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**CITY OF ELKHART, INDIANA  
ZONING ORDINANCE  
No. 4370**

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## SECTION 1 GENERAL PROVISIONS

### Sections

- 1.1 Title**
  - 1.2 Purpose**
  - 1.3 Rules**
  - 1.4 Interpretation**
  - 1.5 Scope of the Regulations**
  - 1.6 Severability**
  - 1.7 Repeal of Prior Ordinances**
  - 1.8 Publication and Effective Date**
  - 1.9 Lot Area, Building Requirements, and General Permitted Uses**
  - 1.10 Regulations for Nonconformities**
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#### **1.1 Title**

This Ordinance shall be known and may be cited and referred to as the Zoning Ordinance of the City of Elkhart, Indiana.

#### **1.2 Purpose**

This Ordinance is intended to encourage the growth and development of the City in accordance with a comprehensive plan so that the City may realize its potential as a place to live and work. Specific purposes of this ordinance are to:

- A. Promote the public health, safety, comfort, morals, convenience, and general public welfare.
- B. Promote the orderly and beneficial development of the City.
- C. Provide adequate light, air, privacy, and convenience of access to property.
- D. Regulate the density and distribution of population and the use and intensity of use of land.
- E. Regulate the location, height, bulk, area, and use of buildings, structures, and land.
- F. Lessen or avoid congestion in the public streets.
- G. Provide for the gradual elimination of non-conformities which may adversely affect the character and value of desirable development in each district.
- H. Define the powers and duties of the administrative officers and bodies as provided herein.

### **1.3 Rules**

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

- A. Wherever appropriate in the context of the Ordinance, the singular number shall be deemed to include the plural and the plural the singular, the masculine gender shall be deemed to include the feminine and the neuter.
- B. The word shall is mandatory and not discretionary.
- C. The word may is permissive.
- D. The phrase use for shall include the phrases arranged for, designed for, intended for, maintained for, and occupied for.
- E. The captions used in this Ordinance are for reference and convenience purposes only and are not intended to enlarge, restrict, or modify in any manner the content of the various Sections hereof.

### **1.4 Interpretations**

- A. In their interpretations and application, the provisions of this Ordinance are intended to be minimum requirements.
- B. When the conditions imposed by any provisions of this Ordinance vary from the conditions imposed by any other law, ordinance, resolution, rule, easement or regulation of any kind and the provisions of this Ordinance do not specify which conditions are to be applicable, then the regulations which are more restrictive shall govern.

### **1.5 Scope of the Regulations**

- A. No structure or land shall hereafter be used or occupied and no structure or part thereof shall hereafter be erected, constructed, moved, or structurally altered except in conformity with all of the regulations herein specified for the district in which it is located, except as specified in Section 1.10, "Regulations for Non-Conformities."
- B. No application for a zoning clearance permit, building permit, license or certificate of occupancy which would authorize the use or change in use of any land or structure contrary to the provisions of this Ordinance shall be approved by any public agency.
- C. No land shall be occupied or used, no excavation or construction shall be started and no structure hereafter erected, moved, added to or structurally altered shall be occupied or used, in whole or in part, for any purpose without a zoning clearance permit issued by the Planning and Zoning Staff.  
(As amended Ord. No. 4683 July 10, 2002)



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## **1.6 Severability**

- A. If any court of competent jurisdiction adjudges any provision of this Ordinance or amendments hereto to be invalid, such judgment shall not affect any other provisions of this Ordinance or amendments hereto not specifically included in said judgment.
- B. If any court of competent jurisdiction adjudges any provision of this Ordinance or amendments hereto to be invalid as applied to a particular property, building or other structure, such judgment shall not affect the application of said provision to any other property, building or structure not specifically included in said judgment.

## **1.7 Repeal of Prior Ordinances**

Except as otherwise provided in Section 1.8 below, Ordinance 3146, and all ordinances amendatory thereof are repealed as of the effective date of this Ordinance.

## **1.8 Publication and Effective Date**

The Planning and Zoning Office is authorized and directed to publish this Ordinance in book or pamphlet form and to give notice of such publication by a notice published in a newspaper of general circulation in the City.

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

## **1.9 Lot Areas, Building Regulations and General Permitted Uses**

- A. Lot Area and Yards
  - 1. When two (2) parcels of land, either of which lacks adequate area or dimension to qualify for a permitted use under the requirements of the use district in which they are located, are contiguous and are held in one ownership, they shall be considered one zoning lot.
  - 2. No yard or lot existing at the effective date of this Ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Ordinance shall meet at least the minimum requirements established by this Ordinance.
  - 3. No part of a yard or other open space or off-street parking or loading space required in connection with any structure shall be included as part of a yard, open space or off-street parking or loading space similarly required for any other structure.

**B. Building on a Zoning Lot**

1. Every structure hereafter erected or altered to provide dwelling units shall be located on a zoning lot, and there shall not be more than one such principal structure on any zoning lot in an R-1, R-2, R-3, or R-5 residential district, except in Planned Unit Developments.
2. Except as otherwise provided in this Ordinance, every structure shall be constructed or erected upon a lot or parcel of land which abuts on a public street. Permits for structures proposed on permanent easements of access to a public street may be obtained, provided:
  - a. The easement and the location of a structure on any lot facing such easement have been approved by the Plan Commission;
  - b. The lot shall meet the requirements set forth in this Ordinance, provided that the access easement shall not be included in the zoning lot area;
  - c. If city sewers are not provided, the lot shall meet the requirements of the local and state health departments.
3. All residential detached principal buildings shall have a minimum width of twenty-four (24) feet and a minimum of nine hundred fifty (950) square feet of habitable space.
4. The space between the floor joists of the building and grade level shall be completely enclosed with a permanent perimeter enclosure, except for required openings, and can be secured to it by any manner approved by the Building Commissioner.
5. The Board of Works may approve or disapprove applications for permits to construct a driveway entrance and approach to all public streets and alleys. The Board of Works may refer to the Plan Commission for a driveway entrance and approach to primary streets. The Plan Commission shall report their recommendations to the Board of Works within three days after the next regularly scheduled meeting of the Plan Commission.

**C. Utility Exemptions**

The following structures and uses are exempted by this Ordinance and permitted in any district: poles, cables, conduits, laterals, pipes, mains, valves, or any similar distributing equipment for electric power, telephone, gas, water and sewer lines of a public utility or municipality, provided that the installation shall conform where applicable with the rules and regulations of other public authorities having jurisdiction.

**D. Subdivision as Permitted Use**

A subdivision, as defined and regulated in the Subdivision Regulations of the City of Elkhart, shall be a permitted use in all zoning districts of the City provided that the

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uses intended in the proposed subdivision meet the requirements of the City Zoning Ordinance.

### **1.10 Regulations for Nonconformities**

#### **A. Intent**

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

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 for which a permit was lawfully granted prior to the effective date of adoption or amendment of this Ordinance and upon which actual building construction has been started within six (6) months after the date of permit and completed within eighteen (18) months.

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

#### **B. Types of Non-Conformities**

##### **1. Nonconforming Lots of Record**

Any single lot or parcel of land, which was of record prior to December 3, 1957, which fails to meet the requirements applicable in its zoning district for lot area or width, or both, may be utilized for the erection of a principal structure and permitted accessory structures, but only if all other requirements applicable in the district are met.

##### **2. Nonconforming Structures**

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

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

panels. (as amended per Ordinance No. 4431 on July 23, 1999) (as amended per Ordinance No. 4456 on November 5, 1999)

- b. Should a nonconforming structure be moved for any reason for any distance whatever, it must thereafter conform to the regulations for the district in which it is located after it is moved;
- c. Should a nonconforming structure or portion of a structure be destroyed by any means, it shall not be rebuilt, restored, or reconstructed, or occupied for any use unless the structure will then conform to all regulations of this Ordinance. To be destroyed means to suffer damage to the extent of more than fifty percent (50%) of the replacement cost of the structure, exclusive of foundation.
- d. When a nonconforming structure is damaged to the extent of fifty percent (50%) or less of the replacement cost of the structure, exclusive of foundation, the structure may be rebuilt in the same location, using the same building footprint, provided that rebuilding begins within one (1) year of the event which caused the damage. Rebuilding shall be diligently pursued to completion or the right to restore the structure as a nonconforming structure shall be forfeited. Restoration of a nonconforming structure pursuant to this subsection shall not increase the degree of nonconformance or noncompliance existing prior to such damage.
- e. On any nonconforming structure or portion of a structure, work may be done on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, provided that a building permit is obtained where necessary. Repairs shall not be permitted if the structure or any portion thereof is declared to be unsafe by any official charged with protecting the public safety.

3. Nonconforming Uses of Land

Where on the effective date of the adoption or amendment 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:

- a. No nonconforming uses shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this Ordinance;
- b. No nonconforming uses shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by the use at the effective date of adoption or amendment of this Ordinance;
- c. No existing structure devoted to a nonconforming use shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located. No additional structure shall be erected in connection with a nonconforming use of land.

- d. A nonconforming use may be extended throughout any parts of the structure it occupies which were manifestly arranged or designed for 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 structure.
- e. When a nonconforming use is replaced by a conforming use, the nonconforming use status shall be lost and no nonconforming use shall thereafter be resumed. A nonconforming use may be replaced only by a use which complies with the provisions of this Ordinance.
- f. If any nonconforming use of land is discontinued or abandoned for more than six (6) months, any subsequent use of the land shall conform to the regulations specified by this Ordinance for the district in which such land is located. (as amended per Ordinance No. 5618 on August 20, 2017.)

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

Where, on the effective date of adoption or amendment of this Ordinance, a lawful use of land exists which would not be permitted under the terms of this Ordinance and such use occupies a lot or structure which does not meet applicable requirements for lots or structures under this Ordinance, continuation of the legal nonconforming status of the use, lot, or structure shall be determined by the provisions applicable to each type of nonconformity. (amended per Ordinance No. 4405 on March 1, 1999)

## SECTION 2 DEFINITIONS

### Section

- 2.1 Introduction to Terms
  - 2.2 Definitions
- 

#### 2.1 Introduction to Terms

For the purposes of this Ordinance, the terms listed in Section 2.2 shall be interpreted as they are defined in that section. All other terms not herein defined shall have the meaning customarily assigned to them in such context.

#### 2.2 Definitions

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

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

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

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

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

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

Zone A99: Areas subject to inundation by the one-percent annual chance flood event, but which will ultimately be protected upon completion of an under-construction Federal flood protection system. These are areas of special flood hazard where enough progress has been made on the construction of a protection system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes. Zone A99 may only be used when the flood protection system has reached specified statutory progress toward completion. No

base flood elevations or depths are shown. Mandatory flood insurance purchase requirements apply.

**Accessory Equipment Building:** A structure used to house equipment for the operation, maintenance or repair of a wireless telecommunications tower including electronic receiving and relay equipment.

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

**Active Construction:** On-site erection, fabrication, installation, alteration, demolition, or removal of any structure, facility, or addition thereto, including all related activities, but not restricted to, clearing of land, earth moving, and landscaping. (as amended per Ordinance No. 5618 on August 20, 2017.)

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

**Adult Entertainment Establishments:**

- A. **“Adult Bookstore.”** An establishment having as a significant portion of its stock in trade books, films, magazines and other periodicals which are distinguished or characterized by an emphasis on matter depicting or describing “sex act(s)” or “specified anatomical areas.”
- B. **“Adult Motel.”** A motel wherein material is presented which is distinguished or characterized by an emphasis on depicting or describing “sex act(s)” or “specified anatomical areas.”
- C. **“Adult Motion Picture Arcade.”** Any place to which the public is permitted or invited wherein coin or token-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where images so displayed are distinguished or characterized by an emphasis on matter depicting or describing “sex act(s)” or “specified anatomical areas.”
- D. **“Adult Motion Picture Theater.”** An enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting or describing “sex act(s)” or “specified anatomical areas” for observation by patrons therein.
- E. **“Adult Lounge or Night Club.”** Any establishment that features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators or similar entertainers.

- F. For purposes of the above, the terms “sex act(s)” and “specified anatomical areas” shall mean the following:
1. **“Sex Act(s).”** Means and includes the following: a) human genitals in a state of sexual stimulation or arousal; b) acts of human masturbation, sexual intercourse or sodomy; and c) fondling or other erotic touching of human genitals, pubic region, buttock or female breast.
  2. **“Specified Anatomical Areas.”** Means and includes the following: a) less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola; and b) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**Airport:** The Elkhart Municipal Airport.

**Airport Elevation:** The established elevation of the highest point on the usable landing area of the airport.

**Alley:** A public way, not more than sixteen and one-half (16 1/2) feet wide, which affords only a secondary means of access to abutting property, other than a right-of-way or easement for public utility purposes.

**Amusement Arcade:** See Amusement Parlor (Room).

**Amusement Machine:** Any machine or device designed or modified to be operated by a coin, coins, or token, or for which change is made for the operation thereof. Such a machine or device used exclusively for the vending of merchandise of a tangible nature shall not be deemed an amusement machine.

**Amusement Parlor (Room):** Any public area or room containing one (1) or more amusement machines.

**Anchor Store:** A store(s) within a mall or shopping center of at least seventy-five thousand (75,000) square feet that serves as a primary traffic generator for the complex.

**Animated Message Board:** Any sign that changes light intensity or that gives the visual impression of movement or rotation. (as amended per Ordinance No. 4592 June 13, 2001)

**Apartment:** See Dwelling Unit.

**Apartment House:** See Dwelling, Multiple-Family.

**Appeal:** a request for a review of the floodplain administrator’s interpretation of any provision of this ordinance or a request for a variance.

**Area of shallow flooding:** a designated AO or AH Zone on the community’s Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by



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ponding or sheet flow.

**Assisted Living Facility:** A building containing two (2) or more dwelling units with common dining and activity facilities in which a professional staff provides limited care and community activities for the residents with the primary goal of enabling the residents to live as independently as possible.

**Automobile:** See Motor Vehicle.

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

**Balcony:** A raised railed platform projecting from the wall of a structure.

**Banquet Facility:** (See Meeting Hall/Banquet Facility)

**Base Flood Elevation (BFE):** the elevation of the one-percent annual chance flood.

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

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

**Bed and Breakfast Home:** A structure, primarily residential in character, that provides lodging for paying guests.

**Billboard:** See Sign, Off-Premise.

**Billiard Room:** Any public area or room containing one (1) or more pool or billiard tables.

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

**Board of Zoning Appeals:** The Board of Zoning Appeals of the City of Elkhart, Indiana.

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

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

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

**Building, Attached:** A building which has any part of its exterior or bearing wall in common with another building or which is connected to another building or roof.

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

**Building Height:** The vertical distance measured from the grade level to the highest point of the main structure of the building.

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

**Bulk Storage Tanks:** Outside storage tanks, where the total volume of the container(s) exceed 2000 gallons used for dispensing of liquids or gases into smaller containers or for use in manufacturing processes. This definition shall not apply to underground storage tanks. (As amended Ordinance No. 4683 July 10, 2002)

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

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

**Campground:** An area or tract of land used for occupancy by two (2) or more temporary tents, dwellings, rooms, sleeping quarters, or recreational vehicles of any kind.

**Canopy:** See Awning.

**Carport:** A roofed structure designed and intended to shelter motor vehicles with at least two (2) of the four (4) sides open to the weather.

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

**Charitable Organization:** An organization organized and operated exclusively for public charitable purposes as defined in the Internal Revenue Code of 1986, as amended.

**City:** The City of Elkhart, Indiana.

**City Council:** The Common Council of the City of Elkhart, Indiana.

**Clinic, Medical, Dental:** A structure where three or more licensed physicians, or dentists, actively engage in the practice of medicine, or dentistry, on an out-patient basis.

**Co-location:** The use of a wireless telecommunications facility by more than one wireless telecommunications provider.

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

**Community:** a political entity that has the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.

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

**Community Rating System (CRS):** a program developed by the Federal Insurance Administration to provide incentives for those communities in the Regular Program that have gone beyond the minimum floodplain management requirements to develop extra measures to provide protection from flooding.

**Comprehensive Plan:** The Comprehensive Plan of the City of Elkhart, Indiana.

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

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

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

**Cul-de-sac:** A street having one end connected to the surrounding roadway system and the other end being permanently terminated by a vehicle turn around.

**Curb Cut:** The area at which a private drive connects to a public street or alley to allow motorized vehicular ingress and egress between the street or alley and the property.

**Diameter at Breast Height (d.b.h.):** In measuring the size of trees, the diameter of a tree as measured at breast height.

**Day Care Center:** A structure in which at least six (6) children at any time receive child care from a provider: (a) while unattended by a parent, legal guardian or custodian; (b) for regular compensation; (c) for more than four (4) hours, but less than twenty-four (24) hours in each ten (10) consecutive days per year, excluding intervening Saturdays, Sundays and holidays; and (d) which is not the primary residence of the child care provider or is not a residential structure.

**Day Care Home:** A residential structure in which at least six (6) children (not including the children for whom the provider is a parent, stepparent, guardian, custodian or other relative) at any time receive child care from a provider: (a) while unattended by a parent, legal guardian or custodian; (b) for regular compensation; (c) for more than four (4) hours, but less than twenty-four (24) hours in each ten (10) consecutive days per year, excluding intervening Saturdays, Sundays and holidays; and (d) which is the primary residence of the child care provider.

**Decibel:** A unit of measurement of the intensity (loudness) of sound.

**Development:** Any man-made change to improved or unimproved real estate including but not limited to:

- A. Construction, reconstruction or placement of a structure or any addition to a structure;
- B. Installing a manufactured home on a site, preparing a site for a manufactured home, or installing a recreational vehicle on a site for more than 180 days;
- C. Installing utilities, erection of walls and fences, construction of roads or similar projects;
- D. Construction of flood control structures such as levees, dikes, dams, channel improvements, etc.;
- E. Mining, dredging, filling, grading, excavation, or drilling operations;
- F. Construction and/or reconstruction of bridges or culverts;
- G. Storage of materials; or
- H. Any other activity that might change the direction, height or velocity of flood or surface waters.

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

**Development Plan:** All materials submitted for approval in accordance with Section 24 of this Zoning Ordinance, identifying principal and accessory structures, streets, pedestrian access systems, utilities, landscaping, exterior lighting, signage and other elements of a proposed development including the site plan and supporting drawings and documentation.

**District:** A zoning district as created and defined in this Ordinance.

**Domestic Animal:** Any nonferal animal which is not prohibited by the City of Elkhart Animal Control Ordinance. Horses require a minimum of one (1) acre of fenced grazing land per animal.

**Drip Line:** A vertical line extending from the outermost branches of a tree to the ground.

**Drive-In Facility:** Drive-in movie theaters, restaurants characterized by primary food service to the public for consumption on the premises by order from and service to vehicular passengers outside the structure, and other businesses catering to patrons parked in vehicles on the site. (as amended per Ordinance No. 5618 on August 20, 2017.)

**Driveway:** An area used for movement of vehicles from street to garage or established parking area.

**Dwelling, Multiple Family:** A structure containing three or more dwelling units.

**Dwelling, One Family:** A structure containing one dwelling unit.

**Dwelling, Two Family:** A structure containing two dwelling units.

**Dwelling Unit:** One or more connected rooms in a structure intended for residential occupancy by one family, including complete kitchen and bathroom facilities, permanently installed exclusive of garages, porches, stoops, decks, basements and similar areas not considered to be part of the interior living space of the dwelling. Calculation of dwelling space shall be done by determining the sum of dwelling unit space as defined above. (as amended per Ordinance No. 4762 on August 1, 2003).

**Dwelling Unit, Efficiency:** A dwelling unit consisting of one room exclusive of bathroom, kitchen or dining alcove adjacent to the principal room, provided such dining alcove does not exceed one hundred (100) square feet in area.

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

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

**Elevation Certificate:** A certified statement that verifies a structure's elevation information.

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

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

**Entry/Development Corridor:** The right of way of the following highways are designated entry/development corridors:

Benham Avenue; Bristol Street; Cassopolis Street; County Road 6; County Road 17; Franklin Street; Hively Avenue; Jackson Boulevard; John Weaver Parkway; Johnson Street; Lexington Avenue; Lusher Avenue; Main Street; Middlebury Street; Nappanee Street; Prairie Street.

**Established Building Setback:** The average setback distance of all structures on the side of a street between two (2) intersecting streets. Such setback shall be re-determined as each successive vacant lot is proposed to be improved with a structure. Where a yard is adjacent to a river or creek, the established setback shall be determined by the average setback of five houses in each direction upstream and downstream of the yard in question. (as amended per Ordinance 4762 on August 1, 2003)

**Established Frontage:** The average frontage distance for all lots on the side of a street between two (2) intersecting streets. Such frontage distance shall be re-determined as each successive vacant lot is proposed to be improved with a structure.

**Established Lot Size:** The average lot area (square footage) for all lots on the side of a street between two (2) intersecting streets. Such lot area shall be re-determined as each successive vacant lot is proposed to be improved with a structure.

**Existing Construction:** Any structure for which the “start of construction” commenced before the effective date of the community’s first floodplain ordinance.

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

**Expansion to an existing manufactured home park or subdivision:** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**F.A.R.:** See Floor Area Ratio.

**F.I.R.M.:** Federal Insurance Rate Map.

**Façade:** An exterior wall of a building. (as amended per Ordinance No. 4431 on July 23, 1999)

**Facility Compound:** The area of a parcel on which wireless telecommunications facilities such as towers and accessory equipment buildings are located.

**Family:**

- A. An individual;
- B. Two (2) or more persons related by genetics, marriage, legal adoption, or other relationship established by law; or
- C. Five (5) or fewer persons who constitute a relatively permanent functioning group living as a single housekeeping unit.

**FEMA:** Federal Emergency Management Agency.

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

**Five-hundred year flood (500-year flood):** The flood that has a 0.2 percent chance of being equaled or exceeded in any year.

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

**Flood Boundary and Floodway Map (FBFM):** An official map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated the areas of flood hazards and regulatory floodway.

**Flood Hazard Boundary Map (FHBM):** An official map of a community, issued by Federal Emergency Management Agency (FEMA), where the boundaries of the areas of special flood hazard have been identified as Zone A.

**Flood Insurance Rate Map (FIRM):** An official map of a community, on which Federal Emergency Management Agency (FEMA) has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

**Flood Insurance Study (FIS):** The official hydraulic and hydrologic report provided by the Federal Emergency Management Agency (FEMA) The report contains flood profiles, as well as the Flood Insurance Rate Map (FIRM), Flood Boundary and Floodway Map (FBFM) (where applicable), and the water surface elevation of the base flood.

**Flood Prone Area:** Any land area acknowledged by a community as being susceptible to inundation by water from any source. (See "Flood")

**Flood Protection Grade (FPG):** The elevation of the regulatory flood plus two feet at any given location in the Special Flood Hazard Areas (SFHA). (see "Freeboard")

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

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

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

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

**Floodproofing certificate:** A form used to certify compliance for non-residential structures as an alternative to elevating structures to or above the FPG. This certification must be by a Registered Professional Engineer or Architect.

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

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

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

**Floor Area - For Determining Off-Street Parking and Loading Requirements:** The sum of the gross horizontal areas of the floors of a structure used for office, retail, wholesale or manufacturing operations. Interior areas utilized for off-street parking or loading facilities and basements not devoted to office, retail and manufacturing uses shall not be included in the floor area calculation.

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

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

**Fringe:** Portions of the floodplain lying outside the floodway.

**Frontage:** The length of the front lot line of a property.

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



sales, or service facilities.

**Garage, Commercial Vehicle:** A structure which is used or intended to be used for the storage of commercial motor vehicles.

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

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

**Garage Sales:** See Sales, Rummage - private and public.

**Grade Level:** The elevation of the ground, as established by the City Engineer, at a structure or site.

**Guest House:** Living quarters within a detached accessory building, located on the same zoning lot with the principal building, for use by temporary guests of the occupants of the premises. Such quarters shall not be rented in any manner or otherwise used as a separate dwelling unit.

**Habitable:** (Deleted as per Ordinance No. 4762 on August 1, 2003)

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

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

**Hazardous Waste Facility:** All contiguous land, structures, other appurtenances and improvements on the land used for treating, storing, or disposing of hazardous waste.

**Hazardous Waste Disposal Facility:** A facility or part of a facility at which hazardous waste is intentionally placed into, or on, any land or water, and at which waste will remain after closure.

**Hazardous Waste Generator:** Any person or site whose act or process produces hazardous waste identified, defined, or listed in E.P.A. regulations.

**Hazardous Waste Motor Freight Terminal:** A motor freight terminal engaged in the off-site transportation of hazardous wastes.

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

**Historic District:** Any federally-, state, or locally-recognized historic area administered under Section 151.075 of the City of Elkhart Code.

**Historic District, Single Site:** Any federally-, state, or locally-recognized historic structure or land administered under Section 151.075 of the City of Elkhart Code.

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

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

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

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

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

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

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

**House Trailer:** See Mobile Home.

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**H.U.D. Code Manufactured Dwelling:** A dwelling unit designed and built in a factory, which bears a seal certifying that it was built in compliance with the National Manufactured Housing Construction and Safety Standards Act of 1974 [42 U.S.C. 5401].

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

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

**Instrument Runway:** A runway equipped with electronic and visual air navigation aids adequate to permit the landing of aircraft under restricted visibility conditions.

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

**Kennel:** Any zoning lot on which more than four (4) animals over four (4) months of age are kept.

**Laboratory:** A structure devoted to experimental study such as testing and analyzing.

**Landing Area:** The area of the airport used for landing, takeoff or taxiing of an aircraft.

**Letter of Map Amendment (LOMA):** An amendment to the currently effective Federal Emergency Management Agency (FEMA) map that establishes that a property is not located in a Special Flood Hazard Area (SFHA). A Letter of Map Amendment is only issued by FEMA.

**Letter of Map Revision (LOMR):** An official revision to the currently effective Federal Emergency Management Agency (FEMA) map. It is issued by FEMA and changes flood zones, delineations, and elevations.

**Letter of Map Revision Based on Fill (LOMR-F):** An official revision by letter to an effective National Flood Insurance Program (NFIP) map. A Letter of Map Revision Based on Fill (LOMR-F) provides the Federal Emergency Management Agency's (FEMAs) determination concerning whether a structure or parcel has been elevated on fill above the Base Flood Elevation (BFE) and excluded from the Special Flood Hazard Area (SFHA).

**Live/Work Unit:** A building or space within a building containing an integrated living and working space with shared access that is intended to function predominately as a commercial business with incidental residential use for the business operator. The unit typically has the workspace, public display area, or showroom on the ground floor of the unit and the majority of the residence located either on an upper floor or at the back of the unit. (as amended per Ordinance No. 5618 on August 20, 2017.)

**Loading and Unloading Area, Off Street:** An open area, other than a public way, surfaced with an all-weather, dustless, impervious, hard-surfaced pavement, the principal use of which is the standing, loading and unloading of commercial motor vehicles, to avoid undue interference with the public use of streets and alleys.

