. If the Administrator finds that the PDCC Final Detailed Plan Submission is incomplete, the petitioner shall be so notified in writing.

6.10 Approval of Final Detailed Plans for PDRS, PDNR, and PDMX Zones.

- A. The petitioner may file the Final Detailed Plans following rezoning to PDRS, PDNR, or PDMX.
- B. A complete PDRS, PDNR, or PDMX Final Detail Plans Submission shall contain the following:
 1. Evidence that any conditions imposed at the hearing of the Advisory Plan Commission have been met.
 2. A minimum of ten (10) sets of drawings labeled Final Detailed Plan shall be submitted. The content of the submission shall contain all the elements of the Approved Preliminary Plan, plus full construction plans for all public improvements to be provided by the developer.
 3. A minimum of ten (10) signed copies of any covenants and horizontal property agreement and owner’s association documents.
 4. A release from the mortgage company, if any, covering the necessary right-of-way, where right-of-way is to be dedicated.
 5. If one or more lots are being created, the petitioner shall provide 10 copies and a reproducible mylar of the signed final plat, prepared by a Registered Land Surveyor.

The Administrator and representatives of the checkpoint agencies shall review the Final Detailed Plan. Improvement Location Permits shall not be issued nor development activity begin until the Administrator determines the final submission is complete, the checkpoint agency approvals are realized, and the Administrator approves the Final Detailed Plan.

- C. If public improvements or improvements for common usage are to be installed by the petitioner, such improvements must be completed after approval of the Final Detailed Plan, but before work on the dwelling units commences. Otherwise, surety must be provided before an improvement location permit will be issued for a dwelling unit. A planned unit development containing common facilities shall be provided with an owner's association or other private organization responsible to and controlled by the property owners. This organization's purpose is to ensure adequate operation and maintenance of these common facilities. Recorded legal assurances shall be provided which show this organization to be self-perpetuating.

6.11 Recording Approved Final Detailed Plans.

- A. The petitioner shall record the Final Detailed Plans, after approval by the Administrator, in the Office of _____ (Recordation) before any development, construction, earth moving activity, or application for improvement location permits, or condominium documents shall occur.

6.12 Amendment of the Approved Final Detailed Plans.

- A. The petitioner may wish to make changes to the Approved Final Detailed Plans after recordation. The Administrator shall make a determination if the changes constitute a minor modification or a major modification. An approved written determination of minor modification by the Administrator shall be attached to the Amended Final Plans before recording. A major modification will require rezoning.
- B. A minor modification cannot include: (1) any increase in residential density; (2) any decrease in residential density of 10% or more; (3) any change in building dimension or location other than within the defined building envelope; (4) any change in lot lines; (5) any change in landscaping other than substitution of species or redesign with the same materials; (6) any alteration in the size and/or location of signage; (7) any change in the alignment or intersection of streets; (8) or any change in restrictive covenants, or horizontal property ownership and owner's association documents regarding the items (1)-(7) above.
- C. The petitioner shall provide the Administrator an as-built survey locating

buildings and common lot lines after the foundations are in place for all condominium or attached zero lot line projects. The revised plans needs to be submitted to and approved by the Administrator and recorded as Amended Final Detailed Plans.

- D. Changes to restrictive covenants and any horizontal property ownership and owner's association documents can only be initiated by a majority of property owners within the planned unit development. Multiple owners of a single unit shall be considered one owner. The developer shall be considered a single owner until all property is sold. The proposed changes shall be reviewed by the Administrator and the determination made as to whether the changes amount to a minor or major modification. The disposition of the minor or major modification shall be made as stated in 6.11 (A) above.

6.13 Lapsed and Abandoned Plan Developments

- A. An intended condominium conversion has lapsed if two years have passed since the date on which rezoning to PDCC was granted, and no Final Detailed Plans have been approved and recorded. The Advisory Plan Commission shall initiate a petition to rezone the property to its former classification following such a lapse.
- B. A planned unit development has been abandoned if two years have passed since the date on which rezoning to PDRS, PDNR, or PDMX was granted, and no Final been approved and recorded for the project. The Administrator shall not issue an improvement location permit for an abandoned planned unit development.