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

**Logo:** A letter, character, symbol, or other distinguishing mark which identifies a use.

**Lot:** See Zoning Lot.

**Lot Area:** The area of a horizontal plane bounded by the front, side, and rear lot lines.

**Lot, Corner:** A lot at the junction of, and fronting on two (2) or more intersecting public streets.

**Lot, Depth:** The shortest distance between the front lot line and the rear of the lot, measured in the mean direction of the side lot lines.

**Lot, Interior:** A lot abutting lots on both sides, whether across an alley or not.

**Lot of Record:** An area of land designated as a lot on a subdivision plot recorded with the Recorder of Elkhart County, Indiana.

**Lot, Reversed Corner:** A corner lot, the rear of which abuts upon the side of another lot, whether across an alley or not.

**Lot, Through:** A lot having frontage on two parallel or approximately parallel streets.

**Lot, Zoning:** See Zoning Lot.

**Lot Coverage:** The portion of a lot that is occupied by buildings, including accessory buildings or structures with a roof, expressed as a percentage of the total lot area. This does not include parking areas, driveways, and sidewalks. (as amended per Ordinance No. 5618 on August 20, 2017.)

**Lot Line:** A boundary line of a zoning lot between the zoning lot and adjacent zoning lots or public ways.

**Lot Line, Front:** On an interior, the lot line adjacent to the street on which an address for the property has been assigned by the City of Elkhart; on a corner lot, the lot line separating the narrowest street frontage of a lot from the street; on a through lot, the lot line so declared by the Planning and Zoning Staff or which is faced by the front of the principal structure (amended per Ordinance No. 4405 on March 1, 1999).

**Lot Line, Rear:** A lot line or connected lines between the ends of the side lot lines and which is or are parallel to or approximately parallel to the front lot line.

**Lot Line, Side:** A lot line or connected lot lines commencing at an end of a front lot line and terminating either at an intersection with an end of the rear lot line or at an intersection with

the opposite side lot line, no portion of which is parallel to or approximately parallel to the front lot line.

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

**Lowest floor:** The lowest of the following:

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

**Manufactured Home:** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for the use with or without a permanent foundation when attached to the required utilities, including a H.U.D. Code Manufactured dwelling constructed after January 1, 1981, and installed on a permanent, under-floor supported system and perimeter foundation in conformity with the regulations of the Indiana One- and Two-Family Dwelling Code (as adopted by the State of Indiana and as amended) the manufacture's installation specifications and the following requirements: (1) all wheels, axles, and hitch mechanisms shall be removed; (2) manufactured homes shall be sided with materials customarily used on site-constructed dwellings; (3) the space between the floor joists of the home and the excavated under floor grade shall be completely enclosed with a permanent perimeter enclosure, except for required openings. The term "manufactured home" does not include a "recreational vehicle."

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

**Manufactured Housing Construction and Safety Standards Code:** The National Manufactured Housing Construction and Safety Act [42 U.S.C. 5401 et. seq.], as amended (previously known as the Federal Mobile Home and Construction Act) and rules and

regulations adopted thereunder, which includes U.S. Department of Housing and Urban Development (H.U.D.) approved information supplied by the home manufacturer, and regulations and interpretations of said code by the Indiana Fire Prevention and Building Safety Commission (amended per Ordinance No. 4405 on March 1, 1999).

**Map amendment:** A change to an effective National Flood Insurance Program (NFIP) map which results in the exclusion from the Special Flood Hazard Area (SFHA) of an individual structure or a legally described parcel of land that has been inadvertently included in the SFHA (i.e., no alterations of topography have occurred since the date of the first NFIP map that showed the structure or parcel to be within the SFHA).

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

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

**Marquee:** A rooflike structure projecting over an entrance to a building.

**Massage:** A manual soft tissue manipulation, which includes holding, causing movement, and/or applying pressure to the body. (amended per Ordinance No. 5044 on July 11, 2007).

**Masseuse, Masseur:** A person who practices massage and is a certified Massage Therapist. (amended per Ordinance No. 5044 on July 11, 2007).

**Massage Therapist:** A person who practices, administers or teaches all or any of the subjects or methods of treatment defined herein as massage therapy and meets the following criteria: Has been awarded the national Certification for Therapeutic Massage and Body Work and can produce the certification, or has graduated from an educational institute of professional massage therapy instruction accredited by the state in which it is located, and can produce a diploma, or is a licensed LPN, RN, physician, chiropractor, osteopath, cosmetologist, esthetician, physical therapist, or assistant physical therapist, or is a student enrolled in an educational institute of professional massage therapy instruction accredited by the state of Indiana, performing massage therapy as a part of his/her training requirements. (amended per Ordinance No. 5044 on July 11, 2007).

**Massage Therapy:** A profession in which the practitioner applies manual techniques, and may apply adjunctive therapies, with the intention of positively affecting the health and well-being of the client. (amended per Ordinance No. 5044 on July 11, 2007).

**Massage Establishment:** Any building, room, place or establishment, other than a massage therapy school certified by the state or a regularly licensed hospital or dispensary wherein each person who administers a massage is a qualified massage therapist as defined herein, where massages, nonmedical, and nonsurgical manipulative exercises are practiced upon the human body. (amended per Ordinance No. 5044 on July 11, 2007).

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**Meeting Hall/Banquet Facility:** A building or part of a building, operated as a for-profit facility rented or leased for the purpose of large meetings, banquets, receptions, or other gatherings. (As amended Ordinance No. 4683 July 10, 2002)

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

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

**Mobile Home Park:** Any area of land in single ownership upon which one (1) or more mobile homes are placed for purposes of occupancy in accordance with Section 9, Mobile Home Park District.

**Mobile Home Tie-Down:** Device used to secure a mobile home to the ground with sufficient anchorage to resist floatation, collapse, or lateral movement of the mobile home.

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

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

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

**Motor Freight Terminal:** A structure in which freight, brought to said structure by motor truck, is sorted for further shipment by motor truck.

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

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

**Motor Vehicle Impoundment Yard:** Any place where two (2) or more motor vehicles, regardless of operating condition, are kept outdoors solely for the purpose of impoundment under proper authority.

**Motor Vehicle Repair, Major:** Engine rebuilding, transmission rebuilding, rebuilding the drive train, or major reconditioning of motor vehicles including frame, or fender straightening or repair, and painting of vehicles when done wholly within a building, but not including “vehicle conversion.”

**Motor Vehicle Repair, Minor:** Replacement of parts and other service to motor vehicle such as tune-ups, brake replacement and adjustment, tire repair and replacement, lubrication and oil change, muffler repair and replacement, but not including “Major Motor Vehicle Repair.”

**Motor Vehicle Sales Lot:** Any premises where two (2) or more vehicles are offered for sale or sold during any calendar year.

**Motor Vehicle Service Station:** A place where gasoline stored only in underground tanks, kerosene, lubricating oil or grease and other similar products used in the servicing and/or operation of motor vehicles are offered for sale directly to the public on the premises, including minor accessories and services for motor vehicles but not including major motor vehicle repairs; and including washing of motor vehicles where no chain conveyor, blower or steam-cleaning device is employed.

**Motor Vehicle Storage Yard:** Any place where two (2) or more vehicles, regardless of operating condition, are kept outdoors for the purpose of storage.

**Motor Vehicle Wash:** A structure or portion thereof where motor vehicles are washed but not including such areas within motor vehicle service station.

**Motor Vehicle Wrecking Yard:** Any place where one (1) or more vehicles not in running condition or otherwise legally operable on a public way, or parts thereof, are stored in the open or any land or structure used for wrecking or storing of such motor vehicles in the open and not for restoration of vehicles to operating condition.

**National Flood Insurance Program (NFIP):** The federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the Federal Government and the private insurance industry.

**National Geodetic Vertical Datum (NGVD) of 1929:** As corrected in 1929, a vertical control used as a reference for establishing varying elevations within the floodplain.

**New construction:** Any structure for which the “start of construction” commenced after the effective date of the community’s first floodplain ordinance.

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

**New Site Area:** Total area of a parcel of land, excluding rights-of-way.

**NFPA:** National Fire Protection Association  
(As amended Ordinance No. 4683 July 10, 2002)



**Nonconforming Lot:** A lot of record which does not conform to the lot area or lot width regulations of this ordinance.

**Nonconforming Structure:** A structure or portion thereof which does not comply with all of the regulations of the district in which such structure is located.

**Nonconforming Use:** The use of land, structures or structures and land which does not conform to the regulations of the district in which such use is located.

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

**Noxious Matter:** Fumes, dust and other matter that is offensive to the human senses, especially sight and smell.

**Nursery School:** A public or private school for pre-kindergarten children.

**Nursing Home:** A private home for the care of children or the aged or infirm, or a place of rest and/or therapy for those suffering bodily disorders, but not including facilities for the treatment of injuries or for surgical care.

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

**Off-Street Parking Area:** An area which is designated for the parking of vehicles and which is not a public way.

**One and Two Family Dwelling Code, Indiana:** The mandatory statewide building code adopted by the Indiana Administrative Building Council for one- and two-family residential dwellings.

**One-hundred year flood (100-year flood):** The flood that has a one percent (1%) chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the one-percent annual chance flood. See "Regulatory Flood".

**One-percent annual chance flood:** The flood that has a one percent (1%) chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the one-percent annual chance flood. See "Regulatory Flood".

**Opaque:** Material that is not reflecting, transparent or translucent, and does not emit light.

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

**Outside Storage (business or manufacturing):** Outside Storage, display, or placement of manufacturing raw and finished materials, manufactured goods, or business-related items in any yard. (as amended per Ordinance 4762 on August 1, 2003)

**Outside Storage (residential):** Outdoor storage, display, or placement of household items, appliances, or furniture not originally designed or manufactured for outdoor use in any yard. (as amended per Ordinance 4762 on August 1, 2003)

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

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

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

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

**Physical Map Revision (PMR):** An official republication of a community's Federal Emergency Management Agency (FEMA) map to effect changes to base (1-percent annual chance) flood elevations, floodplain boundary delineations, regulatory floodways, and planimetric features. These changes typically occur as a result of structural works or improvements, annexations resulting in additional flood hazard areas, or correction to base flood elevations or Special Flood Hazard Area (SFHAs).

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

**Plan Commission:** The Elkhart City Plan Commission.

**Planned Unit Development:** A tract of contiguous land which is to be planned and developed as a single entity under single ownership or control.

**Planning and Zoning Office:** The staff of the Plan Commission and the Board of Zoning Appeals.

**Plot Plan:** See Site Plan.

**Pool Room:** See Billiard Room.

**Pool Table:** See Billiard Table.

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

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

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

**Primary Façade:** Any façade on a building which includes the main pedestrian entrance. This addition shall apply not to the Type II Development Plan Design Standards in Section 24.9 (A) of this Chapter. (as amended per Ordinance No. 4540 dated December 4, 2000).

**Private Recreation Facility:** A site, building, and/or structure for active physical activities by members and/or customers and which is not free to the public, including but not limited to the following: billiard rooms, skating rinks, arcades, swimming pools, tennis courts, and bowling alleys. Space for spectators may also be included. (as amended per Ordinance No. 5618 on August 20, 2017.)

**Probation:** means of formally notifying participating communities of violations and deficiencies in the administration and enforcement of the local floodplain management regulations.

**Public Law 360, Acts of 1971 as Amended:** Enabling legislation requiring the Indiana Administrative Building Council to adopt rules and regulations for the construction, repair, and maintenance of factory constructed one- and two-family residential dwellings.

**Public Park and Recreation Facility:** A natural or landscaped area, buildings, and/or structures, provided by a unit of government, to meet the active or passive recreational needs of people. (as amended per Ordinance No. 5618 on August 20, 2017.)

**Public safety and nuisance:** Anything which is injurious to the safety or health of an entire community, neighborhood or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

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

**Recreational vehicle:** A vehicle which is (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; (4) designed specifically for temporary use as quarters for recreational camping, travel or seasonal use, and not for use as a permanent dwelling. Examples include, but are not limited to boats, motor homes, and travel trailers.

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

**Regular program:** The phase of the community's participation in the National Flood Insurance Program (NFIP) where more comprehensive floodplain management requirements are imposed and higher amounts of insurance are available based upon risk zones and elevations determined in a Flood Insurance Study (FIS).

**Regulatory flood:** The flood having a one percent (1%) chance of being equaled or exceeded in any given year, as calculated by a method and procedure that is acceptable to and approved by the Indiana Department of Natural Resources and the Federal Emergency Management Agency. The regulatory flood elevation at any location is as defined in Article 2 (B) of this ordinance. The "Regulatory Flood" is also known by the term "Base Flood", "One-Percent Annual Chance Flood", and "100-Year Flood".

**Religious Assembly:** A building or group of buildings used or proposed to be used for people to gather together for public worship, religious training, other religious activities or accessory uses associated with the use. (as amended per Ordinance No. 5618 on August 20, 2017.)

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

**Rest Homes:** See Nursing Homes.

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

**Restaurant, Carry-Out:** A restaurant where meals are sold to the public for consumption other than inside the structure.

**Restaurant, Drive-In:** A restaurant that delivers food and beverages for consumption by persons in their parked cars, whether or not meals are provided for consumption inside the structure.

**Restaurant, Drive-Thru:** A restaurant that delivers food and beverages, not for consumption on the premises, to persons in their vehicles from a window, door, or other opening in the principal structure.

**Retail Sales:** Establishments engaged in selling goods or merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such goods.

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

**Reupholstery Shop:** A business engaged in the repair or replacement of materials such as springs, padding, cushions, and fabric for chairs, sofas, and similar furniture.

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

**Rooming House:** See Lodging House.

**Sales, Rummage – Private:** A sale of used clothing and/or household items conducted only by the immediate members of one or two families in a residence, private garage, porch, or rear yard.

**Sales, Rummage – Public:** A temporary sale, conducted by a non-profit organization such as a church or club, where members of the group bring articles or items to a central structure to be sold to raise money for use by the organization.

**SARA:** Superfund Amendment and Reauthorization Act (As amended Ordinance No. 4683 July 10, 2002)

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

**Scrap Processing Yard:** An establishment where scrap metals are processed.

**Screening:** A hedge, natural planting mass, fence, wall, earthen berm, or any combination thereof, used to reduce visual and auditory effects on adjoining uses.

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

**Self-supporting Lattice Towers:** A support structure, securely anchored to a concrete foundation, constructed of vertical metal struts and cross braces forming a triangular or square structure often tapering from the foundation to its apex.

**Sheltered Living Home:** A supervised home for physically or mentally disabled or emotionally distressed persons needing a temporary or permanent sheltered living situation in the community. The term “emotionally distressed persons” includes, but is not necessarily limited to, expectant mothers and physically or mentally abused or battered persons.

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

**Sign, Banner:** Any temporary sign attached to a principal building or structure by means of a rope, string, wire, or similar material, or placed as a freestanding sign.

**Sign, Billboard:** See Sign, Off-Premise.

**Sign, Construction:** Any sign announcing the names of architects, engineers, contractors, or other individuals or firms involved in the construction, alteration, or repair of a building.

**Sign, Flag:** Flags bearing the official designation of a nation, state, municipality or organization.

**Sign, Flashing:** Any directly or indirectly illuminated sign that exhibits changing natural or artificial light or color effects by any means whatsoever.

**Sign, Free-standing:** A sign which is completely or principally self-supported by post or other supports independent of any building or other structure including monument and pole signs.

**Sign, Holiday:** Signs or displays which contain or depict a message pertaining to a national or state holiday and no other information.

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

**Sign, Integral:** Names of buildings, dates of construction, commemorative tablets, and the like, when carved into stone, concrete, or similar material or made of bronze, aluminum, or other permanent type of construction and made an integral part of the building or structure.

**Sign, Marquee, Canopy, or Awning:** A sign displayed, maintained, or supported on an over-hanging marquee, canopy, awning or other similar cover or shelter projecting from a building or structure.

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

**Sign, Multi-Family Dwelling, Subdivision, or Mobile Home Park:** Signs located at the drive or entrance to multiple dwelling complexes, subdivisions or mobile home developments identifying the name or the address of the development and containing no other information.

**Sign, Nameplate:** Signs which identify the owner, resident, or address of the premises where the sign is located and contain no other information.

**Sign, Office:** Signs that identify professional or business offices.

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

**Sign, On-Premise:** A sign which directs attention to a business, commodity, service, or entertainment conducted, sold or offered upon the premises where the sign is located or to which it is affixed.

**Sign, Permanent:** Any sign permanently attached to the ground or a structure as defined by and in accordance with the City Building Code.

**Sign, Pole:** Any sign supported by one or more upright poles, columns, or braces placed in or on the ground and not attached to any building or structure.

**Sign, Political:** Temporary signs announcing candidates seeking public political office, issues to be voted upon including referenda, and other data pertinent thereto.

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

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

**Sign, Public Event:** Temporary signs announcing any public, charitable, educational, or religious event or function when located entirely within the premises of an institution.

**Sign, Public Information:** Signs indicating scenic or historical points of interest, memorial plaques, and the like. Public signs shall contain no advertising, trademarks, business name, or the business address.

**Signs, Public Safety:** Signs including safety signs, trespassing signs, traffic signs, entrance signs and exit signs, and all signs erected by or on order of a public officer in the performance of a public duty. Public safety signs shall contain no advertising, trademarks, business name, or business address. One (1) logo no larger than six (6) inches by six (6) inches may be permitted for property identification purposes.

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

**Sign, Roof Mounted:** A sign erected, constructed, or maintained upon the roof of a structure.

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

**Sign, Signable Area:** A two-dimensional area defining the square, rectangle or parallelogram on the façade of a building free of architectural details on which a wall sign would be located. The signable area shall not exceed twenty-five percent (25%) of the total area of the facade of the building.

**Sign, Surface Area:** The entire area within a single continuous perimeter enclosing the extreme limits of a sign. The perimeter shall not include any structural or framing elements

lying outside the limits of the sign and not forming an integral part of the display. The surface area of a double-faced sign shall be the area of the largest single face. For multi-faced signs in which the faces are not back-to-back, the sign surface area shall be the total area of each sign face.

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

**Sign, Wall or Wall Mounted:** A sign drawn on or attached to the exterior wall of a building or structure which does not project more than eighteen (18) inches. Individual letters, in addition to the "box type" sign, may also be installed as a wall or wall-mounted sign.

**Site Constructed Dwelling:** A dwelling constructed on the premises in accordance with the Indiana One- and Two-Family Dwelling Code (as adopted by the State of Indiana and as amended).

**Site Plan:** A diagram showing dimensions and locations of existing and proposed structures and yards.

**Sleeping Unit/Room:** Sleeping and living quarters, without cooking facilities, and with or without an individual bathroom.

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

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

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

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



foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms. For substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building. This definition ONLY applies to Section 21 of the City of Elkhart Zoning Ordinance.

**Storefront:** A portion of the building façade which encloses the space occupied by the store, on which is located the primary entrance to the store. (as amended per Ordinance No. 4431 on July 23, 1999)

**Story:** That portion of a structure included between the surface of any floor and the surface of the floor above or, if there is no floor above, the space between the floor and the ceiling next above. A basement shall be counted as a story when more than one-half (1/2) of such basement height is above grade level.

**Story, Half:** A half story is that portion of a structure under a gable, hip or mansard roof, the wall plates of which, on at least two opposite exterior walls, are not more than four and one-half (4 1/2) feet above the finished floor of such story.

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

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

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

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

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

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

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

For purposes of Section 21 of the Zoning Ordinance, "Structure" shall be defined as follows:

**Structure:** means a structure that is principally above ground and is enclosed by walls and a roof. The term includes a gas or liquid storage tank, a manufactured home, or a prefabricated building. The term also includes recreational vehicles to be installed on a site for more than 180 days.

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

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

**Substance Abuse:** The habitual or compulsive consumption of alcohol or use of illegal drugs or misuse of prescription drugs by an individual. Substance abuse clinics or institutions are set up to assist individuals with substance abuse problems into recovery from these addictions.

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

**Substantial Improvement:** Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure (excluding the value of the land) before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage" regardless of the actual repair work performed. The term does not include improvements of structures to correct existing violations of State or Local health, sanitary or safety code requirements or any alteration of a "historic structure" provided that the alteration will not preclude the structure's continued designation as a "historic structure."

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

**Suspension:** The removal of a participating community from the NFIP because the community has not enacted and/or enforced the proper floodplain management regulations

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required for participation in the National Flood Insurance Program (NFIP).

**Swimming Pool:** An artificial or semi-artificial basin or tank, including all appurtenant equipment, structures and facilities, for the purpose of impounding water to a depth of more than two and one-half (2 1/2) feet for the immersion of human beings.

**Tank:** Any vessel containing more than 50 gallons. (As amended Ordinance No. 4683 July 10, 2002)

**Tattoo Parlor:** Any room or space where tattooing is performed or the business of tattooing is conducted. Tattooing means the placement in human tissue of: 1) any indelible design, letter, scroll, figure, symbol or other mark placed with the aid of needles or other instruments; or 2) any design, letter, scroll, figure or symbol done by scarring upon or under the skin.

**Tourist Home:** See Lodging House.

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

**Toxic Substance:** Those pollutants or combinations of pollutants, including disease-causing agents, which, after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through the food chains, will on the basis of information available to the Planning and Zoning Staff, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformations in such organisms or their offspring. (As amended Ord. No. 4683 July 10, 2002)

**Trade School:** A privately owned school, not conducted by or under the sponsorship of a charitable organization, which teaches industrial arts.

**Trailer, Travel:** See Recreational Vehicle.

**Underground:** Located below the natural grade of the site. (As amended Ordinance No. 4683 July 10, 2002)

**Use, Accessory:** A use incidental to, and on the same lot as, a principal use.

**Use, Principal:** The main use of land or structures as distinguished from subordinate or accessory use.

**Van Conversion:** See Vehicle Conversion.

**Variance:** Grant of relief from the requirements of this ordinance, which permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship.

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

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

**Vehicle Display Area:** Any property which is used for the placement of vehicles for the purposes of sale, rental, lease or financial remuneration.

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

**Violation:** The failure of a structure or other development to be fully compliant with this ordinance. A structure or other development without the elevation, other certification, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

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

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

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

**X zone:** The area where the flood hazard is less than that in the SFHA. Shaded X zones shown on recent Flood Insurance Rate Maps (FIRMs) (B zones on older FIRMs) designate areas subject to inundation by the flood with a 0.2 percent chance of being equaled or exceeded (the 500-year flood). Unshaded X zones (C zones on older FIRMs) designate areas where the annual exceedance probability of flooding is less than 0.2 percent.

**Yard:** A portion of a zoning lot lying either in front of, at the side of, or at the rear of the principal structure on the lot, unoccupied except for a driveway and/or those fences and/or other obstructions permitted therein under Section 26 and extending from a lot line a minimum distance into the lot perpendicular to the lot line, as required in the zoning district in which the lot is located.

**Yard, Corner Side:** The side yard abutting a street in which the required setback is the same as that for the front yard. There shall be no structures, no open storage of materials or equipment, no parking of vehicles (except at one and two family dwelling units), and no paved parking spaces, aisles, or drives.

**Yard, Front:** A yard extending the full width of the zoning lot and situated between the front lot line and a line parallel thereto and passing through the nearest point of the structure.

There shall be no structures, no open storage of materials or equipment, no parking of vehicles (except at one- and two-family dwelling units), and no paved parking spaces, aisles, or drives.

**Yard, Rear:** A yard extending the full width of the zoning lot lying between the rear line of the lot and the nearest point of the principal structure. In a through lot, the Rear Yard shall not include any area which would constitute either a front yard, or a side yard if the lot were not a through lot.

**Yard, Sale:** See Sales, Rummage.

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

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

**Zone A:** (see definition for A zone)

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

**Zoning Lot:** A piece, parcel, plot or tract of land designated by its owner or developer to be used, developed or built upon as a unit under one ownership or control. (as amended per Ordinance No. 5618 on August 20, 2017.)

**Zoning Maps:** The maps or maps incorporated into this Ordinance. (as amended per Ordinance No. 4457 on December 8, 1999)

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## SECTION 3 DISTRICTS AND BOUNDARIES

### Sections

- 3.1 Official Zoning Map**
  - 3.2 Interpretation of District Boundaries**
  - 3.3 Land Hereafter Annexed to the City**
  - 3.4 Establishment of Districts**
- 

### **3.1 Official Zoning Map**

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

- A. The Official Zoning Map shall be identified by the signature of the Mayor, attested by the City Clerk, and bear the seal of the City and the effective date of this Ordinance.
- B. If changes are made in district boundaries or other matters portrayed on the Official Zoning Map by amendment, such changes shall be made by the Planning and Zoning Staff when the amending Ordinance authorizing such changes becomes effective. (As amended Ord. No. 4683 July 10, 2002)
- C. Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map located in the Planning and Zoning Office shall be the final authority as to the current zoning status.
- D. No changes of any nature shall be made in the Official Zoning Map or any matter shown thereof except in conformity with the procedures and requirements of this Ordinance. It shall be unlawful for any person to make any unauthorized change in the Official Zoning Map.
- E. If the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes, the City Council may, by resolution, adopt a new Official Zoning Map or portion thereof which shall supersede the prior map or portion.

The new Official Zoning Map may correct drafting or other errors or omissions in the prior map, but no map adopted by resolution shall have the effect of amending the Official Zoning Map.

### **3.2 Interpretation of District Boundaries**

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:

- A. Boundaries indicated as approximately following the center lines of rights-of-way shall be construed to follow such center lines.
- B. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.
- C. Boundaries indicated as approximately following city limits shall be construed as following such city limits.
- D. Boundaries indicated as following railroad lines shall be construed to follow the center line of the right-of- way.
- E. Boundaries indicated as following shore lines or bodies of water shall be construed to follow such shore lines. Boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such center lines. In the event of change in the shore line or center line, such line shall be construed as moving with the actual shore line or center line.
- F. Boundaries indicated as parallel to or extensions of features indicated in Subsections A through E above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map.
- G. Where physical features existing on the ground are at variance with those shown on the Official Zoning Map or in other circumstances not covered by Subsections A through E above, the Planning and Zoning Staff shall interpret the district boundaries. (As amended Ord. No. 4683 July 10, 2002)
- H. Where a district boundary line divides a zoning lot which was in existence as such lot at the effective date of this Ordinance, the Planning and Zoning Staff shall make a determination as to the appropriate zoning category for the zoning lot and adjust the boundary line accordingly. (As amended Ord. No. 4683 July 10, 2002)

### **3.3 Land Hereafter Annexed to the City**

- A. All land annexed to the City of Elkhart after the effective date of this Ordinance shall, at the time of annexation, retain the use district classification name and planned unit development district provided in the Elkhart County Zoning Ordinance, as amended, except that all agricultural use districts in said County Zoning Ordinance shall automatically be classified under this Ordinance in the R-1 One-Family Dwelling district until such classification is changed by the City Council. Where discrepancies occur between the district regulations of the Elkhart County and Elkhart City Zoning Ordinances, the Elkhart City Zoning Ordinance shall apply after the effective date of annexation.
- B. All special exceptions and any other special district rights granted by the Elkhart County Board of Zoning Appeals shall be retained upon annexation.



- C. Any use or activity conducted in compliance with regulations of the Elkhart County Zoning Ordinance but which, at the effective date of annexation to the City, would not be in compliance with the regulations of this Ordinance may be continued and regulated in the same manner as other nonconformities of this Ordinance.
- D. Any use or activity which, at the effective date of annexation to the City, is contrary to the provisions both of this Ordinance and the Elkhart County Zoning Ordinance shall constitute a violation of the applicable provisions of this Ordinance.

### **3.4 Establishment of Districts**

The City is divided into the following districts:

#### **A. Use Districts**

##### **1. Residential Districts:**

- R-1, One-Family Dwelling District
- R-2, One-Family Dwelling District
- R-3, Two-Family Dwelling District
- R-4, Multiple-Family Dwelling District
- R-5, Urban Residential District
- MHP, Mobile Home Park District

##### **2. Business Districts:**

- O, Office District
- B-1, Neighborhood Business District
- B-2, Community Business District
- B-3, Service Business District
- B-4, Regional Business District
- CBD, Central Business District
- OP, Office Park District
- BP, Business Park District

##### **3. Manufacturing Districts:**

- M-1, Limited Manufacturing District
- M-2, General Manufacturing District

##### **4. PUD Planned Unit Development District**

#### **B. Overlay Districts**

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

## CITY OF ELKHART - DISTRICT YARD REQUIREMENTS CHART

DISTRICT	DRAWING	SIZE	FRONTAGE	FRONT YARD SIDE YARD(S) REAR YARD	MAX HT.	MAX LOT	FAR
R1 ONE-FAMILY DUELLING		9,500 sq ft	75'	ESTABLISHED OR 25'	30'	40%	N/A
R2 ONE-FAMILY DUELLING		ESTABLISHED OR 7,500 sq ft. EST. SHALL BE 2,500	ESTABLISHED OR 60' EST. SHALL BE 45'	ESTABLISHED OR 20'	30'	40%	N/A
R3 TWO-FAMILY DUELLING		7,500 sq ft	60'	ESTABLISHED OR 20'	30'	40%	N/A
R4 MULTIPLE DUELLING		10,000 sq ft MIN. 1,000 sq ft FOR EACH	100'	25'	65'	40%	3.0
R5 MULTIPLE FAMILY DUELLING		7,500 sq ft MIN. 1,000 sq ft FOR EACH	60'	CONFORM TO ESTABLISHED	30'	40% TOTAL EXCEPT FOR CON- DITIONAL USES	N/A
B-1 BUSINESS DISTRICT		NO MINIMUM	NO MINIMUM	ESTABLISHED OR 15'	35'	50%	1
B-2 COMMUNITY BUSINESS DISTRICT		NO MINIMUM	75'	30'	35'	50%	1
B-3 SERVICE BUSINESS DISTRICT		NO MINIMUM	75'	30'	35'	50%	1
M-1 LIMITED MANUFACT. DISTRICT		NO MINIMUM	NO MINIMUM	25'	75' MAX OF 2 TOWERS WITH MAX HT. OF 90'	60%	3.0
M-2 GENERAL MANUFACT. DISTRICT		NO MINIMUM	NO MINIMUM	25'	75' MAX OF 2 TOWERS WITH MAX HT. OF 90'	60%	3.0
CBD CENTRAL BUSINESS DISTRICT		NO MINIMUM	NO MINIMUM	ESTABLISHED OR UP TO FRONT PROPERTY LINE	125'	75%	10
BP BUSINESS PARK DISTRICT		10 ACRES	150'	50'	65'	40%	
OP OFFICE PARK DISTRICT		0.5 ACRES	100'	60'	65'	40%	
O OFFICE DISTRICT		10,000 sq ft	75'	ESTABLISHED OR 25'	35'	40%	N/A
MHP MOBILE HOME PARK DISTRICT		5,000 sq ft	50'	20'	30'	30% BY MOBILE HOMES. 40% BY ALL STRUCTURES	

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## SECTION 4

### R-1, ONE-FAMILY DWELLING DISTRICT

#### Section

- 4.1 Purpose**
  - 4.2 Permitted Uses**
  - 4.3 Special Exception Uses**
  - 4.4 Yard Requirements**
  - 4.5 Development Conditions**
  - 4.6 Supplemental Regulations**
- 

#### **4.1 Purpose**

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

#### **4.2 Permitted Uses**

- A. One-Family detached dwellings with a minimum width of 24 feet and a minimum of one-thousand two hundred fifty (1,250) square feet of dwelling unit space, in which case the ground floor shall consist of no less than 850 square feet of such dwelling unit space. The primary façade of the structure shall face a public street. (as amended per Ordinance No. 4542 dated December 4, 2000 & as amended per Ordinance 4762 on August 1, 2003).
  - 1. Site-constructed dwellings.
  - 2. Modular homes, placed on a permanent foundation.
  - 3. Manufactured homes, placed on a permanent foundation.
- B. Home occupations.
- C. Temporary Structures, used for construction site purposes for a period not to exceed six (6) months.
- D. Accessory structures and uses
- E. Not more than four (4) domestic animals over sixteen (16) weeks of age.
- F. Sales, rummage - private or public (see Section 4.5, Development Standards).
- G. Police and Fire Stations, located along a primary or thoroughfare street.
- H. Sheltered living homes licensed by the State of Indiana.
- I. Radio towers owned by federally licensed amateur radio operators. (as amended per Ordinance No. 4457 on December 8, 1999).

#### **4.3 Special Exception Uses**

- A. Cemeteries
- B. Places of worship
- C. Golf courses and country clubs, including associated buildings.
- D. Fraternal or religious institutions.
- E. Public libraries, located on a collector or arterial street.
- F. Day Care Home
- G. Day Care Center, located on a collector or arterial street.
- H. Nursing Homes/Assisted Living Centers
- I. Community Centers
- J. Public utilities and public service uses, including but not limited to: public utility facilities, railroad facilities, sewage treatment plant, telephone exchange, water filtration plants, water pumping stations, and water reservoirs.
- K. Police and Fire Stations, if on a lot not abutting a primary or thoroughfare street.
- L. School, elementary and secondary, public or private, including auxiliary playgrounds and athletic fields.
- M. Sheltered living homes not licensed by the State of Indiana.
- N. Bed and Breakfast Home.
- O. Parks and playgrounds.
- P. Off- or on-site parking lots and driveways (including street access) used in connection with business, office, manufacturing or special exception uses.
- Q. Private clubs or lodges not run as businesses.
- R. Funeral Homes, Crematories and Similar Services. (as amended per Ordinance No. 4431 on July 23, 1999)

#### **4.4 Yard Requirements**

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

“Corner Side Yard: The Corner Side Yard setback is determined by measuring the average established setback of the structures within the same block between two intersecting streets. This calculation would equal the established front yard setback for the side street.”

Lot Size	Frontage	Setbacks				Maximum Structure Height	Maximum Lot Coverage for Structures
		Front Yard	Side Yards		Rear Yard		
9,500 square feet	75 feet	Established setbacks; or 25 feet if no established setback	20 feet total, minimum of 7 feet on any side	17 feet between Dwelling Units	30 feet** see below	30 feet; or 40 feet with a 25 foot total side yard, minimum 10 feet on any side, and 20 feet between dwelling units. (amended Ord.#4985, 9/22/2006)	40% total for all structures

\*\* Rear Yard 30 feet or established setbacks if adjacent to a river or creek. (as amended per Ordinance 4762 on August 1, 2003)

The Planning Staff may approve an increase in height of up to seventy (70) feet for a radio tower that is:

Structurally attached to primary structures;

(2) Owned by federally licensed amateur ham radio operators; and

(3) When it has been demonstrated by study that the additional height is necessary for effective operation of the radio tower. (as amended per Ordinance No. 4457 on December 8, 1999).

#### 4.5 Development Standards

Rummage Sales.

A. Private

1. No such sale shall be conducted for longer than three (3) consecutive days, nor more than fifteen (15) days in any calendar year by any of the same persons or on the same property.
2. No articles or items purchased for resale shall be offered for sale.
3. Motor vehicles, boats, trailers and industrial or commercial equipment shall not be offered for sale on the premises in conducting this sale.

4. No articles or items for sale shall be displayed within ten (10) feet of a public right-of-way nor within six (6) feet of a side yard lot line.
5. At the close of each day and not later than 8:00 p.m. on such day all articles not sold shall be removed from the front and side yards.

B. Public

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

#### **4.6 Supplemental Regulations**

- A. Special Flood Hazard Area Regulations - Section 21
- B. Wetlands Conservation District Regulations - Section 22
- C. Air Space Control Area Regulations - Section 25
- D. Accessory Structures and Swimming Pool Requirements - Section 26.1
- E. Permitted Obstructions in Required Yards - Section 26.3
- F. Fence Requirements - Section 26.4
- G. Intersection Visibility Area Requirements - Section 26.5
- H. Primary Street Setback Requirements - Section 26.5
- I. Off-Street Parking and Loading Requirements - Section 26.7
- J. Sign Regulations - 26.10

## SECTION 5

### R-2, ONE-FAMILY DWELLING DISTRICT

#### Section

- 5.1 Purpose**
- 5.2 Permitted Uses**
- 5.3 Special Exception Uses**
- 5.4 Yard Requirements**
- 5.5 Supplemental Regulations**

#### 5.1 Purpose

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

#### 5.2 Permitted Uses

- A. Any use permitted in the R-1, One-Family Dwelling District
- B. Single family detached residences located on a permanent foundation with a minimum width of 24 feet and a minimum of nine hundred fifty (950) square feet of dwelling unit space, in which case the ground floor shall consist of no less than 600 square feet of such dwelling unit space. The primary façade of the structure shall face a public street. (as amended per Ordinance No. 4542 dated December 4, 2000 & as amended per Ordinance 4762 on August 1, 2003).

#### 5.3 Special Exception Uses

Special Exceptions listed in the R-1, One-Family Dwelling District.

#### 5.4 Yard Requirements

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

“Corner Side Yard: The Corner Side Yard setback is determined by measuring the average established setback of the structures within the same block between two intersecting streets. This calculation would equal the established front yard setback for the side street.”

Lot Size	Frontage	Setbacks			Maximum Structure Height	Maximum Lot Coverage for Structures
		Front Yard	Side Yards	Rear Yard		
Established lot size; or 7,200 square feet if no established lot size. Established lot size shall	Established frontage; or 60 feet if no established frontage. Established	Established setbacks; or 20 feet if no established setback	7 feet	30 feet **see below	35 feet (amended per Ord. No. 4985 9/22/2006)	40% total for all structures

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never be less than 5,800 square feet.	frontage shall never be less than 45 feet.					
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\*\* Rear Yard 30 feet or established setbacks if adjacent to a river or creek. (as amended per Ordinance 4762 on August 1, 2003)

## 5.5 Supplemental Regulations

- A. Special Flood Hazard Area Regulations - Section 21
- B. Wetlands Conservation District Regulations - Section 22
- C. Air Space Control Area Regulations - Section 25
- D. Accessory Structures and Swimming Pool Requirements - Section 26.1
- E. Permitted Obstructions in Required Yards - Section 26.3
- F. Fence Requirements - Section 26.4
- G. Intersection Visibility Area Requirements - Section 26.5
- H. Primary Street Setback Requirements - Section 26.5
- I. Off-Street Parking and Loading Requirements - Section 26.7
- J. Sign Regulations - 26.10



## SECTION 6

### R-3, TWO-FAMILY DWELLING DISTRICT

#### Section

- 6.1 Purpose**
- 6.2 Permitted Uses**
- 6.3 Special Exception Uses**
- 6.4 Yard Requirements**
- 6.5 Supplemental Regulations**

#### 6.1 Purpose

The R-3 District is designed to provide for low to medium density single and two family residential development in urbanized areas.

#### 6.2 Permitted Uses

- A. Any use permitted in the R-2 One-Family Dwelling District.
- B. Two-Family dwellings, with a minimum width of 24 feet and a minimum of seven hundred fifty (750) square feet of dwelling unit space per dwelling unit. The primary façade of the structure shall face a public street. (as amended per Ordinance No. 4542 dated December 4, 2000 & as amended per Ordinance 4762 on August 1, 2003).

#### 6.3 Special Exception Uses

- A. Special Exceptions listed in the R-2, One-Family Dwelling District.
- B. Licensed home or facility for substance abuse rehabilitation.
- C. Offices of charitable organizations.

#### 6.4 Yard Requirements

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

“Corner Side Yard: The Corner Side Yard setback is determined by measuring the average established setback of the structures within the same block between two intersecting streets. This calculation would equal the established front yard setback for the side street.”

Use	Lot Size	Frontage	Setbacks				Maximum Structure Height	Maximum Lot Coverage for Structures
			Front Yard	Side Yards		Rear Yard		
One-Family	6,000 square	50 feet	Established setbacks;	15 feet total, 5	10 feet between	30 feet	30 feet	40% total for all structures

Use	Lot Size	Frontage	Setbacks				Maximum Structure Height	Maximum Lot Coverage for Structures
			Front Yard	Side Yards		Rear Yard		
	feet		or 20 feet if no established setback.	feet minimum	dwelling units			
Two-Family	7,200 square feet	60 feet	Established setbacks; or 20 feet if no established setback.	15 feet total, 5 feet minimum	10 feet between dwelling units	30 feet **see below	30 feet	40% total for all structures

\*\* Rear Yard 30 feet or established setbacks if adjacent to a river or creek. (as amended per Ordinance 4762 on August 1, 2003)

## 6.5 Supplemental Regulations

- A. Special Flood Hazard Area Regulations - Section 21
- B. Wetlands Conservation District Regulations - Section 22
- C. Air Space Control Area Regulations - Section 25
- D. Accessory Structures and Swimming Pool Requirements - Section 26.1
- E. Permitted Obstructions in Required Yards - Section 26.3
- F. Fence Requirements - Section 26.4
- G. Intersection Visibility Area Requirements - Section 26.5
- H. Primary Street Setback Requirements - Section 26.5
- I. Off-Street Parking and Loading Requirements - Section 26.7
- J. Sign Regulations - 26.10

## SECTION 7

### R-4, MULTIPLE FAMILY DWELLING DISTRICT

#### Section

- 7.1 Purpose**
- 7.2 Permitted Uses**
- 7.3 Special Exception Uses**
- 7.4 Yard Requirements**
- 7.5 Supplemental Regulations**

#### 7.1 Purpose

The R-4 District is designed to provide for new multiple family residential development.

#### 7.2 Permitted Uses

- A. Any use permitted in the R-3, Two-Family Dwelling District, except one- and two-family dwellings.
- B. Multiple-family dwellings
- C. Dormitories, sorority and fraternity houses.
- D. Radio towers owned by federally licensed amateur ham radio operators. (as amended per Ordinance No. 4457 on December 8, 1999).

#### 7.3 Special Exception Uses

- A. Special exceptions listed in the R-3, Two-Family Dwelling District.
- B. Hospitals and clinics.

#### 7.4 Yard Requirements

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

“Corner Side Yard: The Corner Side Yard setback is determined by measuring the average established setback of the structures within the same block between two intersecting streets. This calculation would equal the established front yard setback for the side street.”

Use	Lot Size	Frontage	Setbacks			Maximum Structure Height	Maximum Lot Coverage for Structures	Floor Area Ratio
			Front Yard	Side Yards	Rear Yard			
Multi-Family	A minimum of 10,000 square feet including at least 1,500	100 feet	25 feet	10 feet for each side yard. 1 additional	30 feet **see	65 feet	40% total for all structures	3.0

Use	Lot Size	Frontage	Setbacks			Maximum Structure Height	Maximum Lot Coverage for Structures	Floor Area Ratio
			Front Yard	Side Yards	Rear Yard			
	square feet for each efficiency unit or sleeping room; and at least 2,500 square feet for each other dwelling unit			foot for every 2 feet in height above 35 feet.	below			

\*\* Rear Yard 30 feet or established setbacks if adjacent to a river or creek. (as amended per Ordinance 4762 on August 1, 2003)

The Planning Staff may approve an increase in height of up to seventy (70) feet for a radio tower that is:

- (1) Structurally attached to primary structures;
- (2) Owned by federally licensed amateur ham radio operators; and
- (3) When it has been demonstrated by study that the additional height is necessary for effective operation of the radio tower. (As amended per Ordinance No. 4457 on December 8, 1999).

## 7.5 Development Conditions

### Landscape Requirements

In addition to the requirements specified in Section 26, "Development Standards" the following landscape requirements shall apply:

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

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

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

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

**7.6 Supplemental Regulations** (as amended per Ordinance No. 4431 on July 23, 1999)  
(as amended per Ordinance No. 4456 on November 5, 1999)

- A. Special Flood Hazard Area Regulations - Section 21
- B. Wetlands Conservation District Regulations - Section 22
- C. Air Space Control Area Regulations - Section 25
- D. Accessory Structures and Swimming Pool Requirements - Section 26.1
- E. Landscape and Screening Requirements - Section 26.2
- F. Permitted Obstructions in Required Yards - Section 26.3
- G. Fence Requirements - Section 26.4
- H. Intersection Visibility Area Requirements - Section 26.5
- I. Primary Street Setback Requirements - Section 26.5
- J. Off-Street Parking and Loading Requirements - Section 26.7
- K. Sign Regulations - 26.10

## SECTION 8 R-5 URBAN RESIDENTIAL DISTRICT

### Section

- 8.1 Purpose**
  - 8.2 Permitted Uses**
  - 8.3 Special Exceptions**
  - 8.4 Conditional Uses**
  - 8.5 Yard Requirements**
  - 8.6 Supplemental Regulations**
- 

### **8.1 Purpose**

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

### **8.2 Permitted Uses**

- A. One-family dwellings located on a permanent foundation with a minimum width of 24 feet and a minimum of nine hundred fifty (950) square feet of dwelling unit space, in which case the ground floor shall consist of no less than 600 square feet of such dwelling unit space. The primary façade of the structure shall face a public street. (as amended per Ordinance No. 4542 dated December 4, 2000 & as amended per Ordinance 4762 on August 1, 2003).
- B. Home occupations
- C. Temporary structures, used for construction site purposes for a period not to exceed six (6) months.
- D. Accessory structures and uses
- E. Not more than four (4) domestic animals over sixteen (16) weeks of age
- F. Sheltered living homes licensed by the State of Indiana.
- G. Radio towers owned by federally licensed amateur radio operators. (As amended per Ordinance No. 4457 on December 8, 1999).
- H. Two-family dwellings (as amended per Ordinance No. 4960 on April 10, 2006)

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- I. Multiple-family dwellings up to and including six (6) units (as amended per Ordinance No. 4960 on April 10, 2006)

### **8.3 Special Exception Uses**

- A. Cemeteries
- B. Places of worship
- C. Schools, colleges and libraries
- D. Day care home
- E. Day care center, located on a collector or arterial street
- F. Nursing homes and assisted living facilities
- G. Private clubs or lodges
- H. Public utilities and service uses
- I. Sheltered living homes not licensed by the State of Indiana
- J. Bed and Breakfast Homes
- K. Hospitals
- L. Parks, playgrounds, and community centers
- M. Funeral Homes, Crematories and Similar Services (as amended per Ordinance No. 4431 on July 23, 1999)

### **8.4 Conditional Uses**

- A. The following uses shall require approval by the Board of Zoning Appeals as conditional uses within the R-5 district:
  - 1. Professional and governmental offices and offices of charitable organizations
  - 2. Boarding and lodging homes
  - 3. Dormitories
  - 4. Fraternity and sorority houses(1-4 as amended by Ordinance No. 4960 on April 10, 2006)
- B. Supplementary Information

In addition to the information required in Section 29.8, "Conditional Uses", an application for a conditional use shall include the following supplementary information: (as amended per Ordinance No. 4431 on July 23, 1999)

1. Documentation from the City Public Works and Utilities Department that sufficient capacity exists within the public infrastructure system (sanitary sewer and water) and on site (surface drainage retention) to support the proposed development;
2. Number, size and location of paved on-site parking spaces as required by the City Zoning Ordinance, including screening;
3. Percent of lot remaining as open space excluding all structures, drives and parking areas; and
4. Use of all structures within two hundred (200) feet of the petitioned property.

C. Board of Zoning Appeals Review

In order to grant approval of a conditional use in the R-5 District, the Board of Zoning Appeals must find that the following standards, together with the standards applicable to conditional uses specified in Section 29.7, have been met:

1. The proposed conditional use is consistent with existing neighborhood density;
2. The proposed conditional use is compatible with existing neighborhood uses and character;
3. The proposed development (including all structures, drives and parking areas) will not occupy more than sixty percent (60%) of the total lot area;
4. Sufficient capacity exists both within the public infrastructure system (sanitary sewer and water) and on site (surface drainage retention) to support the proposed development; and
5. The proposed conditional use will not adversely affect the stability and viability of the existing residential neighborhood.

## 8.5 Yard Regulations

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

“Corner Side Yard: The Corner Side Yard setback is determined by measuring the average established setback of the structures within the same block between two intersecting streets. This calculation would equal the established front yard setback for the side street.”

Use	Lot Size	Frontage	Setbacks			Maximum Structure Height	Maximum Lot Coverage for Structures
			Front Yard	Side Yards	Rear Yard		



Use	Lot Size	Frontage	Setbacks			Maximum Structure Height	Maximum Lot Coverage for Structures
			Front Yard	Side Yards	Rear Yard		
One-Family	6,000 square feet	50 feet	Conform to established building setbacks	7 feet for each side yard	30 feet** see below	Conform to average height of existing structures on the block	40% total for all structures, except as specified for conditional uses
Two-Family	7,200 square feet	60 feet		10 feet for each side yard			
Multi-Family	A minimum of 7,500 square feet including at least 1,500 square feet for each efficiency unit or sleeping room; and at least 2,500 square feet for each other dwelling unit.						
All Other Uses	10,000 square feet						

\*\* Rear Yard 30 feet or established setbacks if adjacent to a river or creek. (as amended per Ordinance 4762 on August 1, 2003)

The Planning Staff may approve an increase in height of up to seventy (70) feet for a radio tower that is:

- (1) Structurally attached to primary structures;
- (2) Owned by federally licensed amateur ham radio operators; and
- (3) When it has been demonstrated by study that the additional height is necessary for effective operation of the radio tower. (as amended per Ordinance No. 4457 on December 8, 1999).

## 8.6 Supplemental Regulations

- A. Special Flood Hazard Area Regulations - Section 21
- B. Wetlands Conservation District Regulations - Section 22
- C. Air Space Control Area Regulations - Section 25
- D. Accessory Structures and Swimming Pool Requirements - Section 26.1
- E. Permitted Obstructions in Required Yards - Section 26.3

- F. Fence Requirements - Section 26.4
- G. Intersection Visibility Area Requirements - Section 26.5
- H. Primary Street Setback Requirements - Section 26.5
- I. Off-Street Parking and Loading Requirements - Section 26.7
- J. Sign Regulations - 26.10

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## SECTION 9 MHP MOBILE HOME PARK DISTRICT

### Section

- 9.1 Purpose**
  - 9.2 Permitted Uses**
  - 9.3 Yard Requirements**
  - 9.4 Development Conditions**
  - 9.5 Procedure for Submission of Plans**
  - 9.6 Supplemental Regulations**
- 

### 9.1 Purpose

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

### 9.2 Permitted Uses

- A. Mobile homes, qualifying as H.U.D. Code Manufactured Dwellings.
- B. Community buildings serving the development including child day care centers, dry cleaning and laundry, neighborhood commercial uses, and indoor recreation facilities.
- C. Mobile home sales and management offices, when located in the interior of the park and limited to three percent (3%) of the total park area.
- D. Home Occupations
- E. Parks and Playgrounds
- F. Accessory Structures and Uses
- G. Temporary Structures, used for construction site purposes for a period not to exceed six (6) months.
- H. Daycare Home or Center serving only residents of the park.
- I. Public Utilities and Service Uses

### 9.3 Yard Requirements

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

Lot Size	Lot Width	Setbacks			Maximum Structure Height	Maximum Lot Coverage for Structures	Unit Spacing
		Front Yard	Side Yards	Rear Yard			
5,000 square feet	50 feet	20 feet	7 feet with 2 side yards or 14 feet with a zero lot line	10 feet	30 feet	30% by mobile home; 40% by all structures	A 14-foot spacing shall be maintained between all units.

#### 9.4 Development Conditions

##### A. General Requirements

1. It shall be unlawful for any person to park, place or locate or permit the parking, placing or locating of any occupied mobile home within the City except in a mobile home park.
2. It shall be unlawful for any person to park, place or locate or permit the parking, placing or locating of any unoccupied mobile home within the City except on a mobile home sales lot.
3. It shall be unlawful for a person to establish, construct, alter or enlarge a mobile home park on land located in the City unless such land is zoned MHP. Prior to construction or issuance of permit, a final site plan shall be submitted to the Plan Commission for review and approval at a public hearing.
4. All mobile home parks shall comply, where applicable, with the Flood Plain District regulations, Section 21, Special Flood Hazard Area Overlay District.

##### B. Site Conditions

1. No mobile home shall be used for any purpose other than that of a single family dwelling or office for the developer. Further, no commercial enterprise shall be carried on within the confines of the mobile home park other than specifically enumerated under the conditions of the MHP zoning district and the final site plan.
2. Minimum area of a mobile home park shall be fifteen (15) acres with the first phase not less than five (5) acres. The maximum density shall be five (5) mobile homes per acre.
3. Individual mobile home sites within a mobile home park shall not be sold or transferred; however, the entire park may be sold or transferred to a new owner.

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## C. Standards for Mobile Home Parks

### 1. Landscaping

- a. The outer boundaries of a mobile home park shall contain a buffer zone.

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

- b. Ground cover shall be provided where needed to prevent erosion.
- c. Each mobile home lot shall include two (2) trees at least two (2) inches diameter at breast height (d.b.h.).

### 2. Mobile Home Spaces

- a. The mobile home park shall be divided into lots with permanent markers indicating the corners of each lot.
- b. Setback lines, yard requirements and lot coverage.
  - i. All mobile homes shall be set back at least fifty (50) feet from any public right-of-way outside the development and at least twenty (20) feet from any private drive or public street within the development.
  - ii. No mobile home or structure shall be located closer than forty (40) feet to the boundaries of the development.
  - iii. Accessory structures shall not be within three (3) feet of any side or rear lot line.

### 3. Recreation

- a. In all parks there shall be one or more recreation areas which shall be easily accessible to all residents. The size of such recreation areas shall not be less than eight percent (8%) of the gross site area.
- b. Recreation facilities, such as playgrounds, swimming pools and community buildings, should be provided to the extent necessary to meet the anticipated needs of the residents of the park. Such facilities shall meet all applicable City regulations.