Section 7 Airport Protection

Air Space Control

7.1 Intent:

The maximum height of **buildings, structures, and plant growth** is regulated by this section—under the authority conferred in *Chapter 283 of the Acts of the General Assembly of Indiana*, as amended – in order to prevent the construction of obstructions to air navigation in the vicinity of any **public-use airport**. This protects the lives and property of persons living in that vicinity, and of those in aircraft which are approaching, taking off from, or circling that airport, promoting public health, safety and general welfare.

7.2 Airport Districts:

- a. Airport districts, which are overlay **zones**, consist of two parts, an **airport approach area** and an **airport circling area**.
- b. Airport districts and their two parts are shown on an airport district map for each **public-use airport** in this planning and zoning jurisdiction. These maps are part of this section of this ordinance.

7.3 Airport District Regulations:

The regulations in 7.4 and 7.5 below apply to all land within an airport district, and are in addition to all other zoning regulations applicable to that land. In case of conflict, the more restrictive regulations control.

7.4 Height:

- a. Except as in 7.4(b) below, within the **airport circling area** or the **airport approach area** of an airport district, no part of any new **building, structure or plant growth** shall be constructed, located or grown, and no part of any existing **building, structure or plant growth** shall be reconstructed, relocated, or **enlarged**, so that it projects above either the **airport approach surfaces**, the **airport primary surfaces**, the **airport transitional surfaces**, the **airport horizontal surface**, or the **airport conical surface**, whichever is most restrictive.

- b. However, projections may extend to a maximum height of 50' above the **established airport elevation**.
- c. The maximum permitted height above ground level for any building, structure, or plant growth is computed as follows:
 - 1. Determine the elevation of the site in question in feet above mean sea level;
 - 2. Compute the difference between the site elevation and the established airport elevation (as shown on the airport district map);
 - 3. If the site elevation is higher than the established airport elevation, subtract the difference from the elevation of the **airport control surface** directly above that site; if lower, add the difference to the elevation of the **airport control surface** for that site. The result is the maximum permissible height.
 - 4. Proof of conformance lies with the property owner; any assistance by the **Administrator** in finding applicable elevations is construed to be of assistance only. In cases of any doubt, the **Administrator** shall require an affidavit signed by a Registered Land Surveyor or Registered Civil Engineer, certifying that the height of the **structures** and **plant growth** conforms to this section.

7.5 Use Restrictions:

- 1. Notwithstanding any other provisions of this ordinance, no **use** shall be made of land or water within any airport district established by 7.2 above in such a manner as to either:
 - a. create electrical interference with navigational signals or radio communication between the airport and aircraft;
 - b. make it difficult for pilots to distinguish between airport lights and others;
 - c. result in glare in the eyes of pilots using the airport;
 - d. impair visibility in the vicinity of the airport;
 - e. create bird strike hazards;

- f. or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.
2. Within that part of the **airport approach surface areas** and **airport transitional surface areas** of the **airport district map**, which extent within ten thousand (10,000) feet from each end of a runway measured horizontally along the extended centerline of said runway, no building, structure or premises shall be erected, relocated or converted for use as a school, church, child caring institution, hospital, stadium, sports arena, public swimming pool, picnic grounds, public auditorium, theater, assembly hall, carnival, amusement park, correctional institution or any other public assembly use.

Section 8

Design Review Committee

Preface

The purpose of this section is to provide a framework for the establishment of a technical committee to assist the plan commission with those decisions it must make in regard to community appearance, architectural character, landscape characteristics, site planning, and historic preservation.

This section provides for the committee's membership, its jurisdiction both geographically and in regard to subject matter, the purpose of the committee, and how its responsibilities under the zoning ordinance are to be coordinated with its responsibilities under the subdivision regulations.

In most communities, the matters of community appearance and character have come to be of increasing public concern. This is because all aspects of the physical environment are closely related to the economic success, liveability, and overall well-being achieved in the towns, cities, and the populated countryside.