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

4. Street and Drive Requirements

- a. Entrances to a mobile home park shall abut a public street and shall be designed to allow free movement of traffic onto such public street. Streets within the park shall be laid out to discourage through traffic. Entrance ways shall have radii adequate for safe and convenient ingress and egress.
- b. All streets and drives within any mobile home park shall have an approved cross section with a paved surface of twenty-five (25) feet measured from back of curb to back of curb.
- c. All cul-de-sacs shall have a minimum radius of sixty (60) feet to the outer edge of the pavement.
- d. All streets and drives shall be provided with a smooth, graded, drained, sealed and paved durable surface commencing from the public street to and throughout the park.
- e. All streets and drives shall be maintained by the mobile home park owner and shall be free of holes and other hazards.
- g. Concrete curb and gutter shall be provided along the outside edge of all streets, drives and parking area pavements.
- h. All streets and drives shall be constructed to City specifications.
- i. Names shall be assigned to all streets and drives appearing on the final plan and shall be approved by the Fire Department. All mobile home stands shall be systematically identified as they appear on the final plan.
- j. Driveway Requirements
  - i. Driveways shall be provided on the site where necessary for convenient access to service entrances of buildings.
  - ii. Driveways shall be a minimum of ten (10) feet wide.

5. Parking Requirements

- a. At least two (2) off-street parking spaces nine (9) feet by eighteen (18) feet each shall be provided on each mobile home site.
- b. No parking shall be permitted on any street or drive.
- c. The developer shall provide a minimum of one (1) visitor parking space for every five (5) home lots. Visitor spaces may be located in

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one centrally located site or may be equally distributed throughout the park.

6. Mobile Home Stands

- a. Each mobile home stand shall be either:
  - i. A reinforced concrete pad of suitable thickness to support the home and appurtenances or the runners with rebar rods, but shall not be less than four (4) inches thick; or
  - ii. A foundation on suitable concrete footings at least thirty-six (36) inches below grade with suitable cross-bracing provided and all remaining open spaces filled with sand or gravel or other suitable material.
- b. Adequate drainage grading away from mobile home shall be provided.

7. Permanent Structures

- a. Buildings shall comply with applicable zoning and building regulations and be approved by the Plan Commission.
- b. A separate area shall be provided, which is fenced, screened or otherwise enclosed, for the storage of residents' camping trailers, boats, snowmobiles and other similar items. These items shall not be stored in any other area of the mobile home park.

8. Dependent Mobile Homes and Occupied Travel Trailers Prohibited

- a. A mobile home without bath and kitchen facilities is prohibited in all mobile home parks.
- b. Occupied travel trailers are prohibited in mobile home parks, except as noted in Section 9.4(7) (a) above.

9. Pedestrian Ways

- a. A common concrete walk system shall be provided and maintained on both sides of all streets within the park. Such common walk shall have a minimum width of four (4) feet.
- b. All mobile homes shall be connected by concrete or paved individual walks with a minimum width of three (3) feet to common walks or parking areas.

10. Mobile Home Installation

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

- b. Mobile homes located in Flood Hazard Areas shall be anchored in accordance with industry standards or standards established by FEMA, whichever are more restrictive.
- c. All mobile homes shall have skirting.
- d. All hitches shall be removed from all mobile homes after placement has been completed on the mobile home site.

11. Storage

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

12. Utilities

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

13. Lighting

All lots shall contain one yard light. Street lights shall be provided at all intersections and a minimum five hundred (500) foot spacing as needed between intersections.

14. Other Requirements

Every mobile home park shall also comply with all applicable laws and regulations of the State of Indiana and its administrative agencies.

## **9.5 Procedure for Zoning and Site Plan Approval**

A. Preliminary Filing

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

B. A final site plan shall be filed with the rezoning application.

C. Final Site Plan

Fifteen (15) copies shall be submitted to the Plan Commission. An additional seventeen (17) copies, including any required revisions, shall be submitted following Plan commission action for City Council review. The plan shall include the following items:

- 1. Name and address of applicant, name and address of owner of property, name and address of person preparing the plan.



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2. Location map and legal description of development.
  3. Site plan of proposed area containing the following information:
    - a. Proposed name of the development;
    - b. Date, scale and north arrow;
    - c. Contour information at vertical intervals of not less than two (2) feet with reference to U.S. Geodetic Survey (U.S.G.S.) datum;
    - d. Indication of gross land area of the park and a computation of the density of the park;
    - e. Drawing indicating how surface water drainage will be handled;
    - f. Drawing indicating location of available sanitary sewer and water, and how park will be served;
    - g. Location of all proposed fire hydrants;
    - h. Statement of restrictions contemplated, if any, such as:
      - i. Placement of oil tanks, storage sheds, fences and patios;
      - ii. Skirting;
      - iii. Pets;
      - iv. Parking;
      - v. Boats and outside storage;
      - vi. Children.
    - i. Elevation of water table, percolation data and description of soil type;
    - j. Layout and width of all streets;
    - k. Service building and maintenance building;
    - l. Playgrounds;
    - m. Mobile home space and mobile home stands;
    - n. Parking spaces, driveways and sidewalks;
    - o. Boundaries, fencing and screen planting, including types of plant materials;
    - p. Street lighting;

- q. Landscaping;
- r. Typical lot detail;
- s. Tentative letter from State Board of Health and State Pollution Board as to sanitary sewer and water distribution system;
- t. Statement of review and tentative approval by City Traffic Engineer of all accesses onto public streets; and
- u. Any other information deemed necessary by the Plan Commission.

D. Submission to Plan Commission and City Council

- 1. The site plan shall be reviewed and approved by the Plan Commission and City Council as part of the zoning application. As a condition of approval either the Plan Commission or the City Council may require modifications to the site plan to insure compliance with the standards of this ordinance and to promote the purpose of this district.
- 2. Following zoning approval by the City Council, construction of the mobile home park shall be in accordance with the approved site plan.

E. Amendments to Approved Site Plan

- 1. The planning staff may review and approve proposed minor amendments provided that the changes:
  - a. Maintain the purpose and intent of the approved plan; and
  - b. Do not result in the addition, deletion, or relocation of approved curb cuts onto public streets or cross access drives onto adjoining properties; increase the density or size of the mobile home park; reduce or alter the perimeter treatment of the site; additions to the approved uses of the park; reduce approved setbacks for buildings, homes, structures, and other site elements; or create a significant impact on surrounding properties.

Such review shall be completed with ten (10) working days of submittal.
- 2. All other amendments shall be deemed major and must be reviewed and approved by the Plan Commission following a public hearing.

## 9.6 Supplemental Regulations

- A. Special Flood Hazard Area Regulations - Section 21
- B. Wetlands Conservation District Regulations - Section 22
- C. Air Space Control Area Regulations - Section 25

- D. Accessory Structures and Swimming Pool Requirements - Section 26.1
- E. Landscape and Screening Requirements - Section 26.2
- F. Permitted Obstructions in Required Yards - Section 26.3
- G. Fence Requirements - Section 26.4
- H. Intersection Visibility Area Requirements - Section 26.5
- I. Primary Street Setback Requirements - Section 26.5
- J. Off-Street Parking and Loading Requirements - Section 26.7
- K. Sign Regulations - 26.10

## **SECTION 10**

### **O, OFFICE DISTRICT**

#### **Section**

- 10.1 Purpose**
  - 10.2 Permitted Uses**
  - 10.3 Special Exception Uses**
  - 10.4 Conditional Uses**
  - 10.5 Yard Requirements**
  - 10.6 Development Conditions**
  - 10.7 Supplemental Regulations**
- 

#### **10.1 Purpose**

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

#### **10.2 Permitted Uses**

- A. Professional and business offices including but not limited to dentists, doctors, medical practitioners, designers, engineers, accountants, lawyers, real estate brokers and appraisers, utility business offices, business offices related to local services, loan and mortgage offices, and insurance representative offices.
- B. Beauty Salons and Barber Shops (as amended per Ordinance No. 4462 on January 13, 2000.)
- C. Libraries (as amended per Ordinance No. 4462 on January 13, 2000.)
- D. Government offices (as amended per Ordinance No. 4462 on January 13, 2000.)
- E. Police and fire stations located on primary or thoroughfare streets (as amended per Ordinance No. 4462 on January 13, 2000.)
- F. Therapeutic Massage and/or Massage Therapy when conducted in a massage establishment by a professional masseuse/masseur, who has completed training at a state certified school of massage and who has earned certification as a "Massage Therapist" or similar designation. (as amended per Ordinance No. 5044 on July 11, 2007.)

#### **10.3 Special Exception Uses**

Police and fire stations not located on primary or thoroughfare streets.

#### **10.4 Conditional Uses**

One-Family dwellings when associated with an office use.

## 10.5 Yard Requirements

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

“Corner Side Yard: The Corner Side Yard setback is determined by measuring the average established setback of the structures within the same block between two intersecting streets. This calculation would equal the established front yard setback for the side street.”

Lot Size	Frontage	Setbacks			Maximum Structure Height	Maximum Lot Coverage for Structures
		Front Yard	Side Yards	Rear Yard		
10,000 square feet	75 feet	The established building setback or 25 feet if no established setback	10 feet	20 feet	35 feet	40% total for structures; 60% total for structures, drives, and parking areas

## 10.6 Development Conditions

- A. The office establishment in this district shall be conducted principally in daylight hours and shall not create a nuisance in neighboring residential districts from noise, smoke, odor, or traffic.
- B. Uses within this district shall front onto a collector or arterial street.
- C. Landscape Requirements:

In addition to the requirements specified in Section 26, Development Standards, the following landscape requirements shall apply:

1. In the event a property to be developed in this district is adjacent to a residentially zoned or used property along a common side or rear lot line, whether separated by an alley or not, a ten (10) foot landscaped area shall be provided consisting of a combination of ornamental or shade trees, shrubs, and ground cover. At least fifty percent (50%) of the common lot line landscape area shall contain shrubs and/or trees. A minimum of one (1) tree per every forty (40) feet of common lot line shall be provided.
2. All business and office service areas (loading docks/doors, dumpsters, mechanical equipment, etc.) located in a side or rear yard abutting a residentially zoned or used property shall be screened by a solid six (6) foot high fence, wall or dense evergreen hedge. Fences and walls shall be consistent with the architecture of the development or principal building. Any vegetative or architectural screening located along a side property line shall

not extend beyond the front façade of the residential structure located on the adjacent lot.

#### **10.7 Supplemental Regulations**

- A. Special Flood Hazard Area Regulations - Section 21
- B. Wetlands Conservation District Regulations - Section 22
- C. Air Space Control Area Regulations - Section 25
- D. Accessory Structures and Swimming Pool Requirements - Section 26.1
- E. Landscape and Screening Requirements - Section 26.2
- F. Permitted Obstructions in Required Yards - Section 26.3
- G. Fence Requirements - Section 26.4
- H. Intersection Visibility Area Requirements - Section 26.5
- I. Primary Street Setback Requirements - Section 26.5
- J. Off-Street Parking and Loading Requirements - Section 26.7
- K. Sign Regulations - 26.10

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## SECTION 11

### B-1 NEIGHBORHOOD BUSINESS DISTRICT

#### Section

- 11.1 Purpose**
  - 11.2 Permitted Uses**
  - 11.3 Special Exception Uses**
  - 11.4 Yard Requirements**
  - 11.5 Development Conditions**
  - 11.6 Supplemental Regulations**
- 

#### **11.1 Purpose**

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

#### **11.2 Permitted Uses**

- A. Bakery Shop, to include only the baking and processing of food products for retail sale only on the premises.
- B. Barber and Beauty Shops
- C. Book Store
- D. Candy/Ice Cream Shop
- E. Delicatessen
- F. Drug Store
- G. Dry Cleaning, pick up or delivery
- H. Florist
- I. Food Store, Retail
- J. Laundromat
- K. Medical and Dental Offices and Clinics
- L. Offices, business and professional
- M. One residential dwelling located above or to the rear of a commercial use if occupied by the owner of the commercial use or the owner of the property.  
(amended per Ordinance No. 4405 on March 1, 1999)

- N. Restaurant or Cafe, excluding drive-in restaurant, serving non-alcoholic beverages only, and including outdoor dining up to fifty percent (50%) of the interior seating.
- O. Police and fire stations, located on a primary or thoroughfare street
- P. Post office branch
- Q. Other retail sales and service businesses serving the immediate neighborhood
- R. Funeral Homes, Crematories and Similar Services (as amended per Ordinance No. 4431 on July 23, 1999)
- S. Therapeutic Massage and/or Massage Therapy when conducted in a massage establishment by a professional masseuse/masseur, who has completed training at a state certified school of massage and who has earned certification as a "Massage Therapist" or similar designation. (as amended per Ordinance No. 5044 on July 11, 2007.)

### **11.3 Special Exception Uses**

- A. Churches
- B. Convents, monasteries, rectories, parish houses
- C. Parks, playgrounds, and community centers
- D. Public utilities and public service uses including but not limited to:
  - 1. Fire Station, located on streets other than Primary or Thoroughfare
  - 2. Police Station, located on streets other than Primary or Thoroughfare
  - 3. Public Utility Facilities
- E. Recreational Buildings, public or non-profit
- F. Public schools, elementary and secondary
- G. Sheltered Living Home
- H. Meeting Hall/Banquet Facility  
(As amended Ordinance No. 4683 July 10, 2002)

### **11.4 Yard Requirements**

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

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



Lot Size	Frontage	Setbacks			Maximum Structure Height	Maximum Lot Coverage for Structures	Floor Area Ratio
		Front Yard	Side Yards	Rear Yard			
No Minimum	No Minimum	Established building setback or 15 feet if no established setback	10 feet for building; 6 feet for drives (amended #5044 7.11.2007)	20 feet for building; 6 feet for drives (amended #5044 7.11.2007)	35 feet	50%	1

### 11.5 Development Conditions

- A. The business activity must be conducted wholly within a completely enclosed building.
- B. The business establishment shall not offer goods, service, food, beverages, or make sales directly to customers in motor vehicles.
- C. All businesses shall be of a retail or service character, selling to or performing services directly for the ultimate customer.
- D. No business establishment in this district shall create a nuisance from noise, smoke, or odor.
- E. Landscape Requirements:

In addition to the requirements specified in Section 26, Development Standards, the following landscape requirements shall apply:

1. In the event a property to be developed in this district is adjacent to a residentially zoned or used property along a common side or rear lot line, whether separated by an alley or not, a ten (10) foot landscaped area shall be provided consisting of a combination of ornamental or shade trees, shrubs, and ground cover. At least fifty percent (50%) of the common lot line landscape area shall contain shrubs and/or trees. A minimum of one (1) tree per every forty (40) feet of common lot line shall be provided.
2. All business and office service areas (loading docks/doors, dumpsters, mechanical equipment, etc.) located in a side or rear yard abutting a residentially zoned or used property shall be screened by a solid six (6) foot high fence, wall or dense evergreen hedge. Fences and walls shall be consistent with the architecture of the development or principal building. Any vegetative or architectural screening located along a side property line shall

not extend beyond the front façade of the residential structure located on the adjacent lot.

#### **11.6 Supplemental Regulations**

- A. Special Flood Hazard Area Regulations - Section 21
- B. Wetlands Conservation District Regulations - Section 22
- C. Air Space Control Area Regulations - Section 25
- D. Accessory Structures and Swimming Pool Requirements - Section 26.1
- E. Landscape and Screening Requirements - Section 26.2
- F. Permitted Obstructions in Required Yards - Section 26.3
- G. Fence Requirements - Section 26.4
- H. Intersection Visibility Area Requirements - Section 26.5
- I. Primary Street Setback Requirements - Section 26.5
- J. Off-Street Parking and Loading Requirements - Section 26.7
- K. Sign Regulations - 26.10

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## SECTION 12

### B-2 COMMUNITY BUSINESS DISTRICT

#### Section

- 12.1 Purpose**
  - 12.2 Permitted Uses**
  - 12.3 Special Exception Uses**
  - 12.4 Yard Requirements**
  - 12.5 Required Conditions**
  - 12.6 Supplemental Regulations**
- 

#### **12.1 Purpose**

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

#### **12.2 Permitted Uses**

- A. All Permitted Uses under the B-1 Neighborhood Business District without size restriction.
- B. Amusement parlors.
- C. Appliance Stores
- D. Auction Rooms
- E. Convenience Stores
- F. Department Stores
- G. Dry Cleaning and Laundromats
- H. Financial Institutions
- I. Grocery and Food Stores
- J. Hotels and Motels
- K. Indoor Recreation
- L. Liquor Stores
- M. Medical Supply Stores
- N. Motor Vehicle Service Stations, including oil change facilities and minor motor vehicle repair

- O. Motor Vehicle Wash, Self and Full Service
- P. Movie and stage theaters, including dinner theaters
- Q. Outdoor Sales, if accessory to primary use and is less than fifteen percent (15%) of interior sales area.
- R. Pet Stores
- S. Photography Studios
- T. Professional and Business Offices
- U. Restaurants and Catering, including those with drive-thru service, alcoholic beverage service, or outdoor dining up to fifty percent (50%) of the interior seating
- V. Retail Businesses (sales and/or service)
- W. Shopping Centers, not greater than one hundred twenty thousand (120,000) square feet in area.
- X. Taverns
- Y. Video Rental
- Z. Wireless Communication Facilities, as defined in Section 27 of this ordinance. (as amended per Ordinance No. 4457 on December 8, 1999).
- AA. Therapeutic Massage and/or Massage Therapy when conducted in a massage establishment by a professional masseuse/masseur, who has completed training at a state certified school of massage and who has earned certification as a "Massage Therapist" or similar designation. (as amended per Ordinance No. 5044 on July 11, 2007.)

### **12.3 Special Exception Uses**

- A. All Special Exception Uses under B-1 Neighborhood Business District
- B. Airports or aircraft landing fields and heliports
- C. Charitable Organizations
- D. Cultural and sports facilities including but not limited to auditoriums, stadiums, arenas, museums, and planetariums
- E. Homeless or temporary shelter providing housing and/or meals
- F. Tattoo Parlors
- G. Trade Schools

## 12.4 Yard Requirements

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

“Corner Side Yard: The Corner Side Yard setback is determined by measuring the average established setback of the structures within the same block between two intersecting streets. This calculation would equal the established front yard setback for the side street.”

Lot Size	Frontage	Setbacks			Height	Maximum Lot Coverage for Structures	F.A.R
		Front Yard	Side Yards	Rear Yard			
No Minimum	75 feet	30 feet for building	10 feet for building and 6 feet for drives, unless abutting a residential district, then Section 12.5(F)(1) shall also apply (amended #5044 7.11.2007)	20 feet for building and 6 feet for drives, unless abutting a residential district, then Section 12.5(F)(1) shall also apply (amended #5044 7.11.2007)	35 feet	50% total	1

## 12.5 Development Conditions

- A. The business activity shall be conducted wholly within a completely enclosed building, except for motor vehicle service station, or as permitted in this Section.
- B. Where the business offers goods, services, food, beverages, or makes sales to customers in cars, adequate driveway space on the premise for ten (10) waiting vehicles for a single lane and for five (5) waiting vehicles per lane for multiple lanes, shall be provided.
- C. Exterior lighting shall be shielded to avoid casting direct light or glare upon any property located in a residentially zoned district or upon any public street.
- D. No business establishment in this district shall create a nuisance from noise, smoke, or odor.
- E. Uses within this district shall front onto a collector or arterial street.
- F. Landscape Requirements

In addition to the requirements specified in Section 26, "Development Standards" the following landscape requirements shall apply:

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

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

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

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

## **12.6 Supplemental Regulations**

- . Special Flood Hazard Area Regulations - Section 21
- B. Wetlands Conservation District Regulations - Section 22
- C. Air Space Control Area Regulations - Section 25
- D. Accessory Structures and Swimming Pool Requirements - Section 26.1
- E. Landscape and Screening Requirements - Section 26.2
- F. Permitted Obstructions in Required Yards - Section 26.3
- G. Fence Requirements - Section 26.4
- H. Intersection Visibility Area Requirements - Section 26.5
- I. Primary Street Setback Requirements - Section 26.5
- J. Off-Street Parking and Loading Requirements - Section 26.7
- K. Sign Regulations - 26.10

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## **SECTION 13**

### **B-3, SERVICE BUSINESS DISTRICT**

#### **Sections**

- 13.1 Purpose**
- 13.2 Permitted Uses**
- 13.3 Special Exception Uses**
- 13.4 Yard Requirements**
- 13.5 Development Conditions**
- 13.6 Supplemental Regulations**

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#### **13.1 Purpose**

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

#### **13.2 Permitted Uses**

- A. All uses permitted in the B-2, Community Business District
- B. Appliance Repair and Service
- C. Auto, Truck, Recreational Vehicle and Agricultural Implement Sales
- D. Broadcasting Studios
- E. Building Material and Supply
- F. Contractors' Offices and shops; no on-site fabrication or outside storage
- G. Equipment Rental Facilities
- H. Greenhouses and Wholesale Growers
- I. Gun Shop
- J. Kennels and Animal Hospitals, when conducted wholly within a building
- K. Laboratories
- L. Manufactured Home Sales
- M. Motor Vehicle Repair, Major
- N. Outdoor Sales, Located on Paved Sites
- O. Pawn Shops

- P. Printing, binding, and publishing of newspapers, periodicals, books, stationery, and other reading material
- Q. Self Storage Facility on a parcel of land not less than two (2) acres and not more than five (5) acres
- R. Shopping Centers and Shopping Malls
- S. Wholesale businesses, where all Storage of Materials is within a Building
- T. Outside storage of liquids or gases in one or more tanks, where total volume of the tank(s) does not exceed 2000 gallons. (As amended per Ordinance No. 4683 July 10, 2002)
- U. Therapeutic Massage and/or Massage Therapy when conducted in a massage establishment by a professional masseuse/masseur, who has completed training at a state certified school of massage and who has earned certification as a "Massage Therapist" or similar designation. (as amended per Ordinance No. 5044 on July 11, 2007.)

### **13.3 Special Exception Uses**

- A. All Special Exception Uses allowed in the B-2, Community Business District
- B. Airports or aircraft landing field and heliports
- C. Communications, television and radio towers not included in Section 27, Wireless Telecommunications Facilities
- D. Drive-in Movie Theaters
- E. Indoor shooting ranges
- F. Outdoor Recreation facilities excluding archery and rifle ranges
- G. Public utilities and public service uses, including but not limited to:
  - 1. Bus Garage, Lot, Terminal, or Turnarounds (off street)
  - 2. Public Utility Facilities
  - 3. Railroad Facilities
  - 4. Sewage Treatment Facilities
- H. Trade and Technical Schools
- I. Bulk storage tanks including materials that do not require filing a Tier 1 or 2 SARA report or those that do not exceed an NFPA classification of 2. (As amended per Ordinance No. 4683 July 10, 2002)



### 13.4 Yard Requirements

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

“Corner Side Yard: The Corner Side Yard setback is determined by measuring the average established setback of the structures within the same block between two intersecting streets. This calculation would equal the established front yard setback for the side street.”

Lot Size	Frontage	Setbacks			Height	Maximum Lot Coverage for Structures	F.A.R
		Front Yard	Side Yards	Rear Yard			
No Minimum	75 feet	30 feet for structure	10 feet for structures and 6 feet for drives, unless abutting a residential district, then Section 13.5(D)(1) shall also apply (amended #5044 7.11.2007)	20 feet for structures and 6 feet for drives, unless abutting a residential district, then Section 13.5(D)(1) shall also apply (amended #5044 7.11.2007)	35 feet	50% total	1

### 13.5 Development Conditions

- A. No business establishment in this district shall create a nuisance from noise, smoke, or odor.
- B. This district should have access to a major arterial roadway that can accommodate truck traffic.
- C. Vehicle wash and drive-thru facilities must have adequate vehicle stacking space located out of the public right-of-way for ten (10) vehicles for a single lane and for five (5) vehicles per lane for multiple lanes.
- D. Landscape Requirements:

In addition to the requirements specified in Section 26, “Development Standards” the following landscape requirements shall apply:

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

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

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

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

### **13.6 Supplemental Regulations**

- A. Special Flood Hazard Area Regulations - Section 21
- B. Wetlands Conservation District Regulations - Section 22
- C. Air Space Control Area Regulations - Section 25
- D. Accessory Structures and Swimming Pool Requirements - Section 26.1
- E. Landscape and Screening Requirements - Section 26.2
- F. Permitted Obstructions in Required Yards - Section 26.3
- G. Fence Requirements - Section 26.4
- H. Intersection Visibility Area Requirements - Section 26.5
- I. Primary Street Setback Requirements - Section 26.5
- J. Off-Street Parking and Loading Requirements - Section 26.7
- K. Sign Regulations - 26.10

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## SECTION 14

### B-4, REGIONAL BUSINESS DISTRICT

#### Sections

- 14.1 Purpose**
  - 14.2 Permitted Uses**
  - 14.3 Special Exception Uses**
  - 14.4 Yard Requirements**
  - 14.5 Development Conditions**
  - 14.6 Supplemental Regulations**
- 

#### **14.1 Purpose**

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

#### **14.2 Permitted Uses**

- A. Auto, truck and recreational vehicle sales when located in an integrally designed motor mall
- B. Accessory Structures and Uses
- C. Convenience Stores
- D. Dinner Theaters
- E. Hotels and Motels
- F. Motor Vehicle Service Stations
- G. Motor Vehicle Wash
- H. Movie and stage theaters
- I. Police and Fire Stations located on primary or thoroughfare streets
- J. Restaurants, including those with drive-thru windows or outdoor seating, those serving alcohol, and taverns
- K. Retail businesses (sales and/or service)
- L. Shopping Malls or Shopping Centers

- M. Wireless Communication Facilities, as defined in Section 27 of this ordinance (as amended per Ordinance No. 4457 on December 8, 1999)

### 14.3 Special Exception Uses

(as amended per Ordinance No. 4457 on December 8, 1999)

- A. Cultural and Sports Facilities
- B. Highway Service Plazas
- C. Park & Ride Facilities
- D. Public Transportation Stations
- E. Public Utility Facilities
- F. Meeting Hall/Banquet Facility  
(As amended per Ordinance No. 4683 on July 10, 2002)

### 14.4 Yard Requirements

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

“Corner Side Yard: The Corner Side Yard setback is determined by measuring the average established setback of the structures within the same block between two intersecting streets. This calculation would equal the established front yard setback for the side street.”

Lot Size	Frontage	Setbacks			Height	Maximum Lot Coverage for Structures	F.A.R.	District Size
		Front Yard	Side Yards	Rear Yard				
1 acre	150 feet	75 feet for structure	30 feet for building and 8 feet for drives, unless abutting a residential district, then Section 14.5(F)(1) shall also apply	30 feet for building and 8 feet for drives, unless abutting a residential district, then Section 14.5(F)(1) shall also apply	45 feet	40% total	1	10 acres

### 14.5 Development Conditions

- A. A development plan shall be submitted to the Planning and Zoning Office for review and approval in accordance with Section 24. All development shall comply with Type I and Type II Design Standards as specified in Section 24.