8.1 Membership and Jurisdiction

- A. **Membership.** The Design Review Committee (hereinafter referred to as the "Review Committee") shall consist of and continue as a five member panel appointed as follows:

One (1) ex-officio member of the _____ Plan Commission appointed from among its members to serve as liaison between the Review Committee and the Plan Commission as well as serving as a fully participating member of the Review Committee.

Four (4) citizen members appointed by the (City, Town, County) (Council, Commission) who may not be members of the Plan Commission. These citizen members must, insofar as possible, possess the following professional qualifications:

- i. They must hold a college level academic degree in architecture, landscape architecture, art history, city planning, historic preservation, history, urban design or urban planning or have had an equivalent combination of education and experience in dealing with the historic and/or visual aspects of the natural and built environments.
- ii. They must possess a sensitive and keen interest in the protection and enhancement of the natural and built environments.

- B. **Terms of Office.** The initial five members shall be appointed for terms of four (4), three (3), two (2), one (1), and one (1) year, respectively. Thereafter each successive member shall be appointed for four (4) years. The staggering of terms is intended for the purpose of giving the Review Committee continuity in its recommendations to the Commission.

- C. **Territorial Jurisdiction.** The Review Committee shall have a jurisdiction which is coterminous with that of the other sections of this Ordinance.

- D. **Subject Matter Jurisdiction.** The Review Committee shall have advisory authority only, and shall under this ordinance make recommendations 1) to the Administrator and the Plan Commission as a checkpoint agency for the review of planned developments, 2) to the Administrator regarding parking and landscaping plans filed with applications for improvement location permits, except those for single family homes, and 3) to the Administrator regarding all aspects of design for improvement location permits filed for property located within the

Historic Preservation District as defined and mapped in the adopted Comprehensive Plan.

- E. Purpose. The purpose of the Review Committee is to provide professional and technical advice to the Administrator and the Plan Commission in the administration of this Ordinance as specified elsewhere in this Ordinance.

- F. Coordination with the Zoning Ordinance/Subdivision Regulations. This Review Committee is established both under the Subdivision Ordinance and the Zoning Ordinance to serve the differing needs of these two ordinances. It shall be made up of the exact same members under both ordinances in order to facilitate coordination of the decision-making with respect to the design review aspects of these ordinances.

Section 9

Board of Zoning Appeals, Variances, Special Uses and Appeals

Preface

The purpose of this section is to explain the makeup of, jurisdiction of and procedures to be used by the Advisory Board of Zoning Appeals. Subsection 9.1 describes the Board's membership, terms of office, area of jurisdiction and statutory basis. It also explains the Board's relationship to staff support. Subsection 9.2 sets forth the rules and procedures under which the Board shall function. Subsection 9.3 specifies how the Board must deal with requests for special uses. These are uses which may be permitted if they can meet restrictions and conditions in addition to those required under other provisions of the ordinance for the district in which they are to be located. The primary use table found in Section 4 establishes those uses which may be permitted in specific districts through the grant of special use permits. Subsection 9.4 deals with the manner in which the Board may permit variances (deviations) from the strict interpretation of the ordinance in cases where a non-economic hardship exists with respect to a condition peculiar to a particular piece of property and not the result of any act of the owner. Subsection 9.5 describes the procedures for appealing decisions of the Board.

NOTE #1: Use variances are permitted by the State Statute for Advisory Boards of Zoning Appeals, but permitting them is not recommended. Use variances have virtually the same effect as rezoning, but without benefit of legislative action. Permitting the Board to have this authority usurps the role of city and town councils and boards of county commissioners to regulate land use and leads to the destruction of the homogeneity of zoning districts and their property values. In most states, such a delegation of legislative authority to an appointed board is unconstitutional.

NOTE #2: IC 36-7-4-901 authorizes the continuation of certain Advisory Boards of Zoning Appeals in existence before the enactment of the zoning ordinance. In these cases, the language of the zoning ordinance may reestablish the Advisory Board of Zoning Appeals and continue the current terms of the membership. This document assumes an initial establishment of the Advisory Board of Zoning Appeals. The membership of an Advisory Board of Zoning Appeals is mandated under IC 36-7-4-902(a) unless the particular county has a metropolitan plan commission where the governing statute for membership appointment is IC 36-7-4-902(b). This Model Zoning Ordinance assumes the condition prescribed under IC 36-7-4-902(a).

9.1 Advisory Board of Zoning Appeals: Membership and Jurisdiction

The Board. There is hereby established the Advisory Board of Zoning Appeals to be known as the ADVISORY BOARD OF ZONING APPEALS OF THE (TOWN, CITY, COUNTY) OF _____, INDIANA. The Advisory Board of Zoning Appeals is established under the advisory plan law, being IC 36-7-4-901, as amended.

A. **Membership.** The Advisory Board of Zoning Appeals shall consist of a five member board appointed as follows:

Three (3) citizen members appointed by the executive of the (Town, City, County) of _____, of whom one (1) must be a member of the Advisory Plan Commission and two (2) must not be members of the Advisory Plan Commission.

One (1) citizen member appointed by the fiscal body of the (Town, City, County), who is not a member of the plan commission.

One (1) citizen member appointed by the Advisory Plan Commission who must be a county agricultural agent or a citizen member of the Advisory Plan Commission, and not the same member from the plan commission appointed by the executive above.

B. **Terms of Office.** Following adoption of this Ordinance, the members shall be initially appointed for the following terms of office:

- One (1) for a term of one (1) year.
- One (1) for a term of two (2) years.
- One (1) for a term of three (3) years.
- Two (2) for a term of four (4) years.

Thereafter each member, except those appointed from the Advisory Plan Commission shall be for a term of four (4) years. The members appointed from the Advisory Plan Commission shall be for a term of one year. Each term shall expire on the first Monday of the year of termination.

C. **Territorial Jurisdiction.** The Advisory Board of Zoning Appeals shall have jurisdiction over all the land subject to the zoning ordinance.

D. **Subject Matter Jurisdiction.** The Advisory Board of Zoning Appeals shall have exclusive jurisdiction for (1) variances under the statute and this ordinance except it shall have no jurisdiction to grant a variance from a use district or classification; (2) special uses; (3) appeals as

provided by statute, including requirements for procurement of improvement location permits or any ordinance adopted under IC 36-7-4 or any prior zoning statute, and any other appeals authorized by statute.

- E. **Staff.** The Staff of the Advisory Board of Zoning Appeals shall consist of the Administrator as defined in this ordinance and such other persons employed by the (Town, City, County) of _____ as the administrator may direct from time to time to assist the administrator or the Advisory Board of Zoning Appeals.

9.2 Advisory Board of Zoning Appeals: Rules and Procedures

- A. **Rules and by-laws.** The Advisory Board of Zoning Appeals shall have sole authority to adopt any and all rules under *Indiana Code*, §36-7-4-916 and any and all by-laws concerning organization, selection of officers, forms for applications, filing requirements, other than as to place of filing as herein provided for, procedures, notices for and conduct of meetings. Upon adoption of such rules and by-laws they shall be applicable to the Advisory Board of Zoning Appeals.
- B. **Facilities and Funding.** The (Town, City, County) of _____ shall provide suitable facilities for the holding of Advisory Board of Zoning Appeals hearings and the storage of its recorded documents and accounts, and in its annual budget to provide sufficient funds for the functioning of said Board and its staff.
- C. **Filing.** All applications for variances, special uses, and requests for appeal shall be filed by the applicant with the staff of the Advisory Board of Zoning Appeals.
- D. **Hearings.** All hearings required for variances, special uses, and appeals shall be by the Advisory Board of Zoning Appeals. As per section 9.2 (a), procedures for public notice setting forth time and place for all hearings by the Advisory Board of Zoning Appeals shall be established by the Advisory Board of Zoning Appeals.