- B. The development shall be a unified and organized arrangement of structures, parking areas, walks, lighting and appurtenant facilities.
- C. Vending machines shall be either located within a primary structure or located on the exterior of a primary structure abutting its exterior wall.
- D. Vehicle wash and drive-thru facilities must have adequate vehicle stacking space located out of the public right-of-way for ten (10) vehicles for a single lane and for five (5) vehicles per lane for multiple lanes.
- E. This district shall be located along freeways or major thoroughfares or at limited access major arterials only.
- F. Landscape Requirements:

In addition to the requirements specified in Section 26, Development Standards, the following landscape requirements shall apply:

1. In the event a property to be developed in this district is adjacent to a residentially zoned or used property along a common side or rear lot line, whether separated by an alley or not, a forty (40) foot landscaped area shall be provided consisting of a combination of ornamental or shade trees, shrubs, and ground cover. At least fifty (50) percent of the common lot line landscape area shall contain shrubs and/or trees. A minimum of one (1) tree per every forty (40) feet of common lot line shall be provided.
2. All business and office service areas (loading docks/doors, dumpsters, mechanical equipment, etc.) located in a side or rear yard abutting a residentially zoned or used property shall be screened by a solid six (6) foot high fence, wall or dense evergreen hedge. Fences and walls shall be consistent with the architecture of the development or principal building. Any vegetative or architectural screening located along a side property line shall not extend beyond the front façade of the residential structure located on the adjacent lot.

#### **14.6 Supplemental Regulations**

- A. Special Flood Hazard Area Regulations - Section 21
- B. Wetlands Conservation District Regulations - Section 22
- C. Air Space Control Area Regulations - Section 25
- D. Accessory Structures and Swimming Pool Requirements - Section 26.1
- E. Landscape and Screening Requirements - Section 26.2
- F. Permitted Obstructions in Required Yards - Section 26.3
- G. Fence Requirements - Section 26.4
- H. Intersection Visibility Area Requirements - Section 26.5

- I. Primary Street Setback Requirements - Section 26.5
- J. Off-Street Parking and Loading Requirements - Section 26.7
- K. Sign Regulations - 26.10

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## **SECTION 15**

### **CBD CENTRAL BUSINESS DISTRICT**

#### **Sections**

- 15.1 Purpose**
  - 15.2 Permitted Uses**
  - 15.3 Special Exception Uses**
  - 15.4 Yard Requirements**
  - 15.5 Development Conditions**
  - 15.6 Supplemental Regulations**
- 

#### **15.1 Purpose**

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

#### **15.2 Permitted Uses**

- A. Accessory structures
- B. Religious Assembly, except that religious assembly uses shall not be permitted adjacent to Main Street, Jackson Boulevard, or Elkhart Avenue (as amended per Ordinance No. 5606 on August 11, 2017.)
- C. Department stores
- D. Drive Thru Facilities, except those facilities shall not be permitted adjacent to Main Street, Jackson Boulevard, or Elkhart Avenue (as amended per Ordinance No. 5606 on August 11, 2017.)
- E. Drug stores
- F. Financial institutions
- G. Fitness centers, dance studios, self-defense schools, etc.
- H. Government offices
- I. Hotels and Motels, with or without conference centers
- J. Laundromats
- K. Libraries
- L. Live/Work Units (as amended per Ordinance No. 5606 on August 11, 2017.)

- M. Mass Transit Centers
- N. Medical and dental offices and clinics
- O. Movie, stage, and dinner theaters
- P. Museums
- Q. Multi-family residential dwellings, including condominiums, townhouses, and residences located above commercial uses
- R. Offices, business and professional
- S. Parking Structures (as amended per Ordinance No. 5606 on August 11, 2017.)
- T. Printing and publishing of newspapers, magazines, periodicals, etc.
- U. Public Park and Recreation Facilities (as amended per Ordinance No. 5606 on August 11, 2017.)
- V. Public utilities and service users
- W. Restaurants, cafes, and catering, including those with alcoholic beverage service and with interior and/or exterior seating, other than drive-in. Drive-thru windows are permitted in conjunction with a restaurant with a minimum seating capacity of fifty (50) persons, except those facilities shall not be permitted adjacent to Main Street, Jackson Boulevard, or Elkhart Avenue. (as amended per Ordinance No. 5606 on August 11, 2017.)
- X. Retail sales and service, excluding adult entertainment, pawn shops, and tattoo parlors (as amended per Ordinance No. 5606 on August 11, 2017.)
- Y. Temporary structures, related to active construction on a site (as amended per Ordinance No. 5606 on August 11, 2017.)
- Z. Funeral Homes, Crematories and Similar Services (as amended per Ordinance No. 4431 on July 23, 1999)
- AA. Taverns (as amended per Ordinance No. 4462 on January 13, 2000)
- BB. Therapeutic Massage and/or Massage Therapy when conducted in a massage establishment by a professional masseuse/masseur, who has completed training at a state certified school of massage and who has earned certification as a "Massage Therapist" or similar designation. (as amended per Ordinance No. 5044 on July 11, 2007.)
- CC. Rooftop entertainment areas, including decks, patios, porches, glass enclosed spaces and similar uses for the purpose of utilizing the rooftop areas of buildings. (as amended per Ordinance No. 5606 on August 11, 2017.)

### **15.3 Special Exception Uses**



- A. Bed and Breakfast home
- B. Charitable organizations
- C. Community centers, convention halls, arenas, auditoriums, stadiums
- D. Private recreation facilities (as amended per Ordinance No. 5606 on August 11, 2017.)
- E. Meeting Hall/Banquet Facility  
(As amended per Ordinance No. 4683 July 10, 2002)

#### 15.4 Yard Requirements

Yard requirements for the CBD, Central Business District are as follows: (All standards are minimums except as noted.) (as amended per Ordinance No. 4431 on July 23, 1999) (as amended per Ordinance No. 5606 on August 11, 2017.)

Lots and parcels fronting on **Main Street, Jackson Boulevard, and Elkhart Avenue:**

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

**Lots and parcels fronting on all other streets:**

Lot Size	Frontage	Setbacks			Structure Height	Maximum Lot Coverage for Structures	Maximum F.A.R.
		Front Yard	Side Yards	Rear Yard			
No Minimum	No Minimum	Established building setback. If there is no established setback, the minimum setback is 0 feet and the maximum setback is 10 feet. Up to an additional 10 feet of setback may be provided along no more than 50% of the length of the front façade to accommodate additional outdoor seating and/or amenities.	Established building setback. If there is no established setback, the building may be built up to the side property line, except when abutting a residential use, then minimum setback is 10 feet.	Established building setback. If there is no established setback, the building may be built up to the rear property line, except when abutting a residential use, then minimum setback is 10 feet.	Maximum: 65 feet	75% total	10

## 15.5 Development Conditions

- A. A development plan shall be submitted to the Planning and Zoning Office for review and approval in accordance with Section 24. All development shall comply with Type I and Type II Design Standards as specified in Section 24.
- B. Business activity must be conducted wholly within a completely enclosed building, except for legally permitted outdoor eating areas and sidewalk sales.
- C. Where businesses in this district are adjacent to residentially zoned or used property, all service areas, including but not limited to, loading docks and doors, dumpsters, etc. shall be screened by a solid six (6) foot high fence, wall or dense evergreen hedge. Fences and walls shall be consistent with the architecture of the development or principal building. Any vegetative or architectural screening located along a side property line shall not extend beyond the front façade of the residential structure located on the adjacent lot.
- D. In addition to the Off-Street Parking and Loading standards specified in Section 26.7, the following apply to properties fronting on Main Street from Pottawattomi Drive south to Prairie Street, Jackson Boulevard from Main Street east to Prairie Street/Johnson Street, and Elkhart Avenue from Johnson Street south to Waterfall Drive. (as amended per Ordinance No. 5606 on August 11, 2017.)

1. Parking areas shall not be located in the front or side yard.
  2. The number of parking spaces required under Section 26.7 may be reduced by up to 50% for structures that include at least two floors of occupiable space.
  3. Contiguous on-street parking spaces may be counted toward the required number of spaces for adjacent parcels.
  4. Parking lots shall be designed to provide coordinated access to parking areas on adjoining lots or parcels within the CBD. A Site Circulation Plan shall be submitted as part of the development plan review process to reinforce a common alley/access road to the rear parking lots for parcels along Main Street, Jackson Boulevard, and Elkhart Avenue.
  5. If access to parking areas may be gained from another street, alley, or adjacent lot, a curb cut shall not be established on Main Street, Jackson Boulevard, or Elkhart Avenue.
  6. Rear accesses should be designed to connect and reinforce a grid development pattern.
  7. New curb cuts shall be a maximum of 24 feet in width.
  8. Closure of existing curb cuts on Main Street, Jackson Boulevard, or Elkhart Avenue is strongly encouraged. A signage bonus of an additional 20% of the sign area permitted under Section 26.10 shall be awarded if all curb cuts onto Main Street or Jackson Boulevard for a parcel are closed.
- E. In addition to the Type II Design Standards specified in Section 24, the following architectural design standards shall be required as part of the development plan approval process when new buildings are proposed or existing structures are altered in the CBD:
1. Any site designated as a single site historic district or located within an established historic district shall obtain approval for all exterior development (building and site) from the Elkhart City Historic and Cultural Preservation Commission.
  2. All exterior wall building materials shall be high quality, and shall be any combination of the following: (as amended per Ordinance No. 5606 on August 11, 2017.)
    - a. Brick
    - b. Stone
    - c. Wood, excluding plywood (no more than 25% of the street facing façade)
    - d. Glass, excluding glass block
    - e. Textured concrete masonry units

- f. Smooth concrete masonry units, however they may be no more than 25% of any single façade.
    - g. Architectural precast panels
    - h. Architectural metal, with corrugated metal comprising no more than 25% of any single façade.
    - i. Exterior Insulation and Finish Systems (EIFS), with no more than 25% of the street facing façade and must be located a minimum of 24 inches above the finished grade.
    - j. Fiber cement board
    - k. Or other high quality material as approved by Plan Commission
  - 3. Exterior bars on windows, “scissor” security gates, and roll up doors are prohibited on street facing facades along Main Street, Jackson Boulevard, and Elkhart Avenue. (as amended per Ordinance No. 5606 on August 11, 2017.)
  - 4. All structures along Main Street, Jackson Boulevard, and Elkhart Avenue must have at least one sidewalk facing, pedestrian entrance. (as amended per Ordinance No. 5606 on August 11, 2017.)
  - 5. For nonresidential, ground floor facades along Main Street, Jackson Boulevard, or Elkhart Avenue, at least 50% of the wall surface between 3 feet and 8 feet must be glass or other transparent material and allow views from the sidewalk into the interior space. Upper floors, including those for residential use, must be at least 15% transparent in the space between floor and ceiling height. (as amended per Ordinance No. 5606 on August 11, 2017.)
  - 6. Façades on Main Street, Jackson Boulevard, or Elkhart Avenue shall include relief elements including but not limited to, windows and surrounds, storefronts, doors, and details such as special brick coursing, pilasters, or lintels. (as amended per Ordinance No. 5606 on August 11, 2017.)
  - 7. All roof mounted mechanical equipment shall be screened through the use of a parapet wall or other design detail, as approved by the Plan Commission or its staff (as amended per Ordinance No. 5606 on August 11, 2017.)
- F. Stormwater Best Management Practices are strongly encouraged in new development and redevelopment. (as amended per Ordinance No. 5606 on August 11, 2017.)
- 1. Stormwater planters, rain gardens, bio-retention areas, and other green infrastructure practices may be substituted for parking lot landscaping, buffer yard landscaping, and other landscaping requirements, as approved by the City Engineer or designee.

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2. Maximum lot coverage may be increased to a total of 85% of the lot given the use of permeable pavers in parking areas, as approved by the City Engineer.
- G. Permanent, free-standing signs shall be prohibited in front yards along Main Street, Jackson Boulevard, and Elkhart Avenue. (as amended per Ordinance No. 5606 on August 11, 2017.)
- H. Bicycle and Pedestrian Facilities: (as amended per Ordinance No. 5606 on August 11, 2017.)
1. Dedicated pedestrian paths shall be provided from parking areas to building entrances.
  2. Trails and multi-use paths identified in the City's Comprehensive Plan, River District Plan, or other adopted City plans shall be incorporated into site development plans on applicable parcels.
  3. The dedication of right-of-way for bicycle and pedestrian facilities along Main Street, Jackson Boulevard, or Elkhart Avenue may be required as a condition of development plan approval.
  4. Maximum lot coverage may be increased to a total of 85% of the lot given the provision of additional bicycle or pedestrian facilities, a kayak launch, or other recreation amenities, at the approval of Planning Staff.
- I. Placement of new utilities: (as amended per Ordinance No. 5606 on August 11, 2017.)
1. The installation of new utility systems, including water, sewer, gas, telephone, cable television and electric, along with component parts, structures, appendages and materials, shall be installed underground in a manner approved by the applicable utility provider and in accordance with all city standards. Aboveground utility systems will not be permitted, except where certain appurtenances and accessory equipment must be installed above ground for servicing. Examples of such accessory equipment include fire hydrants, gas and electrical meters, electric service cabinets, irrigation controllers, and similar features.
  2. Parcels adjacent to existing easements or public rights-of-way where overhead utility supply lines and service connections have previously been installed may be supplied with service from those overhead lines, but the service connections from the overhead lines shall be installed underground. Should a road widening or an extension of service, or other such condition occur as a result of the proposed development and necessitate the replacement or relocation of such utilities, such replacements or relocation shall be underground.
  3. Where undergrounding of utilities within a site is not feasible due to utility or infrastructure conflicts, topographic conditions, or site limitations, alternative placement shall be approved by the Plan Commission and landscape screening may be required as a condition of approval.

4. Electric power transmission lines are exempt from these requirements.

**15.6 Nonconforming Uses, Lots, Structures, and Signs** (as amended per Ordinance No. 5606 on August 11, 2017.)

- A. Nonconforming uses, structures, or nonconforming uses and structures in combination:
  1. Are permitted to make site and/or building improvements if such improvement does not increase any nonconformity.
  2. May be expanded one time, up to 25% of the gross floor area, but must still be able to meet all other development standards (ie parking requirements, landscaping, screening, etc.).
  3. Expansion of a nonconforming use and/or structure may not expand onto another zoning lot.
- B. Nonconforming signs:
  1. May not be enlarged.
  2. The message on a nonconforming sign may be altered so long as no new nonconformities are created.
  3. If a nonconforming sign remains blank for a period of 1 year, the sign shall be deemed abandoned and must be removed within a period of 2 months after abandonment.
  4. Nonconforming signs advertising a business that has ceased operation on the site for a period of 1 year shall be deemed abandoned and must be removed within a period of 2 months after abandonment.

**15.7 Supplemental Regulations**

- A. Special Flood Hazard Area Regulations - Section 21
- B. Wetlands Conservation District Regulations - Section 22
- C. Air Space Control Area Regulations - Section 25
- D. Accessory Structures and Swimming Pool Requirements - Section 26.1
- E. Landscape and Screening Requirements - Section 26.2
- F. Permitted Obstructions in Required Yards - Section 26.3
- G. Fence Requirements - Section 26.4
- H. Intersection Visibility Area Requirements - Section 26.5

- I. Primary Street Setback Requirements - Section 26.5
- J. Off-Street Parking and Loading Requirements - Section 26.7
- K. Sign Regulations - 26.10

## **SECTION 16**

### **OP, OFFICE PARK DISTRICT**

#### **Sections**

- 16.1 Purpose**
  - 16.2 Permitted Uses**
  - 16.3 Special Exception Uses**
  - 16.4 Yard Requirements**
  - 16.5 Development Conditions**
  - 16.6 Supplemental Regulations**
- 

#### **16.1 Purpose**

The OP Office Park District is intended for professional and administrative offices and research laboratories, developed on a large acreage under unified control. To maintain a park-like setting, the area is comprised of large lots with deep yards and ample off-street parking areas connected by private roads or driveways. This district has direct access to major thoroughfares or freeways. The business of the district generally occurs during daylight hours and involves no display or selling of merchandise.

#### **16.2 Permitted Uses**

- A. Professional and Business Offices
- B. Research, Development, and Technical Training Offices
- C. Laboratories
- D. Financial Institutions
- E. Charitable Organization offices.
- F. Restaurants, except drive-ins and those with drive-thru windows, whose sum total of land area does not exceed ten percent (10%) of the developable land within the office park.
- G. Restaurants, including fast food without drive-thru windows, when located entirely within a larger office building and comprising no more than ten percent (10%) of the constructed square footage of the building.
- H. Hotels and Motels, whose sum total of land does not exceed twenty percent (20%) of the developable land within the office park development, with or without enclosed restaurants and meeting rooms.
- I. Day Care Centers, when located within a larger office building and serving only the needs of that office building.
- J. Accessory structures and uses.



### 16.3 Special Exception Uses

- A. Stand-alone Day Care Centers, to serve the needs of more than one office building
- B. Heliports
- C. Public Utilities and Service Uses

### 16.4 Yard Requirements

Yard requirements for the OP, Office Park District are as follows: (All standards minimum except as noted.)

“Corner Side Yard: The Corner Side Yard setback is determined by measuring the average established setback of the structures within the same block between two intersecting streets. This calculation would equal the established front yard setback for the side street.”

Lot Size	Frontage	Setbacks			Maximum Structure Height	Maximum Lot Coverage for Structures	Minimum District Size
		Front Yard	Side Yards	Rear Yard			
0.5 acre	100 feet	60 feet	30 feet	30 feet	65 feet	40% total	5 acres

### 16.5 Development Conditions

- A. A development plan shall be submitted to the Planning and Zoning Office for review and approval in accordance with Section 24. All development shall comply with Type I Design Standards as specified in Section 24.
- B. The development shall be a unified and organized arrangement of structures, parking areas, walks, lighting and appurtenant facilities.
- C. An OP district may only be established on a tract of land that is in single ownership or under other means of unified control.
- D. An OP district shall be located on property which has direct access to major arterials or freeways designed to carry the additional traffic generated by such a development. All individual properties shall be internally accessed.
- E. The proposed development shall be compatible with the properties immediately adjacent to the proposed development.
- F. Provision shall be made at points of ingress, egress and within the district to ensure a free and safe flow of vehicular and pedestrian traffic.
- G. All service areas for loading and unloading vehicles, and all areas for storage and collection of trash and garbage shall be properly screened using natural plantings and/or compatible building materials so as to conceal such activities from all street, parking and walkway views and from adjoining properties outside the office park.

- H. The development will not impose an undue burden on public services and facilities, such as fire and police protection.
- I. All on-premise signage, both for individual businesses within the park and for the park itself, shall be limited to monument signs only.
  - 1. Signs for individual buildings shall be limited to a maximum six (6) feet in height and fifty (50) square feet in area, except for signage facing limited access highways which may be a maximum ten (10) feet in height and 75 square feet in area.
  - 2. Signs identifying the park shall be limited to a maximum ten (10) feet in height and 75 square feet in area with a 25-foot setback from the public right-of-way.
- J. In addition to the standard landscape requirements of this ordinance the following shall apply:
  - 1. A minimum of twenty percent (20%) of the building site shall be in open space. Open space shall be landscaped to include the following:
    - a. Ground cover, including grass
    - b. Shrubs, vines and/or hedges
    - c. Individual trees or grouped trees and/or natural vegetation in the form of wooded areas with a minimum of one (1) tree per five thousand (5,000) square feet of open space.
  - 2. Non-living durable materials commonly used in landscaping may also be included, such as, but not limited to, rocks, pebbles, sand, berms, ponds, walkways, or fences. Landscaped areas within parking areas, such as control islands, shall not be included for purposes of calculating the twenty percent (20%) open space requirement.
  - 3. All surface drainage retention ponds shall be free form in shape (curvilinear rather than rectilinear) and be incorporated into the overall landscape design of the park or individual lot which it serves.
  - 4. Where an OP district abuts residentially zoned land or land shown as residential on the adopted land use plan for the City of Elkhart, there shall be a minimum twenty (20) foot greenway consisting of a combination of trees, shrubs, and ground cover. At least fifty (50) percent of the greenway frontage abutting residential land shall contain shrubs and trees with a minimum of one (1) tree for every forty (40) lineal feet of greenway. An earthen berm(s) or ornamental masonry wall or wood fence may be incorporated into the greenway, however, if a wall or fence is used, vegetative landscaping shall be placed between the wall or fence and the property line to provide visual relief.

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- 5. A combination of trees and/or natural plant groupings shall be planted in front yards along all principal interior roadways at intervals no greater than seventy-five (75) feet.
  - K. No principal building within the OP district shall be constructed within fifty (50) feet of the district boundary.
  - L. No free-standing restaurant, hotel or motel may be constructed within an approved office park until at least fifty thousand (50,000) square feet of office/laboratory structures have been constructed.
  - M. Architectural Requirements
    - 1. All structures must present a decorative façade on all sides which face roadways, parking areas, or can be viewed from the district boundary.
    - 2. The following exterior building materials shall be prohibited:
      - a. Smooth or standard concrete block, whether painted or unpainted.
      - b. Corrugated or vertical metal siding on any façade facing roadways or parking areas. All other facades shall be limited to a maximum of twenty-five percent (25%) of the total façade surface.
      - c. Sheet plywood, composite board, or similar materials.
      - d. Metal roofing, except raised seamless or other decorative roofing approved by the Planning and Zoning Office.
    - 3. The architecture of restaurants, motels and hotels (including chain and franchise operations) shall be consistent with the overall architectural treatment within the office park.

#### **16.6 Supplemental Regulations**

- A. Special Flood Hazard Area Regulations - Section 21
- B. Wetlands Conservation District Regulations - Section 22
- C. Air Space Control Area Regulations - Section 25
- D. Accessory Structures and Swimming Pool Requirements - Section 26.1
- E. Landscape and Screening Requirements - Section 26.2
- F. Permitted Obstructions in Required Yards - Section 26.3
- G. Fence Requirements - Section 26.4
- H. Intersection Visibility Area Requirements - Section 26.5
- I. Primary Street Setback Requirements - Section 26.5

- J. Off-Street Parking and Loading Requirements - Section 26.7
- K. Sign Regulations - 26.10

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## **SECTION 17**

### **BP, BUSINESS PARK DISTRICT**

#### **Sections**

- 17.1 Purpose**
  - 17.2 Permitted Uses**
  - 17.3 Special Exception Uses**
  - 17.4 Yard Requirements**
  - 17.5 Development Conditions**
  - 17.6 Supplemental Regulations**
- 

#### **17.1 Purpose**

The Business Park District is designed to accommodate large scale office, light fabrication, assembly, distribution and mixed-use facilities which are located adjacent to regional freeways or major arterials and have a high level of site and building façade design.

#### **17.2 Permitted Uses**

- A. Single- or Multi-Tenant Office Buildings for professional, administrative, clerical or sales purposes.
- B. All uses permitted in the M-1, Limited Manufacturing District, excepting outside storage, developed and operated in compliance with section 17.5, Development Conditions. (as amended per Ordinance No. 4462, on January 13, 2000).
- C. Facilities with mixed uses including offices, warehousing, sales, repair, fabrication, and distribution or any combination thereof.
- D. Research laboratories for scientific research, investigation, testing or experimentation which may include prototype product development.
- E. Financial Institutions, with or without drive-thru windows, whose sum total of land area does not exceed ten percent (10%) of the developable land area of the business park.
- F. Express Package Delivery
- G. Motion Picture Production
- H. Restaurants, except drive-ins and those with Drive-Thru windows, whose sum total of land area does not exceed ten percent (10%) of the developable land area within the business park.
- I. Hotels and Motels, including dining and meeting rooms, whose sum total of land area does not exceed twenty percent (20%) of the developable land area of the business park.
- J. Accessory structures and uses

- K. Day Care Centers, when enclosed within a larger building and serving only the needs of that building

### **17.3 Special Exception Uses**

- A. Stand-alone Day Care Centers
- B. Heliports
- C. Public Utilities and Service Uses
- D. Parking Structures
- E. Colleges and Universities
- F. Broadcast Studios
- G. Communication Towers not specified in Section 27, Wireless Telecommunications Facilities

### **17.4 Yard Requirements**

Yard requirements for the BP, Business Park District are as follows: (All standards are minimums except as noted.)

“Corner Side Yard: The Corner Side Yard setback is determined by measuring the average established setback of the structures within the same block between two intersecting streets. This calculation would equal the established front yard setback for the side street.”

Lot Size	Frontage	Setbacks			Maximum Structure Height	Maximum Lot Coverage for Structures	Minimum District Size
		Front Yard	Side Yards	Rear Yard			
1.0 acre	150 feet	50 feet	25 feet	50 feet	65 feet	40% total	5 acres

### **17.5 Development Conditions**

- A. A development plan shall be submitted to the Planning and Zoning Office for review and approval in accordance with Section 24. All development shall comply with Type I Design Standards as specified in Section 24.
- B. The development shall be a unified and organized arrangement of structures, parking areas, walks, lighting and appurtenant facilities.
- C. A BP district may only be established on a tract of land that is in single ownership or under other means of unified control.
- D. The proposed development shall be compatible with the properties and uses of properties immediately adjacent to the proposed development.

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- E. The locations of a BP district shall be on property which has direct access to major arterials or freeways, designed to carry the additional automobile and truck traffic generated by such a development. All developments shall be internally accessed.
  - F. All structures must present a decorative façade on all sides which face roadways, parking areas, or can be viewed from the district boundary.
  - G. Provision shall be made at points of ingress, egress and within the district to ensure a free and safe flow of vehicular traffic.
  - H. All service areas for loading and unloading vehicles, and all areas for collection of trash and garbage shall be properly screened using a combination of natural plantings and fences or masonry walls which are architecturally consistent with the principal building(s) so as to conceal such activities from all public streets and parking area views. (As amended per Ordinance No. 4462, on January 13, 2000.)
  - I. The development will not impose an undue burden on public services and facilities, such as fire and police protection.
  - J. The activity within the district shall create no noise perceptible on the district boundary lines and no smoke, heat or glare.
  - K. All on-premise signage, both for individual businesses within the park and for the park itself, shall be limited to monument signs only.
    - 1. Signs for individual buildings shall be limited to a maximum six (6) feet in height and fifty (50) square feet in area, except for signage facing limited access highways which may be a maximum ten (10) feet in height and 75 square feet in area.
    - 2. Signs identifying the park shall be limited to a maximum ten (10) feet in height and 75 square feet in area with a 25-foot setback from the public right-of-way.
  - L. In addition to the standard landscape requirements of this ordinance the following shall apply:
    - 1. A minimum of twenty percent (20%) of the building site shall be in open space. Open space located in a front, corner side yard and the front one-third (1/3) of a side yard of a property shall be landscaped to include the following:
      - a. Ground cover, including grass
      - b. Shrubs, vines and/or hedges.
      - c. Individual trees or grouped trees and/or natural vegetation in the form of wooded areas with a minimum of one (1) tree per 5,000 square feet of open space.
    - 2. Non-living durable materials commonly used in landscaping may also be included, such as, but not limited to, rocks, pebbles, sand, berms, ponds, walkways, or fences. Landscaped areas within parking areas, such as

control islands, shall not be included for purposes of calculating the twenty percent (20%) open space requirement.