9.3 Special Uses

- A. There shall be no classes of cases or application therefor, nor any particular situation in which this Ordinance authorizes either special exceptions, contingent uses or conditional uses.
- B. The Advisory Board may approve a special use in a district if, after a hearing under section 9.2 (d), it makes findings of fact in writing, that:

- i. section 4.1 authorizes that special use in that district; and
 - ii. the requirements and development standards for the requested special use as prescribed by this Ordinance will be met; and
 - iii. granting the special use will not undermine the general purposes served by this Ordinance and will not, because of traffic generation, placement of outdoor lighting, noise production or hours of operation, materially and permanently injure other property or uses in the same zoning district and vicinity.
- C. The Advisory Board may impose such reasonable conditions upon its approval as it deems necessary to find that (b) (iii) above will be served.
 - D. The Advisory Board may permit or require the owner of the parcel of property to make a written commitment concerning the use or development of the parcel as specified under IC 36-7-4-921.
 - E. The approval of a special use under subsection (B) is unnecessary for a use authorized by section 4.1 if that use existed on the date this Ordinance, or pertinent amendments to it, were passed. However, this subsection shall not authorize the expansion of such a use if it involves the enlargement of a building, structure, or land area.
 - F. A special use approved by the Advisory Board may not be expanded, extended, or enlarged unless reapproved by the Advisory Board under the procedures set forth in this Ordinance for approving a special use.
 - G. A special use, approved under subsection (B) or authorized by subsection (E) ceases to be authorized and is void if that use is not established within a twelve-month period of the date the special use was approved, or if that special use is discontinued at that site for a twelve-month period during which time it is not succeeded by the same specifically approved special use.
 - H. A special use may be terminated by the Advisory Board of Zoning Appeals, upon filing of an application therefore by an interested person or the Administrator, and upon a finding at a public hearing, with notice to the property owner, that the terms of this Ordinance, or conditions of approval or commitments have not been complied with.
 - I. The Administrator shall make the determination whether an applicant's proposed use requires special use approval. Such a determination may involve the expansion, extension, or enlargement of a previously approved use under (F) above. The Administrator shall file a written

report with the Plan Commission stating the facts concerning the proposed use. The plan commission shall determine how the granting of the special use would affect the purposes served by this Ordinance in meeting the goals of the Comprehensive Plan. Within thirty (30) days of the date on which it received the application, the Commission shall report its findings to the Advisory Board. The Advisory Board shall take the appropriate action based on the criteria in subsection (B). If the Advisory Board grants the special use, it shall direct the applicant to apply for an improvement location permit under section 10.1. If such application complies with this ordinance and all other applicable codes and ordinances, the Administrator shall issue the improvement location permit for the approved special use.

9.4 Variances

- A. The Advisory Board may grant a variance from the development standards (such as height, bulk, area) of the zoning ordinance if, after a public hearing, it makes findings of fact in writing, that:
 - i. the Advisory Plan Commission has determined that the variance application is not for a use variance, i.e. a variance from a use district or classification per Section 9.1(D); and
 - ii. the approval will not be injurious to the public health, safety, morals, and general welfare of the community; and
 - iii. the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
 - iv. the strict application of the terms of this Ordinance (a) is being applied to some condition peculiar to the property involved that is not common to other properties in the same zoning district; and (b) will result in an unusual and unnecessary hardship. This situation shall not be solely self-imposed, nor be based on a perceived reduction of or restriction on economic gain.
- B. The Advisory Board may permit or require the owner of a parcel of property to make written commitment concerning the use or development of that parcel or may impose conditions upon that grant of variance.
- C. A variance granted by The Advisory Board shall run with the land until such time as: (1) the use of the variance ends, or (2) the property conforms with the Ordinance as written.

- D. Where an owner has failed to comply with any condition and/or commitment permitted or required by the grant of variance, the Advisory Board may authorize such action as it may deem appropriate to obtain compliance by the owner with the condition or commitment of the grant, or with the terms of this Ordinance in the same manner as if the variance had not been granted.