3. All surface drainage retention ponds shall be free form in shape (curvilinear rather than rectilinear) and be incorporated into the overall landscape design of the park or individual lot which it serves.
  4. Where a BP district abuts residentially zoned land or land shown as residential on the adopted land use plan for the City of Elkhart, there shall be a minimum twenty (20) foot greenway consisting of a combination of trees, shrubs, and ground cover. At least fifty percent (50%) of the greenway frontage abutting residential land shall contain shrubs and trees with a minimum of one (1) tree for every forty (40) lineal feet of greenway. An earthen berm(s) or ornamental masonry wall or wood fence may be incorporated into the greenway. However, if a wall or fence is used, vegetative landscaping shall be placed between the wall or fence and the property line to provide visual relief.
  5. A combination of trees and/or natural plan groupings shall be planted in front yards along all principal interior roadways at intervals no greater than seventy-five (75) feet.
- M. No principal building shall be constructed within fifty (50) feet of the BP district boundary.
- N. No materials, inventory, products, equipment or other personal property shall be stored outside. (As amended per Ordinance No. 4462 on January 13, 2000.)
- O. No free-standing restaurant, hotel, or motel may be constructed within an approved BP district until at least fifty thousand (50,000) square feet of office, laboratory, assembly, light fabrication, or warehousing structures have been constructed.

## **17.6 Supplemental Regulations**

- A. Special Flood Hazard Area Regulations - Section 21
- B. Wetlands Conservation District Regulations - Section 22
- C. Air Space Control Area Regulations - Section 25
- D. Accessory Structures and Swimming Pool Requirements - Section 26.1
- E. Landscape and Screening Requirements - Section 26.2
- F. Permitted Obstructions in Required Yards - Section 26.3
- G. Fence Requirements - Section 26.4
- H. Intersection Visibility Area Requirements - Section 26.5



- I. Primary Street Setback Requirements - Section 26.5
- J. Off-Street Parking and Loading Requirements - Section 26.7
- K. Sign Regulations - 26.10

## **SECTION 18**

### **M-1 LIMITED MANUFACTURING DISTRICT**

#### **Sections**

- 18.1 Purpose**
  - 18.2 Permitted Uses**
  - 18.3 Special Exception Uses**
  - 18.4 Conditional Uses**
  - 18.5 Existing “B” Business Uses**
  - 18.6 Yard Requirements**
  - 18.7 Development Conditions**
  - 18.8 Supplemental Regulations**
- 

#### **18.1 Purpose**

The M-1 District is designed to accommodate limited manufacturing uses having a minimal impact on surrounding areas. The intent is to allow manufacturing development by reason of location and the availability of adequate transportation and infrastructure systems, while protecting the surrounding uses from negative external effects.

#### **18.2 Permitted Uses**

- A. Wholesale businesses
- B. Service businesses that provide support services to manufacturing uses
- C. Manufacturing, assembly, warehousing, and distribution of previously prepared material
- D. Office uses related to the manufacturing activities
- E. Automobile and truck repair or vehicle conversion shops, including painting, upholstering, reconditioning, and body repair when performed entirely within a building
- F. Machine, tool, and die shops, including presses and similar equipment in compliance with Section 18.7 (E), Development Conditions
- G. Public utilities substations and distribution centers
- H. Indoor and outdoor storage facilities, except when located in the front yard (as amended per Ordinance 4592 June 13, 2001)
- I. Equipment Rental Facilities
- J. Printing and publishing establishments
- K. Building supply store, including lumber sales

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- L. Recycling centers, excluding chemical processing and tire recycling
  - M. Kennels and animal hospitals
  - N. Laundries, commercial
  - O. Paint shops
  - P. Archery/rifle range, when located entirely within a building.
  - Q. Motor freight terminal, excluding hazardous waste
  - R. Truck, tractor, trailer or bus storage, parking lot or yard, or garage
  - S. Warehousing
  - T. Boat building and repair
  - U. Bicycle manufacture
  - V. Recreational vehicle manufacture
  - W. Trailer and mobile home manufacture, and manufactured housing
  - X. Auction barns
  - Y. Canning and preserving
  - Z. Clothing and textile manufacture, including dyeing and printing
  - AA. Contractors offices, shops and storage facilities
  - BB. Drugs and pharmaceutical products manufacture
  - CC. Production and use of food grade chemicals, acids and enzymes
  - DD. Crematoriums (as amended per Ordinance No. 4444 on August 20, 1999)
  - EE. Outside storage, provided that it is not located in the front yard area. (as amended per Ordinance No. 4462, on January 13, 2000)
  - FF. Professional Offices (as amended per Ordinance No. 4462, on January 13, 2000)
  - GG. Wireless Communication Facilities, as defined in Section 27 of this ordinance. (as amended per Ordinance No. 4457 on December 8, 1999)
  - HH. Perfumes and cosmetics manufacture (as amended per Ordinance No. 4592 on June 13, 2001)

- II. Outside storage of liquids or gases in one or more tanks, where total volume of the tank(s) does not exceed 2000 gallons. (as amended per Ordinance No. 4683 July 10, 2002)

- JJ. Laboratories (as amended per Ordinance no. 4985 on September 22, 2006)

### **18.3 Special Exception Uses**

- A. Television, and radio towers not included in Section 27, Wireless Telecommunications Facilities (as amended per Ordinance No. H 4457 on December 8, 1999)
- B. Airports and heliport landing fields
- C. Railroad Facilities
- D. Excavation areas/gravel pit
- E. Motor freight terminals, except hazardous waste
- F. Stadiums, auditoriums, arenas
- G. Automobile drive-in theaters
- H. Recycling Centers involving used tires and/or any chemical processing of materials
- I. Tattoo Parlors
- J. Public utilities and service uses
- K. Bulk storage tanks including liquids or gases that require filing a Tier 1 or 2 SARA report or those that exceed an NFPA classification of 2.  
(As amended per Ordinance No. 4683 July 10, 2002)
- L. Storage of any liquid or gas in excess of 10,000 gallons.  
(As amended per Ordinance No. 4683 July 10, 2002)

### **18.4 Conditional Uses**

Adult Entertainment Establishments

### **18.5 Existing "B" Business Uses**

Business uses permitted in the "B" zoning districts which are in existence on the effective date of this Ordinance may be expanded within the limits of the existing zoning lot upon which they are located so long as all other requirements of this zoning district are satisfied. Creation of new "B" uses on currently vacant zoning lots or the expansion of a zoning lot upon which an existing "B" use is located is prohibited within the M-1 district.

## 18.6 Yard Requirements

The yard requirements for the M-1, Limited Manufacturing District are as follows: (All standards are minimums except as noted.)

“Corner Side Yard: The Corner Side Yard setback is determined by measuring the average established setback of the structures within the same block between two intersecting streets. This calculation would equal the established front yard setback for the side street.”

Lot Size	Frontage	Setbacks			Height	Maximum Lot Coverage for Structures	F.A.R
		Front Yard	Side Yards	Rear Yard			
No Minimum	No Minimum	25 feet	15 feet each or 25 feet each when abutting a residential district	10 feet or 30 feet when abutting a residential district	75 feet; maximum of 2 towers with a maximum height of 90 feet each	60% total	3

## 18.7 Development Conditions

- A. The district shall have major transportation facilities readily available.
- B. The transportation systems serving this district shall not be routed through a residential development, or a street serving a school.
- C. All operations, servicing, and processing shall be conducted within completely enclosed buildings or structures, except; airport/heliport, excavation activities, outdoor storage, and large equipment rentals.
- D. No emission of toxic or noxious matter, which is injurious to human health, comfort, or enjoyment of life and property or to animal or plant life shall be permitted. Where such emissions could be produced as a result of an accident or equipment malfunction, adequate safeguards considered suitable for safe operation in the industry involved shall be taken.
- E. No person, firm or corporation shall cause vibrations which can be detected without the use of instruments at or beyond the property boundaries.
- F. In addition to the standard landscape requirements of this ordinance the following shall apply:
  1. In the event a property to be developed in this district is adjacent to a residentially zoned property along a common rear or side lot line, whether separated by an alley or not, a visual and physical screen, a minimum of six feet in height, shall be provided along the common lot line, which may consist of any of the following:

- a. An evergreen hedge used with a chain link fence
  - b. A solid fence of a non-deteriorating material
  - c. Masonry wall
  - d. When a fence or masonry wall is used, plantings (trees, shrubs, etc.) shall be installed so as to reduce its visual impact.
- 2. In the event a property to be developed in this district is across a street from residentially zoned property a visual and physical screen, a minimum of six feet in height, shall be provided as necessary to screen any outside storage of materials or loading facilities.
- G. No building or structure shall be used for residential purposes except that a watchman or custodian may reside on the premises.
- H. In the event that a property to be developed in this district is adjacent to or across an alley from a residentially zoned property the following setbacks for on-site parking shall apply:

Parcel Size	Setback from Property Line
< 1 acre	15 feet
1 to 3 acres	20 feet
> 3 acres	30 feet

#### **18.8 Supplemental Regulations**

- A. Special Flood Hazard Area Regulations - Section 21
- B. Wetlands Conservation District Regulations - Section 22
- C. Air Space Control Area Regulations - Section 25
- D. Accessory Structures and Swimming Pool Requirements - Section 26.1
- E. Landscape and Screening Requirements - Section 26.2
- F. Permitted Obstructions in Required Yards - Section 26.3
- G. Fence Requirements - Section 26.4
- H. Intersection Visibility Area Requirements - Section 26.5
- I. Primary Street Setback Requirements - Section 26.5
- J. Off-Street Parking and Loading Requirements - Section 26.7
- K. Sign Regulations - 26.10

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## **SECTION 19**

### **M-2, GENERAL MANUFACTURING DISTRICT**

#### **Sections**

- 19.1 Purpose**
  - 19.2 Permitted Uses**
  - 19.3 Special Exception Uses**
  - 19.4 Conditional Uses**
  - 19.5 Existing “B” Business Uses**
  - 19.6 Yard Requirements**
  - 19.7 Development Conditions**
  - 19.8 Supplemental Regulations**
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#### **19.1 Purpose**

The M-2 District is designed to accommodate a broad range of industrial activities, diverse in products, operational techniques, and size, which have a greater impact on the surrounding environment than the M-1 District. The uses permitted in this district generally include those manufacturing and industrial activities which cannot be operated economically without creating some conditions which may be objectionable to the occupants of adjoining properties and which, for that reason, must be grouped in areas where similar industrial uses are now located or where the permitted uses will be best located in accordance with the comprehensive land use plan of the City, which is designed to protect the welfare of the community.

#### **19.2 Permitted Uses**

- A. All uses allowed within the M-1, Limited Manufacturing district
- B. Perfumes and cosmetics manufacture
- C. Steel mills
- D. Boiler shops
- E. Foundries and foundry products
- F. Sewage treatment plants
- G. Aircraft, automobile, and truck manufacturing
- H. Alcoholic beverages manufacture
- I. Box and crate manufacture, requiring the processing of raw materials
- J. Building materials manufacture, including prefabricated houses, composition wallboards, partitions and panels
- K. Cement products manufacture, such as blocks or pipes

- L. Chalk or charcoal manufacture
- M. Corrugated metal product manufacture
- N. Wood or laminate product manufacture, including furniture, barrels, coffins
- O. Dye, ink pigments and other manufacture
- P. Feed milling, processing and storage
- Q. Glass blowing and manufacture, industrial
- R. Graphite and graphite products manufacture.
- S. Hemp products manufacture
- T. Lumber, preserving treatment, processing, sawmills and planing mills
- U. Machinery, heavy manufacturing and repair including electrical, construction, mining, and agricultural manufacture
- V. Stamping and extrusion of products, other than permitted in the M-1 district
- W. Millwork and molding
- X. Porcelain and similar products, such as bathroom and kitchen equipment manufacture
- Y. Railroad equipment, such as railroad cars and locomotive manufacture
- Z. Rubber products, including tires and tubes manufacture and tire recapping
- AA. Scrap processing yards
- BB. Wood pulp products, including paper manufacturing
- CC. Engraving, industrial
- DD. Metal polishing and plating
- EE. Musical instrument manufacture
- FF. Any other manufacturing establishment that can be operated in compliance with the requirements of this Section without creating objectionable noise, odor, dust, smoke, gas fumes or vapor, and that is a use compatible with the uses listed above. (As amended Ord. No. 4683 July 10, 2002)
- GG. Laboratories (as amended Ordinance No. 4985 on September 22, 2006)



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### 19.3 Special Exception Uses

- A. All special exception uses listed under the M-1 Limited Manufacturing district
- B. Animal slaughter houses and stockyards
- C. Arsenal
- D. Cement and lime manufacturing facilities
- E. Hazardous waste disposal, generators, facilities, and motor freight terminals
- F. Salvage yards
- G. Those uses that have been declared a nuisance; or may be unreasonably obnoxious, offensive, hazardous in the opinion of the Planning and Zoning Staff, by reason of the omission of odor, vapor, smoke, gas, noise or explosive nature.  
(As amended Ord. No. July 10, 2002)
- H. Manufacture of gases, acids, chemicals and poisons, other than those permitted in the M-1 district
- I. Rock crushing
- J. Stone mills and quarries
- K. Any other use not qualifying as a permitted use in the M-2 district

### 19.4 Conditional Uses

Adult Entertainment

### 19.5 Existing “B” Business Uses

Business uses permitted in the “B” zoning districts which are in existence on the effective date of this Ordinance may be expanded within the limits of the existing zoning lot upon which they are located so long as all other requirements of this zoning district are satisfied. Creation of new “B” uses on currently vacant zoning lots or the expansion of a zoning lot upon which an existing “B” use is located is prohibited within the M-2 district.

### 19.6 Yard Requirements

The yard requirements for the M-2, General Manufacturing District are as follows: (All standards are minimums except as noted.)

“Corner Side Yard: The Corner Side Yard setback is determined by measuring the average established setback of the structures within the same block between two intersecting streets. This calculation would equal the established front yard setback for the side street.”

(see next page)

Lot Size	Frontage	Setbacks			Maximum Structure Height	Maximum Lot Coverage for Structures	F.A.R.
		Front Yard	Side Yards	Rear Yard			
No Minimum	No Minimum	25 feet	15 feet each or 50 feet each when abutting a residential district	10 feet or 50 feet when abutting a residential district	75 feet; maximum of 2 towers of 90 feet in height	60% total	3

### 19.7 Development Conditions

- A. This district shall have major transportation facilities readily available.
- B. The transportation systems serving this district shall not be routed through a residential development, or a street serving a school.
- C. Junk yard uses permitted in the M-2 zoning district shall be confined to tracts located at least six hundred (600) feet from property zoned for residential purposes.
- D. No emission of toxic or noxious matter, which is injurious to human health, comfort, or enjoyment of life and property or to animal or plant life shall be permitted. Where such emissions could be produced as a result of an accident or equipment malfunction, adequate safeguards considered suitable for safe operation in the industry involved shall be taken.
- E. No person, firm or corporation shall cause vibrations which can be detected without the use of instruments at or beyond the district boundaries.
- F. An operation that produces intense glare or heat shall be performed within a completely enclosed building or structure and exposed sources of light shall be screened so not to be detectable at the district boundary.
- G. No building or structure shall be used for residential purposes.
- H. In addition to the standard landscape and screening requirements of this ordinance the following shall apply:
  - 1. In the event a property to be developed in this district is adjacent to a residentially zoned property along a common lot line, whether separated by an alley or not, a visual and physical screen, a minimum of six (6) feet in height, shall be provided along the common lot line, which may consist of any of the following:
    - a. An evergreen hedge used with a chain link fence
    - b. A solid fence of a non-deteriorating material

- c. Masonry wall
  - d. When a fence or masonry wall is used, plantings (trees, shrubs, etc.) shall be installed so as to reduce its visual impact.
2. In the event a property to be developed in this district is across a street from residentially zoned property a visual and physical screen, a minimum of six feet in height, shall be provided as necessary to screen any outside storage of materials or loading facilities.
- I. In the event that a property to be developed in this district is adjacent to or across an alley from a residentially zoned property, the following setbacks for on-site parking shall apply:

Parcel Size	Setback from Property Line
< 1 acre	15 feet
1 to 3 acres	20 feet
> 3 acres	30 feet

## 19.8 Supplemental Regulations

- A. Special Flood Hazard Area Regulations - Section 21
- B. Wetlands Conservation District Regulations - Section 22
- C. Air Space Control Area Regulations - Section 25
- D. Accessory Structures and Swimming Pool Requirements - Section 26.1
- E. Landscape and Screening Requirements - Section 26.2
- F. Permitted Obstructions in Required Yards - Section 26.3
- G. Fence Requirements - Section 26.4
- H. Intersection Visibility Area Requirements - Section 26.5
- I. Primary Street Setback Requirements - Section 26.5
- J. Off-Street Parking and Loading Requirements - Section 26.7
- K. Sign Regulations - 26.10

## **SECTION 20**

### **PUD, PLANNED UNIT DEVELOPMENT DISTRICT**

#### **Sections**

- 20.1 Purpose**
  - 20.2 Permitted Uses**
  - 20.3 Requirements**
  - 20.4 Submittal Requirements**
  - 20.5 Plan Commission Action**
  - 20.6 Council Action**
  - 20.7 Secondary Review**
  - 20.8 Issuance of Permits**
  - 20.9 Revocation of Permits**
  - 20.10 Modifications to Approved Final Site Plans**
  - 20.11 Authority of Reviewing Body**
  - 20.12 Proof of Recording of Approved Final Site Plan**
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#### **20.1 Purpose**

The Planned Unit Development (PUD) District is designed to encourage quality land development and site design without the use of typical zoning standards. The purpose of this Section is to improve and protect the public health, safety, and welfare by pursuing the following objectives.

- A. To ensure that future development which occurs is in accordance with the Comprehensive Plan.
- B. To encourage innovations in land development and redevelopment.
- C. To foster the safe, efficient, and economic use of the land, transportation, public facilities, and services.
- D. To facilitate the provision of adequate public services such as transportation, water, sewer, storm, drainage, electricity, and public parks.
- E. To avoid the inappropriate development of lands and provide for adequate drainage and reduction of flood damage.
- F. To encourage patterns of land use which decrease trip length of automobile travel and encourage trip consolidation.
- G. To minimize adverse environmental impacts of development.
- H. To improve the design, quality, and character of new development.
- I. To foster a more rational pattern of relationship between residential, business, and industrial uses.

- J. To protect existing neighborhoods from harmful encroachment by intrusive or disruptive development.

## **20.2 Permitted Uses**

All permitted, special exception, and conditional uses enumerated in this ordinance are expressly permitted at the time the PUD is established.

## **20.3 Requirements**

- A. Unified design. The tract of land submitted for PUD development must be developed as a single design entity even though it may be developed in phases or contain a wide variety of uses and activities otherwise not necessarily compatible with one another.
- B. Entire tract must be under single control. All land in the tract submitted as the PUD application must be under the control of the applicant. The narrative text that accompanies the preliminary plan must demonstrate that this control will be workable throughout the PUD development period.
- C. Size requirements - two (2) acre minimum. (as amended per Ordinance No. 4462, January 13, 2000.

## **20.4 Submittal Requirements**

- A. Petitioner shall submit to the Planning and Zoning Office:
  - 1. A completed application for a PUD zone change;
  - 2. A preliminary site plan one (1) copy if eleven inches by seventeen inches (11" x 17") or smaller, otherwise fifteen (15) copies). See 20.4.B. and 20.4.C. below for specific submittal requirements for Conceptual or Standard PUDs; and
  - 3. Any written documentation describing the PUD, by the filing date specified by the Plan Commission.
- B. Conceptual PUD
  - 1. General site plan, including but not limited to: property boundaries, existing natural features on or adjacent to the site, general street layout, proposed uses, individual parcels, setbacks and/or buffers from adjoining properties, and a general on-site drainage plan.
  - 2. Written documentation explaining the nature and purpose of the PUD and providing supplemental information for the site plan, including any restrictive covenants.
- C. Standard PUD
  - 1. A detailed site plan including:

- a. Proposed dimensional layout to scale of any streets, buildings, building elevations (if available), open space, lots, parking areas, signage, on-site drainage, landscaping, and other elements basic to the development; and
  - b. Proposed locations, densities, and types of uses within the area of the development.
- 2. Any written documentation providing supplemental information for the site plan, including any restrictive covenants.
- D. The Planning and Zoning Office may require submission of additional information deemed necessary for consideration of the PUD.

## **20.5 Plan Commission Action**

An application for a PUD shall be filed as a petition for an amendment to the zoning map of the City Zoning Ordinance. Following a public hearing, the Plan Commission shall pass the PUD application on to the Council with no recommendation or shall recommend denial, approval as submitted, or approval with modifications and/or conditions it may deem necessary. (as amended per Ordinance No. 4431 on July 23, 1999)

## **20.6 Council Action**

The PUD ordinance, site plan, and supporting written documentation, along with the Plan Commission recommendation, are forwarded to the City Council. Action by the Council shall be in accordance with Section 29.10(B), "Map Amendment" of the City Zoning Ordinance. If approved, with or without conditions, the PUD shall be implemented as follows:

- A. For a Standard PUD, implementation shall be in conformance with the final approved site plan, the written requirements listed in the adopted PUD ordinance, and all ordinances and regulations of the City not modified by the PUD.
- B. For a Conceptual PUD, implementation shall be in conformance with the procedures outlined under "Secondary Review" below.

## **20.7 Secondary Review**

- A. All Conceptual PUDs approved by the City Council must submit a final site plan for the PUD or individual parcel site plans for multiple site PUD's to the Plan Commission for final approval within the time frame specified in the PUD ordinance.
- B. The Plan Commission shall conduct a public hearing on the final site plan and provide all required notification to interested parties. Following the hearing, the Commission may approve the site plan as submitted or with modifications and/or conditions as it deems necessary. In making its decision, the Plan Commission must take into consideration requirements or conditions specified in the original PUD ordinance.

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**20.8 Issuance of Permits**

Permits and construction of the PUD or portion of the PUD shall be in compliance with the approved final site plan and all City ordinances and regulations not modified by the PUD.

**20.9 Revocation of Permits**

Failure to conform to the provisions of the PUD may result in a Stop Work Order being issued and shall require the developer to show just cause at a public hearing conducted by the Plan Commission why such permits issued for the PUD should not be revoked.

**20.10 Modifications to Approved Final Site Plans****A. Minor Modifications**

1. Modifications, such as minor relocation of a building, parking lot, or other site element, due to unforeseen site conditions, can be reviewed and approved by the Planning staff. An adverse decision by the Planning staff may be appealed to the Plan Commission as per 20.10.A.2. below.
2. All other modifications, except those deemed major as defined in 20.10.B. below, shall be presented in writing to the Plan Commission. The Commission shall review and reject or approve the proposed changes without a public hearing.

**B. Major Modifications**

Proposed changes to an approved PUD final site plan which:

1. Change the land area of the PUD;
2. Change the density of use of the PUD;
3. Allow a use previously not permitted in the PUD; or
4. Constitute a change which, in the sole discretion of the Plan Commission, should be considered by the City Council as a new proposed development; shall be deemed a new application for approval of a Planned Unit Development and shall follow the procedures previously set forth in this Section.

**20.11 Authority of Reviewing Body****A. City Council Action**

When adopting or amending a PUD ordinance the City Council may:

1. Impose reasonable conditions on a proposed PUD.
2. Condition issuance of a Zoning Clearance Permit on the furnishing of a bond or satisfactory written assurance guaranteeing the timely completion of any proposed public improvements.

3. Allow or require the property owner to make a written commitment.

B. Plan Commission or Planning Staff Action

When recommending adoption of a PUD ordinance to the City Council, or approving a final site plan or modification of a final site plan, the Plan Commission or Planning staff, as appropriate, may:

1. Impose reasonable conditions on a proposed PUD.
2. Condition issuance of a Zoning Clearance Permit on the furnishing of a bond or satisfactory written assurance guaranteeing the timely completion of any proposed public improvements.
3. Allow or require the property owner to make a written commitment.

**20.12 Proof of Recording of Approved Final Site Plan**

A copy of the approved final site plan shall be recorded at the Elkhart County Recorder's Office, and proof of such action in the form of a receipt of filing for recording of the documents provided to the Planning and Zoning staff shall be provided prior to the issuance of a certificate of occupancy for any such project. (Amended per Ordinance No. 4762 on August 1, 2003)



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**SECTION 21****FLOOD HAZARD AREAS FOR ELKHART, INDIANA**

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**Article 1. Statutory Authorization, Findings of Fact, Purpose, and Objectives.****Section A. Statutory Authorization.**

The Indiana Legislature has in IC 36-7-4 and IC 14-28-4 granted the power to local government units to control land use within their jurisdictions. Therefore, the Common Council of the City of Elkhart does hereby adopt the following floodplain management regulations.

**Section B. Findings of Fact.**

- (1) The flood hazard areas of the City of Elkhart are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages.

**Section C. Statement of Purpose.**

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

- (1) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging, and other development which may increase erosion or flood damage;
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands; and,
- (6) Make federally subsidized flood insurance available for structures and their contents in the City by fulfilling the requirements of the National Flood Insurance Program.

**Section D. Objectives.**

The objectives of this ordinance are:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in floodplains;
- (6) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas, and;
- (7) To ensure that potential homebuyers are notified that property is in a flood area.

**Article 2. General Provisions.****Section A. Lands to Which This Ordinance Applies.**

This ordinance shall apply to all Special Flood Hazard Areas (SFHAs) and known flood prone areas within the jurisdiction of the City of Elkhart.

**Section B. Basis for Establishing Regulatory Flood Data.**

This ordinance's protection standard is the regulatory flood. The best available regulatory flood data is listed below. Whenever a party disagrees with the best available data, the party submitting the detailed engineering study needs to replace existing data with better data and submit it to the Indiana Department of Natural Resources for review and approval.

- (1) The regulatory flood elevation, floodway, and fringe limits for the studied Special Flood Hazard Areas (SFHAs) within the jurisdiction of the City of Elkhart shall be as delineated on the one-percent annual chance flood profiles in the Flood Insurance Study of Elkhart County and Incorporated Areas dated August 2, 2011 and the corresponding Flood Insurance Rate Map (FIRM) prepared by the Federal Emergency Management Agency (FEMA) and dated August 2, 2011.
- (2) The regulatory flood elevation, floodway, and fringe limits for each of the remaining Special Flood Hazard Areas (SFHAs) within the jurisdiction of the City of Elkhart, delineated as an "A Zone" on the Flood Insurance Rate Map (FIRM) of Elkhart County and Incorporated Areas prepared by the Federal Emergency Management Agency (FEMA) and dated August 2, 2011, shall be according to the best data available as provided by the Indiana Department of Natural Resources; provided the upstream drainage area from the subject site is greater than one square mile.

- (3) In the absence of a published Federal Emergency Management Agency (FEMA) map, or absence of identification on a FEMA map, the regulatory flood elevation, floodway, and fringe limits of any watercourse in the community's known flood prone areas shall be according to the best data available as provided by the Indiana Department of Natural Resources; provided the upstream drainage area from the subject site is greater than one square mile.

### **Section C. Establishment of Floodplain Development Permit.**

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities the Special Flood Hazard Areas (SFHAs).