9.5 Appeals

- A. A decision of the Administrator enforcing this Ordinance may be appealed to the Advisory Board of Zoning Appeals by any person who is adversely affected by the decision.
- B. On an appeal under subsection (A), the Advisory Board of Zoning Appeals may make any decision that the Administrator might have made.
- C. All appeals from a decision of the Advisory Board of Zoning Appeals shall be made pursuant to IC 36-7-4-1001 through 36-7-4-1020. The person aggrieved by a decision of such Board of Zoning Appeals shall present the petition provided for in IC 36-7-4-1003 to the Court within thirty (30) days after the entry of the decision of the Board of Zoning Appeals.

Section 10

Improvement Location Permits

Preface

The purpose of this section is to describe the process for obtaining improvement location permits and the conditions which have to be met in order to obtain them. It also deals with certificate of compliance. The issuance of such permits is absolutely critical for the implementation of a zoning ordinance with respect to both temporary and permanent improvements to structures, buildings, and land.

Subsection 10.1 explains the applicability of this permit system: the circumstances and the fees associated under which they must be obtained. Subsection 10.2 deals similarly with of certificates of compliance. Subsection 10.3 explains what drawings and related information must be submitted as part of the permit process. Subsection 10.4 deals with the special provisions concerning industrial uses which must obtain a certification showing that the zoning ordinance performance standards are being met. Subsection 10.5 deals with the special provisions for mobile homes. Subsections 10.6 through 10.9 explain what records must be kept, the length of time for reviewing applications, procedures for issuance or denial, how appeals may be made, when improvement location permits expire, and additional provisions for improvement location permits and certificates of compliance.

10.1 Applicability

- A. An improvement location permit issued and authorized by the Administrator or Administrator's designee shall be required for the following types of projects and changes:
- i. construction of a new primary use building, accessory building, or other structure;
 - ii. demolition of a primary use building, accessory building, sign, or other structure;
 - iii. any structural alteration involved in the expansion, enlargement, conversion, or repair of an existing primary use building, accessory building, or other structure;
 - iv. placement, construction, erection, or modification of any type of sign except those listed in section 5.14 B (Exempt Signs);
 - v. moving an existing primary use building, accessory building, sign or structure from one location to another (either on the same lot or to another);
 - vi. construction of decks and above-ground or in-ground swimming pools;
 - vii. change the use or condition of the land (except an agricultural use);
 - viii. change the use of the land under special uses under section 9.3; and
 - ix. change the Flood Plain district under section 3.3;
- B. However, an improvement location permit is not required for:
- i. a fence;
 - ii. interior or exterior maintenance that does not require structural alterations;
 - iii. re-roofing that does not require structural alteration;
 - iv. landscaping, except as required by this or any other ordinance; and
 - v. a portable or mobile storage shed up to 120 square feet in area.
- C. The filing fee for improvement location permits shall be as follows:

- i. The filing fee for an improvement location permit is \$25. It is not refundable. However, there shall be no filing fee for demolition for a non-conforming use or structure.
- ii. The governmental unit may establish a schedule of other permits.
- iii. If work has been started on a type of project listed in section 10.1 (A) without the benefit of an improvement location permit, the filing fee for that improvement location permit is \$50.

10.2 Certificate of Compliance

- A. No land or structure with respect to which a permit has been issued under section 10.1 may be used for the purpose contemplated by the permit unless the Administrator, after the change is completed, issues a certificate of compliance stating that the change complies with this ordinance and with the permit.
- B. Within ten days after the completion of the change authorized by the improvement location permit, the Administrator or the Administrator's designee shall inspect the premises and, if the change conforms to this ordinance and the improvement location permit, and a certification by a registered professional engineer of the state if required by section 10.4, has been obtained, the Administrator or the Administrator's designee shall issue a certificate of compliance.