### **Section D. Compliance.**

No structure shall hereafter be located, extended, converted or structurally altered within the Special Flood Hazard Area (SFHA) without full compliance with the terms of this ordinance and other applicable regulations. No land or stream within the Special Flood Hazard Area (SFHA) shall hereafter be altered without full compliance with the terms of this ordinance and other applicable regulations.

### **Section E. Abrogation and Greater Restrictions.**

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

### **Section F. Discrepancy between Mapped Floodplain and Actual Ground Elevations.**

- (1) In cases where there is a discrepancy between the mapped floodplain with in the Special Flood Hazard Area (SFHA) on the Federal Insurance Rate Map (FIRM), and the actual ground elevations, the elevation provided on the Flood Insurance Study (FIS) profiles shall govern.
- (2) If the elevation of the site in question is below the base flood elevation, that site shall be included in the Special Flood Hazard Area (SFHA) and regulated accordingly.
- (3) If the elevation (natural grade) of the site in question is above the base flood elevation, that site shall be considered outside the Special Flood Hazard Area (SFHA) and the floodplain regulations will not be applied. The property owner should be advised to apply for a Letter of Map Amendment (LOMA).

### **Section G. Interpretation.**

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

- (1) Considered as minimum requirements; and
- (2) Deemed neither to limit nor repeal any other powers granted under state statutes.

**Section H. Warning and Disclaimer of Liability.**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on rare occasions. Therefore, this ordinance does not create any liability on the part of the City of Elkhart, the Indiana Department of Natural Resources, or the State of Indiana, for any flood damage that results from reliance on this ordinance or any administrative decision made lawfully thereunder.

**Section I. Penalties for Violation.**

Failure to obtain a Floodplain Development Permit in the SFHA or failure to comply with the requirements of a Floodplain Development Permit or conditions of a variance shall be deemed to be a violation of this ordinance. All violations shall be considered a common nuisance and be treated as such in accordance with the provisions of the Zoning Code for the City of Elkhart. All violations shall be punishable by a fine not exceeding two-thousand, five hundred dollars (\$2500.00).

- (1) A separate offense shall be deemed to occur for each day the violation continues to exist.
- (2) The City of Elkhart shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a Standard Flood Insurance Policy to be suspended.
- (3) Nothing herein shall prevent the City from taking such other lawful action to prevent or remedy any violations. All costs connected therewith shall accrue to the person or persons responsible.

**Article 3. Administration.****Section A. Designation of Administrator.**

The Common Council of Elkhart hereby appoints the Planning Department to administer and implement the provisions of this ordinance, and to designate an individual as the Floodplain Administrator. In the Floodplain Administrator's absence, he or she shall designate an individual to administer and implement the provisions of this ordinance.

**Section B. Permit Procedures.**

Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities, and may include, but not be limited to, the following plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically the following information is required:

- (1) Application stage.
  - a). A description of the proposed development;
  - b). Location of the proposed development sufficient to accurately locate property and structure in relation to existing roads and streams;
  - c). A legal description of the property site;

- d). A site development plan showing existing and proposed development locations and existing and proposed land grades;
- e). Elevation of the top of the lowest floor (including basement) of all proposed buildings. Elevation should be in NAVD 88 or NGVD;
- f). Elevation (in NAVD 88 or NGVD) to which any non-residential structure will be floodproofed; and
- g). Description of the extent to which any watercourse will be altered or relocated as a result of proposed development, and;

(2) Construction stage.

Upon placement of the lowest floor; or floodproofing, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the NAVD 88 or NGVD elevation of the lowest floor or floodproofed elevation, as built. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by the same. When floodproofing is utilized for a particular structure said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work undertaken prior to submission of the certification shall be at the permit holders' risk. (The Floodplain Administrator shall review the lowest floor and floodproofing elevation survey data submitted.) The permit holder shall correct deficiencies detected by such review before any further work is allowed to proceed. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project.

### **Section C. Duties and Responsibilities of the Floodplain Administrator.**

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

Duties and Responsibilities of the Floodplain Administrator shall include, but not be limited to:

- (1) Review all floodplain development permits to assure that the permit requirements of this ordinance have been satisfied;
- (2) Inspect and inventory damaged structures in SFHA and complete substantial damage determinations;
- (3) Ensure that construction authorization has been granted by the Indiana Department of Natural Resources for all development projects subject to Article 4, Section E and G (1) of this ordinance, and maintain a record of such authorization (either copy of actual permit or floodplain analysis/regulatory assessment.)
- (4) Ensure that all necessary federal or state permits have been received prior to issuance of the local floodplain development permit. Copies of such permits are to be maintained on file with the floodplain development permit;

- (5) Notify adjacent communities and the State Floodplain Coordinator prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA;
- (6) Maintain for public inspection and furnish upon request local permit documents, damaged structure inventories, substantial damage determinations, regulatory flood data, SFHA maps, Letters of Map Amendment (LOMA), Letters of Map Revision (LOMR), copies of DNR permits and floodplain analysis and regulatory assessments (letters of recommendation), federal permit documents, and “as-built” elevation and floodproofing data for all buildings constructed subject to this ordinance.
- (7) Utilize and enforce all Letters of Map Revision (LOMR) or Physical Map Revisions (PMR) issued by FEMA for the currently effective SFHA maps of the community.
- (8) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished;
- (9) Verify and record the actual elevation of the lowest floor (including basement) of all new or substantially improved structures, in accordance with Article 3 Section B;
- (10) Verify and record the actual elevation to which any new or substantially improved structures have been floodproofed, in accordance with Article 3, Section B;
- (11) Review certified plans and specifications for compliance.
- (12) Stop Work Orders
  - a). Upon notice from the floodplain administrator, work on any building, structure or premises that is being done contrary to the provisions of this ordinance shall immediately cease.
  - b). Such notice shall be in writing and shall be given to the owner of the property, or to his agent, or to the person doing the work, and shall state the conditions under which work may be resumed.
- (13) Revocation of Permits
  - a). The floodplain administrator may revoke a permit or approval, issued under the provisions of the ordinance, in cases where there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.
  - b). The floodplain administrator may revoke a permit upon determination by the floodplain administrator that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this ordinance.
- (14) Inspect sites for compliance. For all new and/or substantially improved buildings constructed in the SFHA, inspect before, during and after construction. Authorized City officials shall have the right to enter and inspect properties located in the SFHA.

#### **Article 4. Provisions for Flood Hazard Reduction.**

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**Section A. General Standards.**

In all Special Flood Plain Areas (SFHAs) and known flood prone areas, the following provisions are required:

- (1) New construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure;
- (2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces;
- (3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage below the Flood Protection Grade (FPG);
- (4) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (5) Electrical, heating, ventilation Electrical, heating, ventilation, plumbing, air conditioning equipment, utility meters, and other service facilities shall be located at/above the FPG or designed so as to prevent water from entering or accumulating within the components below the FPG. Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the FPG;
- (6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;
- (9) Any alteration, repair, reconstruction or improvements to a structure that is in compliance with the provisions of this ordinance shall meet the requirements of "new construction" as contained in this ordinance; and,
- (10) Any alteration, repair, reconstruction or improvement to a structure that is not in compliance with the provisions of this ordinance, shall be undertaken only if said non-conformity is not further, extended, or replaced.

**Section B. Specific Standards.**

In all Special Flood Hazard Areas (SFHAs), the following provisions are required:

- (1) In addition to the requirements of Article 4, Section A, all structures to be located in the Special Flood Hazard Area (SFHA) shall be protected from flood damage below the Flood Protection Grade (FPG). This building protection requirement applies to the following situations:

- a). Construction or placement of any new structure having a floor area greater than 400 square feet;
  - b). Addition or improvement made to any existing structure:
    - (i) where the cost of the addition or improvement equals or exceeds 50% of the value of the existing structure (excluding the value of the land);
    - (ii) with a previous addition or improvement constructed since the community's first floodplain ordinance.
  - c). Reconstruction or repairs made to a damaged structure where the costs of restoring the structure to it's before damaged condition equals or exceeds 50% of the market value of the structure (excluding the value of the land) before damage occurred;
  - d). Installing a travel trailer or recreational vehicle on a site for more than 180 days.
  - e). Installing a manufactured home on a new site or a new manufactured home on an existing site. This ordinance does not apply to returning the existing manufactured home to the same site it lawfully occupied before it was removed to avoid flood damage; and
- (2) **Residential Construction.** New construction or substantial improvement of any residential structure (or manufactured home) shall have the lowest floor; including basement, at or above the Flood Protection Grade (FPG) (two feet above the base flood elevation). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of Article 4, Section B (4).
- (3) **Non-Residential Construction.** New construction or substantial improvement of any commercial, industrial, or non-residential structure (or manufactured home) shall either have the lowest floor, including basement, elevated to or above the Flood Protection Grade (FPG) (two feet above the base flood elevation) or be floodproofed to or above the FPG. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of Article 4, Section B (4). Structures located in all "A Zones" may be floodproofed in lieu of being elevated if done in accordance with the following:
- a). A Registered Professional Engineer or Architect shall certify that the structure has been designed so that below the Flood Protection Grade (FPG), the structure and attendant utility facilities are watertight and capable of resisting the effects of the regulatory flood. The structure design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice. Such certification shall be provided to the official as set forth in Article 3, Section C (10).
  - b). Floodproofing measures shall be operable without human intervention and without an outside source of electricity.
- (4) **Elevated Structures.** New construction or substantial improvements of elevated structures shall have the lowest floor at or above the Flood Protection Grade (FPG).



Elevated structures with fully enclosed areas formed by foundation and other exterior walls below the flood protection grade shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls. Designs must meet the following minimum criteria:

- a). provide a minimum of two openings located in a minimum of two exterior walls (having a total net area of not less than one square inch for every one square foot of enclosed area); and
  - b). the bottom of all openings shall be no more than one foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher; and,
  - c). openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions; and
  - d). access to the enclosed area shall be the minimum necessary to allow for parking for vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator); and
  - e). the interior portion of such enclosed area shall not be partitioned or finished into separate rooms; and
  - f). the interior grade of such enclosed area shall be at an elevation at or higher than the exterior grade; and
- (5) **Structures Constructed on Fill.** A residential or nonresidential structure may be constructed on a permanent land fill in accordance with the following:
- a). The fill shall be placed in layers no greater than 1 foot deep before compacting to 95% of the maximum density obtainable with either the Standard or Modified Proctor Test method.
  - b). The fill should extend at least ten feet beyond the foundation of the structure before sloping below the Flood Protection Grade (FPG).
  - c). The fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulkheading. If vegetative cover is used, the slopes shall be no steeper than 3 horizontal to 1 vertical.
  - d). The fill shall not adversely affect the flow of surface drainage from or onto neighboring properties.
  - e). The top of the lowest floor including basements shall be at or above the FPG.
- (6) **Standards for Manufactured Homes and Recreational Vehicles.** Manufactured homes and recreational vehicles to be installed or substantially improved on a site for more than 180 days must meet one of the following requirements:

- a). The manufactured home shall be elevated on a permanent foundation such that the lowest floor shall be at or above the Flood Protection Grade (FPG) and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. This requirement applies to all manufactured homes to be placed on a site;
  - (i) outside a manufactured home park or subdivision;
  - (ii) in a new manufactured home park or subdivision;
  - (iii) in an expansion to an existing manufactured home park or subdivision; or
  - (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as a result of a flood.
- b). The manufactured home shall be elevated so that the lowest floor of the manufactured home chassis is supported by reinforced piers or other foundation elevations that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. This requirement applies to all manufactured homes to be placed on a site in an existing manufactured home park or subdivision that has not been substantially damaged by a flood.
- c). Manufactured homes with fully enclosed areas formed by foundation and other exterior walls below the flood protection grade shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Article 4, Section B(4).
- d). Recreational vehicles placed on a site shall either:
  - (i) be on site for less than 180 days; and,
  - (ii) be fully licensed and ready for highway use (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or
  - (iii) meet the requirements for “manufactured homes” as stated earlier in this section.

### **Section C. Standards for Subdivision Proposals.**

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards, and;
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions), which is greater than the lesser of fifty lots or five acres.

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#### **Section D. Critical Facility.**

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated to or above the Flood Protection Grade (FPG) at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the FPG shall be provided to all critical facilities to the extent possible.

#### **Section E. Standards for Identified Floodways.**

Located within Special Flood Hazard Areas (SFHAs), established in Article 2, Section B, are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and has erosion potential. If the site is in an identified floodway, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources and apply for a permit for construction in a floodway. Under the provisions of IC 14-28-1 a permit for construction in a floodway from the Indiana Department of Natural Resources is required prior to the issuance of a local building permit for any excavation, deposit, construction, or obstruction activity located in the floodway. This includes land preparation activities such as filling, grading, clearing and paving etc. undertaken before the actual start of construction of the structure. However, it does exclude non-substantial additions/improvements to existing (lawful) residences in a non-boundary river floodway. (IC 14-28-1-26 allows construction of non-substantial additions/improvements to residences in a non-boundary river floodway without obtaining a permit for construction in the floodway from the Indiana Department of Natural Resources. Please note that if fill is needed to elevate an addition above the existing grade, prior approval (construction in a floodway permit) for the fill is required from the Indiana Department of Natural Resources.)

No action shall be taken by the Floodplain Administrator until a permit (when applicable) has been issued by the Indiana Department of Natural Resources granting approval for construction in the floodway. Once a permit for construction in a floodway has been issued by the Indiana Department of Natural Resources, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in Article 4 of this ordinance have been met. The Floodplain Development Permit cannot be less restrictive than the permit for construction in a floodway issued by the Indiana Department of Natural Resources. However, a community's more restrictive regulations (if any) shall take precedence.

No development shall be allowed which acting alone or in combination with existing or future development, will increase the regulatory flood more than 0.14 of one foot; and

For all projects involving channel modifications or fill (including levees) the City shall submit the data and request that the Federal Emergency Management Agency (FEMA) revise the regulatory flood data.

#### **Section F. Standards for Identified Fringe.**

If the site is located in an identified fringe, then the Floodplain Administrator may issue the local Floodplain Development Permit provided the provisions contained in Article 4 of this ordinance have

been met. The key provision is that the top of the lowest floor of any new or substantially improved structure shall be at or above the Flood Protection Grade (FPG).

**Section G. Standards for Special Flood Hazard Areas (SFHAs) Without Established Base Flood Elevation and/or Floodways/Fringes.**

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

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

No action shall be taken by the Floodplain Administrator until either a permit for construction in a floodway or a floodplain analysis/regulatory assessment citing the one-percent annual chance flood elevation and the recommended Flood Protection Grade has been received from the Indiana Department of Natural Resources. Once the Floodplain Administrator has received the proper permit for construction in a floodway or floodplain analysis/regulatory assessment approving the proposed development, a Floodplain Development Permit may be issued provided the conditions of the Floodplain Development Permit are not less restrictive than the conditions received from the Indiana Department of Natural Resources and the provisions contained in Article 4 of this ordinance have been met.

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

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

Upon receipt, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in Article 4 of this ordinance have been met.

- (3) The total cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the regulatory flood more than 0.14 of one foot and will not increase flood damages or potential flood damages.

**Section H. Standards for Flood Prone Areas.**

All development in known flood prone areas not identified on FEMA maps, or where no FEMA published map is available, shall meet general standards as required per Article 4, Section A (1) through (10).

**Article 5. Variance Procedures.**

**Section A. Designation of Variance and Appeals Board.**

The Board of Zoning Appeals as established by the Common Council of Elkhart shall hear and decide appeals and requests for variances from requirements of this Section of the Zoning Ordinance.

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**Section B. Duties of Variance and Appeals Board.**

The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this ordinance. Any person aggrieved by the decision of the board may appeal such decision to any of the Elkhart County Superior Courts, or the Elkhart County Circuit Court.

**Section C. Variance Procedures.**

In passing upon such applications, the Board of Zoning Appeals shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and;

- (1) The danger of life and property due to flooding or erosion damage;
- (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (3) The importance of the services provided by the proposed facility to the community;
- (4) The necessity to the facility of a waterfront location, where applicable;
- (5) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (6) The compatibility of the proposed use with existing and anticipated development;
- (7) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (8) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (9) The expected height, velocity, duration, rate of rise, and sediment of transport of the floodwaters at the site; and,
- (10) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

**Section D. Conditions for Variances.**

- (1) Variances shall only be issued when there is:
  - a). A showing of good and sufficient cause;
  - b). A determination that failure to grant the variance would result in exceptional hardship; and,
  - c). A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.

- (2) No variance for a residential use within a floodway subject to Article 4, Section E or Section G (1) of this ordinance may be granted.
- (3) Any variance granted in a floodway subject to Article 4, Section E or Section G (1) of this ordinance will require a permit from the Indiana Department of Natural Resources.
- (4) Variances to the Provisions for Flood Hazard Reduction of Article 4, Section B, may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade.
- (5) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (6) Variances may be granted for the reconstruction or restoration of any structure individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.
- (7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the lowest floor is to be built and stating that the cost of the flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation (See Article 5, Section E).
- (8) The Floodplain Administrator shall maintain the records of appeal actions and report any variances to the Federal Emergency Management Agency or the Indiana Department of Natural Resources upon request (See Article 5, Section E).

#### **Section E. Variance Notification.**

Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

- (1) The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and;
- (2) Such construction below the base flood level increases risks to life and property. A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

The Floodplain Administrator will maintain a record of all variance actions, including justification for their issuance, and report such variances issued in the community's biennial report submission to the Federal Emergency Management Agency.

#### **Section F. Historic Structure.**

Variances may be issued for the repair or rehabilitation of "historic structures" upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an "historic structure" and the variance is the minimum to preserve the historic character and design of the structure.

**Section G. Special Conditions.**

Upon the consideration of the factors listed in Article 5, and the purposes of this ordinance, the Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

**See also amended Section 29.9 B.**

## SECTION 22

### WETLANDS CONSERVATION OVERLAY DISTRICT

#### Sections

- 22.1 General Provisions
  - 22.2 Wetland District
  - 22.3 General Development Standards
  - 22.4 Nonconforming Uses
  - 22.5 Board of Zoning Appeals
  - 22.6 Enforcement
- 

#### 22.1 General Provisions

##### A. Purpose

The intent of this section is to prevent harm to the human and natural environment from water pollution, increased flooding and loss of ground water supply that may result when natural wetlands are drained, filled or otherwise subjected to uses incompatible with public health, safety and welfare. This purpose is consistent with the Comprehensive Plan of the City of Elkhart, Indiana. The provisions of this section are intended to achieve this purpose by:

1. Providing a method of identifying wetlands within the planning and zoning jurisdictions of the City of Elkhart;
2. Establishing regulations that permit reasonable economic use of wetlands consistent with sound wetland conservation practices;
3. Guiding development adjacent to wetlands to prevent harm to wetlands and protect property from potential flood damage; and
4. Establishing procedures to assure compliance with the Federal Clean Water Act (33 U.S.C., Section 1251 et seq., as amended) and with state regulations that may affect wetlands.

##### B. Definitions

Words or terms used in this section should be interpreted by their common-sense meanings unless more specifically defined otherwise. The definitions and rules of construction that apply to the other parts of the Zoning Ordinance shall apply to this section unless a different definition or rule is provided for in this Section 22.1.B.

1. **Adverse Impact:** Anything that would destroy, harm, impair, diminish or degrade the value or utility of a wetland for pollution control, flood preservation, ground water recharge or habitat for fish and wildlife.



2. **Fill Material:** Any solid material that displaces water or reduces water holding capacity.
3. **Hydrophytic Vegetation:** Plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content. Plant species of this type are listed in: P.B. Reed, Jr., National List of Plant Species that Occur in Wetlands (North Central - Region 3), Biological Report 88 (24) Washington, D.C.: U.S. Fish and Wildlife Services, 1988.
4. **National Wetlands Inventory (NWI):** A series of maps produced by the U.S. Fish and Wildlife Services showing the location and classification of wetlands in standard topographic areas. Such maps, as amended, are hereby incorporated into this ordinance by reference.
5. **Natural Water Storage Capacity:** The maximum volume of water a wetland can contain up to its ordinary high water mark without alterations to its natural grade or contour.
6. **Ordinary High Water Mark:** A mark delineating permanent or periodic inundation or prolonged soil saturation sufficient to support hydrophytic vegetation. In general terms, it indicates the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape.
7. **Periodic Maintenance:** Ordinary inspection and repair of facilities accessory to use of a wetland. This includes erosion control and removal of silt and non-hydrophytic vegetation in ways that do not substantially disturb hydrophytic plant and animal life. Periodic maintenance does not include any modification of a wetland's contour or natural water storage capacity.
8. **Practicable Alternative:** An alternative in terms of the size or location of a proposed development that would accomplish the development's basic purpose and avoid or have less adverse impact on a wetland.
9. **Unified Federal Method for Wetland Delineation:** A standard method for identifying wetlands and delineating their boundaries as described in: Federal Interagency Committee for Wetland Delineation, Federal Manual for Identifying and Delineating Jurisdictional Wetlands, (Washington, D.C.: U.S. Government Printing Office, 1989).

C. Wetlands Overlay Districts

1. The Wetland Districts that are established by Section 22 are overlay districts.
2. No development may take place in a Wetland District without a zoning clearance/building permit.
3. Only uses that are permitted by right or by special exception may be placed in a Wetland District. All other uses are prohibited.

D. Application

1. Section 22 does not apply to:
  - a. Artificially-constructed ponds, drainage ditches, storm water retention/detention basins, gravel pits, stone quarries or waste treatment lagoons, except to the extent that such uses are restricted or prohibited in Wetland Districts;
  - b. Wetlands or portions thereof for which federal or state permits for fill were issued prior to the extension of the planning and zoning jurisdiction of the City of Elkhart over the areas for which the permits were issued; or to
  - c. Any area or use excluded from local planning and zoning jurisdiction by federal or state law.
2. Notwithstanding subparagraph 22.1(D) (1) (b), if a wetland has been divided by the discharge or placement of fill material, the separated parts shall be considered a single wetland.
3. Wetlands of different National Wetlands Inventory (herein the "NWI") classification that are contiguous to one another shall be considered a single wetland.
4. In the event of a conflict between the provisions of Section 22 and those of any other section of the Zoning Ordinance that governs the management of flood hazard areas, this section shall take precedence.

E. Coordination with Federal and State Agencies

No application made under Section 22 for a zoning clearance/building permit, shall be accepted unless the applicant first obtains all necessary federal and state permits, approvals, waivers or letters of non-applicability.

## **22.2 Wetland District**

A. Designation

1. A Wetland District is any wetland area other than those exempted in Subsection 22.1(D)(1) that is at least one (1) acre in size that appears on the most current NWI map or maps published by the U.S. Fish and/or Wildlife Services for areas subject to the planning and zoning jurisdiction of the City of Elkhart. The most current edition of the applicable NWI map or maps and any subsequent revisions thereto are hereby adopted by reference and declared to be part of this section. A Wetland District must also meet the standards of the Unified Federal Method for Wetland Delineation, applied according to the procedures set forth in this subsection.
2. The NWI shows only the general location of wetlands. Precise delineation shall be made by the applicant for a zoning clearance/building permit through the performance of a full field survey applying the wetland delineation methodology in effect at the time of application. Areas containing hydric soils

as mapped and designated by the Natural Resource Conservation Service; or soils containing hydric inclusions must be assessed via full field survey, as well. All permit applications for development in a Wetland District or areas containing soils that may harbor wetlands shall be accompanied by a scaled drawing showing the district boundary. The applicant shall document the results of the boundary survey to the Planning and Zoning Office. Such documentation shall include:

- a. Statement of qualifications of individual(s) and/or firm conducting the boundary delineation;
- b. Certified copy of the boundary delineation; and
- c. All other documentation submitted to the Indiana Department of Environmental Management (IDEM) and/or the U.S. Army Corps of Engineers (COE).

Documentation shall be submitted to the City no later than the date of submittal to IDEM and/or COE. The Planning and Zoning staff may review the documentation to determine its general accuracy and completeness.

3. The City, through the Planning and Zoning Office, may forward to IDEM and/or COE any recommendation, question or concern regarding an application for any State and/or Federal permits that pertain to the area described in the application for the zoning clearance/building permit.
4. In applying for a zoning clearance/building permit, the applicant consents to allowing the Planning and Zoning Office to enter upon the applicant's land to gather information to obtain a basis for a recommendation described at Section 22.2(A)(3).

#### B. Permitted Uses

The following uses are permitted by right, provided they do not involve erecting a building or structure, opening an excavation, depositing or discharging fill material, dredging, earth moving, extending existing drainage systems or creating new drainage systems:

1. Agriculture uses, except animal feed lots, but including general farming, grazing, gardening, sustained-yield forestry in accordance with a management plan approved by the State Forester, nurseries and the erection and maintenance of wire agricultural fences;
2. Hunting, trapping and fishing, where not otherwise prohibited by law;
3. Parks, when left in a natural state, wildlife and natural preserves, recreational uses, including swimming, boating and natural-surface hiking and bridle paths, and educational and scientific uses;

4. Uses incidental to the enjoyment of residential properties, provided that the impact of such uses does not affect more than one-half (2) acre of wetlands (Nationwide Permit 29); and
5. Maintenance and repair of existing streets, roads, highways and public utilities, provided that such uses are not enlarged and that such maintenance or repair is done in a way that minimizes or avoids adverse impacts to wetlands.

C. Special Exceptions

The following special exceptions may be permitted upon approval by the Board of Zoning Appeals in accordance with Section 29.6 of the Zoning Ordinance; such special exceptions are expressly contingent upon the receipt of all required federal and state permits:

1. Structures accessory to permitted uses, provided that they do not significantly obstruct circulation of water in the wetland, threaten water quality, create erosion hazards or disrupt significant wildlife habitat. Such structures include, but are not limited to:
  - a. Temporary structures not intended for human habitation or sheltering livestock;
  - b. Boat anchorages, moorings and piers;
  - c. Walkways, benches, informational displays, directional signs, foot bridges and observation decks; and
  - d. Residential wells.
2. Enhancement of wetlands to improve wildlife habitat in accordance with a plan approved by the I.D.N.R.
3. Public infrastructure, other than buildings and electrical substations, but including public utilities, streets, roads and bridges, provided that:
  - a. There is no practicable alternative route outside the wetland;
  - b. The public need cannot be met by existing facilities of the modification thereof;
  - c. The proposed facility is designed to permit the unimpeded circulation of water in the wetland, control runoff from paved surfaces in accordance with subparagraph 22.2(C)(4), and otherwise minimize adverse impacts on the wetland;
  - d. Any filling, excavating or draining must be necessary for the construction and maintenance of the proposed facility and done in a way that minimizes adverse impacts on the wetland;

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- e. Erosion control measures are taken in accordance with the U.S. Department of Agriculture Soil Conservation Service Field Office Technical Guide; and
  - f. Underground utilities are installed in watertight conduits; and
  - g. Such activities comply with the General and Specific conditions of Nationwide Permits 12 and 14.
4. Storm water retention/detention, provided that there is no practicable alternative site outside a wetland and that a wetland utilization plan is prepared by the applicant and approved by the Board of Zoning Appeals listing steps for monitoring surface and subsurface water quality and a schedule of periodic maintenance of the wetland while in use as a storm water retention/detention facility; and further provided that net flow does not exceed the wetland's natural water storage capacity and that the storm water undergoes pre-treatment to prevent silt, debris and chemical pollutants from entering the wetland.
- a. No special exception for storm water retention/detention use of a wetland shall involve decreasing the wetland's natural water storage capacity or placing more than twenty-five percent (25%) of the surface area of the retention/detention pond in the Wetland District. No retention/detention pond shall occupy more than ten percent (10%) of the area of a Wetland District. The natural outflow from the Wetland District shall not be changed so as to increase or decrease the normal pool elevation. Minor alteration of a wetland's contour may be permitted for the installation of facilities accessory to storm water inflow and outflow, provided that it does not significantly alter the wetland's pre-existing hydrology.
  - b. Pre-treatment measures may include sedimentation basins, vegetated swales and buffer strips. Rip-rap made of natural rock may be used only where vegetation cannot control erosion. Storm drains may not discharge directly into a wetland. Lining of swales with paving materials shall not be permitted.
  - c. No retention/detention facility shall be constructed within a forested wetland, but overflow into a forested wetland may be permitted.
  - d. No more than one (1) retention/detention pond may be placed within a single Wetland District.
  - e. Any portion of a Wetland District used for storm water retention/detention shall remain part of the Wetland District.
  - f. No special exception shall be granted for storm water retention/detention in a wetland subject to divided ownership unless the applicant first obtains and records an easement of use from the owners of all other affected properties.