10.3 Site Plan and Construction Drawings

- A. In addition to all other required applications, information and permits from other governmental agencies, a person who applies for an improvement location permit under section 10.1 must furnish the Administrator with plans drawn to scale showing:
 - i. the location and legal description of the land concerned with the direction north shown by an arrow;
 - ii. the location and horizontal and vertical dimensions of all buildings and structures already on the land and the proposed structures to be erected with each part appropriately labeled "Existing" and "Proposed", including parking, signage,

landscaping, and screening;

- iii. the distance of all proposed structure from all front, rear, and side lot lines, measured from the point where the structure or its foundation is nearest the lot line;
- iv. the size of all entrances to and exits from the land, including all adjacent streets and highways; and
- v. detailed drawings showing all construction and materials;

Plans so furnished shall be kept by the Administrative Officer as permanent records.

- B. As a condition of issuing a permit, the Administrator may require changes to the landscape plan upon recommendation of the Design Review Committee, the relocation of any structures or buildings, or of any entrance or exit, or the inclusion of entrances or exits not shown on the plan, or the deletion of any entrance or exit, if the requirement is necessary in the interest of the public welfare or to an appropriate balancing of the interests of persons in the district and vicinity concerned.

10.4 Industrial Uses: Improvement Location Permits

If an application for an improvement location permit relates to an industrial use, it must be accompanied by a certification by a registered professional engineer of the state, stating that the use will meet the performance standards of the district concerned.

10.5 Mobile Homes

This section does not apply to mobile homes placed within approved Mobile Home Parks or Manufactured Home Communities as provided in Section 4.6.

- A. Mobile homes shall be permitted as temporary uses within the jurisdiction of the municipality. Their placement as a temporary use is subject to the Primary Use Table and governed by this section.
- B. In the event that a single family home has been damaged by any means and an improvement location permit has been issued for its replacement or reconstruction, the property owner may make application for an improvement location permit for a mobile home to be placed on the same property for a period not to exceed one (1) year. No extensions of

time shall be permitted by the Administrator.

- C. Application procedures and requirements shall be the same as for any other improvement location permit.
- D. Placement of the mobile home shall be subject to all use requirements and restrictions applicable to a single family home.
- E. In addition to all other requirements, the property owner shall post a one thousand dollar (\$1,000.00) cash bond in favor of the (Town, City, County) of _____ to be held by the (Town or City) Clerk or the County Auditor. Said cash bond shall be returned without interest upon removal of the mobile home and the issuance of a certificate of compliance for the constructed or reconstructed single family home. Said cash bond may be drawn on by the (Council, Commission) of the (Town, City, County) of _____, at the (Council's, Commission's) discretion upon the advice of the Administrator, that the property owner has failed to remove the mobile home either at the end of one (1) year or within one (1) week of the issuance of the certificate of compliance for the constructed or reconstructed single family home, whichever occurs first. Said cash bond may be used to defray expenses incurred by the Town for the removal of the mobile home and/or legal costs directly associated with the enforcement of this ordinance.
- F. Section 10.5 is not intended nor should it be construed to limit the damages, legal or equitable, that the (Town, City, County) of _____ may seek in the enforcement of this ordinance, nor should section 10.5 be construed as authorizing any violation of this ordinance and/or the subdivision ordinance and the designated uses of respective parcels of real estate.

10.6 Records

A record of each improvement location permit and each certificate of occupancy shall be kept by the Administrator. Upon request, a copy shall be furnished to any person having a proprietary or possessory interest in the premises concerned.

10.7 Issuance or Denial

The Administrator shall accept only a complete application and issue the improvement location permit or deny the application together with a statement of reasons for the denial within a period of eight working days following its submittal, except for the longer period of time required for industrial uses as provided in section 10.4.

10.8 Appeals

A decision of the Administrator under section 10.7 may be appealed to the Advisory Board of Zoning Appeals subject to the provisions of section 9.5.

10.9 Expiration

An improvement location permit shall be valid for a period of one (1) year at which time it shall expire, unless specifically extended by the Administrator or the Administrator's designee upon good cause being shown.

10.10 Additional Provisions for Improvement Location Permits and Certificates of Compliance

- A. A certificate of compliance shall not be issued more than one year from the date of issuance of an improvement location permit unless that permit has been specifically extended by the Administrator or the Administrator's designee.
- B. Any improvement location permit or certificate of compliance issued in conflict with any of the provisions of this ordinance is null and void.