- g. A constructed outflow to a regulated county drain requires approval of the county drainage board or appropriate joint drainage board and/or the county surveyor.
- 5. Maintenance of existing boat channels, provided that the applicant has received a permit from the I.D.N.R. under Indiana Code section 13-2-11-1 et seq., as amended, (Lakes Preservation) and that dredging will be limited as follows:
  - a. Dredging shall be located so as to minimize adverse impacts on vegetation;
  - b. Dredging shall not adversely change water circulation;
  - c. The size of the dredging area shall be limited to the minimum required for boat ingress and egress; and
  - d. Dredged material shall not be disposed of within any lake, wetland or flood hazard area or in any manner that is unlawful or would constitute a public or private nuisance.
  - e. Activities shall comply with all other general and specific conditions of Nationwide Permits 1, 2, 3, 9, 10, and 22.

### **22.3 General Development Standards**

In order to guide development outside a Wetland District to prevent harm to wetlands inside the district, the following standards are established:

- A. No building, structure, street, road, alley, driveway, parking area or paved surface shall be placed closer than seventy-five (75) feet from the boundary of a Wetland District.
- B. No septic system shall be installed closer than one-hundred fifty (150) feet from the boundary of a Wetland District.
- C. The lowest ground floor elevation of all buildings or additions to existing buildings within fifty (50) feet of the boundary of a Wetland District shall be at least two (2) feet above the ordinary high water mark.
- D. No soil storage pile shall be placed nearer than twenty-five (25) feet from the boundary of a Wetland District. Erosion from all soil storage piles placed within two-hundred (200) feet of the boundary of a Wetland District shall be controlled by placing straw bales, filter fence or other effective containment barriers around the piles. Soil loss from any construction site within two-hundred (200) feet of the district boundary shall be controlled by measures described in the U.S. Department of Agriculture Soil Conservation Service Field Office Technical Guide.
- E. No storm water runoff from a development shall be directed into a Wetland District except as provided in subparagraph 22.2(C) (4).

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## 22.4 Nonconforming Uses

Any building, structure or other use that does not conform to section 22.3 is a non-conforming use and is subject to the following provisions:

- A. A non-conforming use may be altered, enlarged or extended on a one-time-only basis, provided that:
  - 1. The lowest ground floor elevation of any addition to an existing building is at least two (2) feet above the ordinary high water mark;
  - 2. The proposed alterations, enlargements or extensions, excluding improvements made solely to comply with state or local health, sanitary or safety codes or to assure safe living conditions, do not increase the value of the use by more than forty percent (40%) of its pre-improvement market value, excluding the value of the land; and
  - 3. No extension of a non-conforming use that does not conform to the setback requirements of subsection 22.3(A) shall be constructed in the direction of a Wetland District.
- B. A non-conforming use that is damaged by accident, flood, fire, explosion, natural disaster or the public enemy may be restored to its original dimensions and condition provided the damage does not reduce the value of the use, excluding the value of the land, by more than forty percent (40%) of its pre-damaged value.

## 22.5 Board of Zoning Appeals

- A. The Board of Zoning Appeals may grant variances from the provisions of Section 22, provided the applicant establishes that:
  - 1. The grant of the proposed variance complies with Indiana Code 36-7-4-918.4 as amended and Subsections 29.8(A) & (B) of the Zoning Ordinance; and that
  - 2. The grant of the proposed variance will not adversely affect the water quality, volume of ground water supply or flood storage capacity of the Wetland District.
- B. Variances shall give the minimum relief necessary to alleviate the applicant's hardship.
- C. No variances shall permit storm water runoff from a street, parking area or roof of an industrial or commercial building to be directed into a Wetland District.
- D. Variances and special exceptions may be granted contingent upon receipt by the Planning and Zoning Staff of all required federal and state permits. (As amended Ord. No. 4683 July 10, 2002)
- E. No variance or special exception shall allow construction or dredging to disturb waterfowl breeding areas during breeding season or fish spawning areas during spawning season.

- F. Whenever a variance or special exception is granted for a use that may alter the grade or contour of land in a Wetland District, the Board of Zoning Appeals shall require that, upon completion of the proposed construction, the applicant will restore the land as closely as possible to its original grade and contour.
- G. No variance or special exception shall allow a net loss of wetland area. Where all or part of a wetland in a Wetland District would be destroyed or substantially altered by a proposed development, the Board of Zoning Appeals shall require mitigation by the applicant and his/her successors in interest according to the following standards:
  - 1. Acre-for-acre replacement of the same or a better type of wetland providing the environmental benefits that would be lost because of the proposed development.
  - 2. Replacement wetlands shall be located reasonably close to the Wetland District, as determined by the Board of Zoning Appeals, in which the losses are sustained and shall become part of the District, if practical.
  - 3. Periodic maintenance for replacement wetlands shall be carried out by the applicant for a minimum of three (3) years to control erosion, remove nuisance vegetation and assure the establishment and survival of predominantly hydrophytic vegetation.
  - 4. The Board of Zoning Appeals may require the applicant to post a bond or other performance guarantee sufficient to assure the City of Elkhart the satisfactory completion of replacement wetlands.
  - 5. If replacement of the same or better type of wetland is not possible adjacent to the Wetland District in which the projected losses would be sustained, the Board of Zoning Appeals may consider replacement at ratios greater than one to one (1:1) of a lesser quality wetland adjacent to the Wetland District.
  - 6. The Board of Zoning Appeals may require replacement of wetland losses of less than a third of an acre even when the applicant has received federal or state approval for the proposed construction without mitigative conditions.
  - 7. The authorization of replacement wetlands shall not be used as a means of permitting avoidable losses of natural wetlands.

## **22.6 Enforcement**

In addition to the enforcement powers and penalties for violation prescribed in Section 29 of the Zoning Ordinance, the Planning and Zoning Staff, Plan Commission or Board of Zoning Appeals, pursuant to Indiana Code, section 36-7-4-1000 et seq. (Local Planning and Zoning -1000 Series-Remedies and Enforcement) may institute civil proceedings in a court of competent jurisdiction to compel complete restoration of wetlands damaged in violation of this section. (As amended Ord. No. 4683 July 10, 2002)



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## **SECTION 23**

### **DEVELOPMENT PLAN OVERLAY DISTRICT**

#### **Sections**

- 23.1 Purpose**
  - 23.2 Definition**
  - 23.3 Basic Requirements**
  - 23.4 Procedures for Establishing District**
  - 23.5 Established Districts**
- 

#### **23.1 Purpose**

The City of Elkhart recognizes that development, especially within certain districts or geographic areas, can have major impacts on the visual and physical character of the City. Consequently, it has established the requirement of "development plan" submittal and approval within critical specified zoning districts. These include: CBD, Central Business District; B-4, Regional Business District; OP, Office Park District; and BP, Business Park District. Within these districts, a high level of site and building plan review is required.

The City further recognizes that the need for this increased level of review may not always occur within the fixed boundaries of a specific zoning district. Instead, areas of major developmental impact may occupy only a portion of a zoning district or include all or portions of several districts. These could include:

1. Corridors along major traffic arteries, including gateways into the City; or
2. A specific geographic area which due to its location, land uses, physical character or other factors significantly affects the overall character of the City.

It is the intent of this section to permit the establishment of Development Plan Overlay Districts to supplement those specified zoning districts requiring the submittal and approval of a "development plan". The purpose of these overlay districts is to:

1. Encourage orderly and compatible development;
2. Encourage a high standard of visual quality within the district;
3. Protect existing and future property values;
4. Promote the safe flow of traffic on streets within the district and the integration of various transportation options including pedestrian, bicycle, and vehicular networks; and
5. Protect and preserve the quality and integrity of residential neighborhoods within and adjacent to the districts.

## **23.2 Definition**

The Development Plan Overlay District is a floating zone that may overlay a portion of an underlying zoning district or all or portions of several zoning districts. All properties located in the district undergoing modification or new construction shall be required to submit a development plan to the City Plan Commission for review and approval in accordance with the requirements of the Zoning Ordinance. Additional design and development standards, including site and building, may be incorporated into the district at the time of its establishment, supplementing or superseding those of the underlying zoning district and the general development standards of the Zoning Ordinance. The establishment of the Development Plan Overlay District does not affect the uses permitted by right, special exception or conditional use of the underlying zoning.

## **23.3 Basic Requirements**

A Development Plan Overlay District boundary shall encompass those properties that share a common identity due to geographic location, historic or locational significance, design characteristics (site and/or building), use, significant transportation routes or physical features, or other identified unifying characteristics. Boundaries will be determined at the time a District is created.

## **23.4 Procedures for Establishing District**

### **A. General Requirements**

An application for establishing a Development Plan Overlay District shall be filed with the Planning and Zoning office at least thirty (30) days prior to the Plan Commission meeting at which it is to be heard. A proposal to establish a District may be initiated by the Plan Commission or by a petition signed by the property owners of not less than seventy-five percent (75%) of the land to be included in the District.

Since the District does not dictate land use, but only requires adherence to the development plan review process and associated design and developmental standards as specified in the Zoning Ordinance, notification shall be required only to those property owners within the proposed District. Such notification shall be by legal notice in the local newspaper and direct mailing to the affected property owners.

### **B. Preliminary Review**

Preliminary review of a proposed District is required for those applications initiated by petition of property owners. Prior to filing a formal application for a District, the petitioner(s) shall submit to the Planning and Zoning office no less than six (6) copies of the proposal including the following information:

1. A map indicating the boundaries of the proposed District.
2. A narrative explaining the reason or need for creating the District.
3. Whether Type I and/or Type II Design Standards will apply.
4. Additional development standards, if any, being recommended and explanation as to why they are necessary.

The Planning staff may request additional information deemed necessary for consideration of the proposed district.

The Planning staff shall review the proposal for compliance with the City Zoning Ordinance and the Comprehensive Land Use Plan. General discussions may be conducted between staff and the petitioner(s) to clarify the proposal or incorporate necessary modifications prior to filing of the formal petition.

C. Plan Commission Action

The Plan Commission shall conduct a public hearing on a proposed Development Plan Overlay District and forward its recommendation consisting of any conditions or modifications and the District boundary map to the City Council for final action.

D. City Council Action

The City Council shall make the final determination on the proposed District. Action by the Council shall be in accordance with Section 29.10(B), "Map Amendment", of the City Zoning Ordinance. All development within an approved District shall comply with the procedures for development plan review, as specified in the City Zoning Ordinance, and any additional development standards incorporated at the time the District was created.

## 23.5 Established Districts

A. The following districts are established as of the effective date of this Ordinance:

1. Cassopolis Street: Bristol Street to North City limits
2. Main Street: Lusher Avenue to South City limits
3. Nappanee Street: Bristol Street to South City limits
4. Bristol Street: Nappanee Street to 600 feet East of Osolo Road
5. C.R. 6: Between East and West City limits
6. Johnson Street: St. Joseph River to Bristol Street
7. C.R.17: Between North and South City limits
8. Jackson Boulevard: Main Street to Prairie Street/Johnson Street (as amended per Ordinance No. 5618 on August 20, 2017.)

B. Riverwalk Overlay District (As amended per Ordinance No. 4533, dated November 6, 2000)



All development in these districts shall comply with Type I and Type II Design Standards except for manufacturing uses located in an M-1 or M-2 zoning district which shall not be required to comply with Type II design standards, but shall comply with the following:

All structures shall present a decorative facade on the front facade facing the district street or river and the front one-third (1/3) of any side facade visible from the district street or river.

- C. Each district, with the exception of the Riverwalk Overlay District (as amended per Ordinance No. 4533, dated November 6, 2000), shall include the entirety of each lot(s) or non-subdivided property being developed as a single development which abuts the district street to a maximum depth of two hundred (200) feet. However, in the event a proposed development extends beyond the two hundred (200)-foot depth, the entire parcel(s) being developed including that portion of the parcel(s) beyond the two hundred (200)-foot depth shall be included in the development plan district, so long as any portion of the development is located within the two hundred (200)-foot depth.

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## **SECTION 24**

### **DEVELOPMENT PLAN PROCEDURES AND DESIGN CRITERIA**

#### **Sections**

- 24.1 Purpose**
  - 24.2 Authorizations to Review and Approve Development Plans**
  - 24.3 Exemptions**
  - 24.4 Pre-Submission Meeting**
  - 24.5 Application for Preliminary Approval**
  - 24.6 Contents of Development Plan for Preliminary Approval**
  - 24.7 Development Requirements for Preliminary Approval**
  - 24.8 Development Plan Design Standards Type I**
  - 24.9 Development Plan Design Standards Type II**
  - 24.10 Preliminary Review and Approval Procedure**
  - 24.11 Final Approval of Development Plans: Authority and Procedure**
  - 24.12 Appeal of Staff Decision to Plan Commission**
  - 24.13 Amendments to an Approved Development Plan**
  - 24.14 Waiver of Design Criteria and Ordinance Standard**
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#### **24.1 Purpose**

Development within certain districts or geographic areas may have a major impact on the visual, physical and functional character of that portion of the City, or of the City as a whole. Appropriate development in these areas must serve to protect the public health, safety and welfare; preserve the natural environment; encourage efficient use of resources; promote the visual quality of the City; and minimize the burdens of new development on City services. Consequently, within those specified zoning and overlay districts the submission of development plans will be required for review and approval prior to the issuance of any permits. The purpose of this Section is to establish procedures and requirements for the review, approval and amendment of development plans.

#### **24.2 Authorization to Review and Approve Development Plans**

- A. The Planning staff is authorized to review and approve all development plans in accordance with the procedures established herein. However, review and approval of a development plan by the Plan Commission may be required if:
  - 1. At the time a zoning map change is approved, the Plan Commission or City Council stipulates that a required development plan be reviewed and approved by the Plan Commission following a public hearing; or
  - 2. Planning staff determines that the development may have significant visual or physical impact on surrounding properties, whether developed or undeveloped, and/or existing streets.
- B. The Plan Commission will review and take action upon any appeal by an applicant of a staff decision. An appeal shall require a public hearing.

- C. The entity charged with the responsibility for reviewing a development plan, whether the Plan Commission or Planning staff, shall be referred to herein as the reviewing authority.

### **24.3 Exemptions**

- A. The following categories of development shall be exempt from compliance with Type I and Type II Design Standards and shall not require development plan approval:
  - 1. Interior remodeling resulting in no increase in parking or loading requirements and no enlargement of the existing building.
  - 2. Reconstruction and/or reconfiguration of an existing parking lot in compliance with the City Zoning Ordinance.
  - 3. The installation of a new sign or the relocation or reconfiguration of an existing sign in compliance with the City sign regulations.
  - 4. Improvements as part of the general maintenance and upkeep of the property.
- B. The following categories of development shall be exempt from Type II Design Standards only and shall otherwise require development plan approval.
  - 1. Development on a property which has been designated a historic district by the City of Elkhart Historic Commission.
  - 2. Additions to an existing structure provided that the addition is architecturally consistent with the existing structure.
  - 3. Roof repair or replacement.
  - 4. Alteration of an existing facade which does not affect more than twenty-five percent (25%) of the square footage of the existing facade.

### **24.4 Pre-Submission Meeting**

A meeting between the planning staff and the developer is recommended prior to formal submittal of the development plan for review. Such a meeting allows staff to familiarize itself with the proposed development and provide information regarding the review process and required development standards.

### **24.5 Application for Preliminary Approval**

- A. Application for preliminary approval of a development plan shall be filed with the Planning & Zoning Office and shall include the following:
  - 1. Completed and signed (by all owners of record) application containing:
    - a. Description of the proposed project;
    - b. Any restrictive covenants to be incorporated into the development;

- c. General statement on method for disposing of on-site drainage;
    - d. Availability of City sanitary sewer and water; or if unavailable, method of service.
  - 2. The following number of site plans and support drawings illustrating the proposed development shall be provided by the applicant:
    - a. Planning staff review and approval: Six (6) copies
    - b. Plan Commission review and approval: Fifteen (15) copies
- The plan shall represent the entire tract for which approval is being requested.
- B. Incomplete submissions will be returned to the applicant and withheld from the review process.

#### **24.6 Contents of Development Plan for Preliminary Approval**

The submitted development plan shall include supporting documentation, site plan and other drawings containing the following information, as may be applicable:

- A. Supporting Documentation
- 1. Identification of: the number, type and square footage of structures; parcel size, proposed lot coverage by buildings and structures, number of parking spaces required and proposed; gross residential density, number and types of dwelling units, where applicable.
  - 2. Statement on measures to insure long term maintenance of public or common open spaces.
  - 3. Any restrictive covenant, declaration, written commitment or other document(s) related to the development which is intended to be recorded or included in any sale or lease agreements.
  - 4. Anticipated development traffic counts (daily and peak hours) and a traffic impact analysis if deemed necessary during the pre-submission meeting.
  - 5. Proof of submission of curb cut and on-site drainage retention applications to the City Public Works & Utilities Department.
- B. Site Plan and Supporting Drawings
- 1. Date, scale (written and graphic), north point, name and address of developer and name of proposed development;
  - 2. Legal description of the project site, including dimensioned boundaries of the tract;

3. Existing site conditions including contours (at minimum two (2) foot intervals), if necessary, water courses and drainage ways, flood plain elevations, significant vegetation, and existing buildings, roads, parking areas and other improvements;
4. Location, size and configuration of areas to be conveyed, dedicated or otherwise reserved as common open spaces, parks or other public or semi-public uses, as applicable;
5. Existing and proposed vehicular circulation system, public and private, including dimensioned public rights-of-way and streets, private drives, parking and loading areas, intersection radii, points of access to public streets;
6. For properties located on arterial streets, the location of existing and proposed cross-access drives interconnecting adjoining properties.
7. Existing and proposed pedestrian circulation system, including links to public walks, nearby land uses and public transit, where applicable;
8. Location and size of all existing and proposed buildings and proposed lot lines of development if it is to be subdivided. Any subdivision of land shall be in compliance with the City Subdivision Ordinance;
9. Landscape plan in accordance with the Zoning Ordinance requirements including all screening, fences, walls and manmade design elements including but not limited to ponds, plazas, trellises, sculpture, etc;

At its discretion, staff may permit the landscape plan to be submitted and approved following the issuance of a building permit, however, a specific date for its submission must be agreed upon in writing as a condition to postponing the submission of the landscape plan.

10. A street and/or site lighting plan indicating both vehicular and pedestrian lighting, fixture type and height, areas to be lighted and their corresponding intensity levels;
11. Uniform signage plan for the entire development for both the site and buildings, including all necessary elevation drawings;
12. Elevations of buildings and structures located within the proposed development;
13. The following general information:
  - a. Surfacing materials for all streets, drives, parking areas, plazas, and pedestrian walks;
  - b. Location of existing City water and sanitary sewer lines and points of connection;



- c. Location of all proposed fire hydrants;
  - d. Location, size and shape of all storm water retention areas;
14. Such other data or information as may be required by the Planning staff or Plan Commission for consideration of the development plan.

#### **24.7 Development Requirements for Preliminary Approval**

Preliminary approval of a proposed development plan shall be based on a determination by the reviewing authority that the development plan:

- A. Complies with the design standards of this Ordinance;
- B. Complies with the purpose of this Section;
- C. Is consistent with the stated goals and purposes of the City of Elkhart Comprehensive Land Use Plan;
- D. Adequately satisfies the following general development standards:
  - 1. Compatibility with surrounding land uses;
  - 2. Availability and coordination of water, sanitary sewer, storm drainage and utility services or facilities;
  - 3. Appropriate building separation and location, parking, site improvements (including landscaping and lighting) and signage;
  - 4. Provision of sufficient public safety access and facilities;
  - 5. The development will not create noise, smoke, heat, glare or odor which would constitute a nuisance.
- E. Provides for vehicular and pedestrian circulation in a manner which creates conditions favorable to the health, safety, convenience and harmonious development of the community, particularly considering the following factors:
  - 1. The extent to which the design and location of proposed street and highway access points minimize safety hazards and congestion;
  - 2. The capacity of adjacent streets and highways to safely and efficiently handle traffic projected to be generated by the development;
  - 3. Whether streets, drives, loading and parking areas, and pedestrian walks both within and adjacent to the development are coordinated to provide a safe, efficient and integrated circulation system.

**24.8 Development Plan Design Standards - Type I**

The following minimum design standards shall apply to all improvements within any development plan district, except as indicated, and shall be considered in the review process by the Planning staff or Plan Commission. The requirements of the underlying zoning district shall also be criteria for review. In the case of a conflict between the provisions of this Section and other regulations in this Ordinance, the more restrictive standard shall apply, unless otherwise determined by the Planning Staff. (as amended per Ordinance No. 5618 on August 20, 2017.)

**A. District Character**

The proposed development shall be compatible with the design character of adjacent development in regard to scale and mass and shall promote the development goals and purpose of the zoning or overlay district in which it is located.

**B. Environmental Design**

1. It is the intention of the City to encourage the preservation of natural site amenities and to minimize the disturbance to the natural environment.
2. Existing trees and other natural amenities shall be preserved wherever possible. The location of these features must be considered when planning common open space, building location, underground services, walks, paved areas and finished grade levels. Inquiries may be made into the means by which natural features will be protected during construction.
3. The proposed development shall have a logical relationship to the topography of the site and adjacent property.
4. Landscaping in the Riverwalk Overlay District shall be designed to soften the placement of buildings within the district and screen parking areas to create an overall "streetscape" along the Riverwalk. (As amended per Ordinance No. 4533, dated November 8, 2000)

**Landscaping Standards**

- a. Parking areas and access drives located within 20 feet of the Riverwalk shall be screened so that vehicles are not visible from the Riverwalk. Landscape screening shall include one (1) or more of the following treatments:
  1. A five (5) foot high opaque wall or fence in conjunction with shrubbery and/or trees. Fence and/or wall materials shall be compatible with façade materials used on the primary building.
  2. Coniferous trees or hedges that are at least five (5) feet in height.
  3. An earthen berm that is at least five (5) feet in height. The earthen berm shall have vegetative ground cover.

b. Yard areas that are adjacent to the riverwalk shall have vegetative ground cover and include two (2) or more of the following treatments:

1. Canopy trees
2. Decorative trees
3. Decorative bushes
4. Decorative fencing

(As amended per Ordinance No. 4533, dated November 8, 2000)

C. Site Development

Structures shall be located to allow adequate light, air, and ease of entry and access by the general public and emergency personnel. The development shall conform to all applicable development standards and district regulations specified in this ordinance.

Riverwalk Overlay District Structures shall be located to create an inviting, pedestrian-scaled “streetscape” along the Riverwalk. (as amended per Ordinance No. 4533, dated November 8, 2000). For parcels within the Riverwalk Overlay that front Main Street, Jackson Boulevard, or Elkhart Avenue, the site should be designed to primarily address these streets. Consideration should still be given to creating an inviting atmosphere along the Riverwalk but these parcels must support an established street wall along these important corridors. (as amended per Ordinance No. 5618 on August 20, 2017.)

D. Vehicular Circulation Systems - General

The following standards apply to all properties located within a development plan district:

1. The number, location and dimensions of accel/decel lanes, passing blisters and entry drives, shall be evaluated on the basis of City Public Works and Utilities standards.
2. All public drives shall conform to the standards established by the City Public Works and Utilities Department. Private drives shall conform to the standards of the City Zoning Ordinance.
3. All streets, access drives and off-street parking areas shall be paved with concrete, asphalt or other approved surfacing material to adequately provide a durable and dust-free surface.

E. Vehicular Circulation Systems - Arterial Streets

The following standards apply only to properties located on an arterial street within a development plan district:

1. In order to reduce traffic hazards and maintain the traffic carrying capacity of the arterial streets, required access control elements may include:

- a. Cross-Access Agreements: The property owner enters into an easement agreement with adjacent property owner(s) and/or the City to provide cross property access allowing multiple developments to share a common entry from the arterial street. The agreement shall be in a form approved by the reviewing authority and shall be recorded.
  - b. Frontage Roads: The property owner grants the City of Elkhart an easement for the construction of a parallel frontage road to connect individual developments to a common entry from the arterial street.
  - c. Temporary Access Drives: Where parcels adjacent to the subject property are undeveloped, a development plan may be approved with direct access to and from the arterial street provided that the property owner delivers to the City of Elkhart a commitment that if at any time access becomes available through a cross access easement or frontage road connected to a common entry, the property owner will close the direct access drive.
2. The reviewing authority may require delivery of such other commitments as it may deem necessary to control site access.

F. Vehicular Circulation Systems

Riverwalk Overlay District parking lots and access drives shall be designed to minimize vehicular traffic along the Riverwalk. Primary structures shall be located between the Riverwalk and access drives and parking lots. Service and access drives shall not be located adjacent to the Riverwalk. (as amended per Ordinance No. 4533, dated November 8, 2000).

G. Pedestrian Circulation Systems

Walkways and plazas shall be constructed to provide pedestrian circulation throughout the development separate from all vehicular drives and parking areas. Where distance separation cannot be achieved, physical separation by means approved by the reviewing authority shall be required. Pavement treatment and materials should be such that they clearly differentiate pedestrian and vehicular circulation areas.

Riverwalk Overlay District

Developments located in the Riverwalk Overlay District shall provide pedestrian access between the development and the Riverwalk. Materials used to construct the pedestrian circulation systems shall be complementary to those used in the Riverwalk. (As amended per Ordinance No. 4533, dated November 8, 2000)

H. Sanitary Sewage Disposal and Water Supply Systems

All water supply and sanitary sewage disposal systems shall comply with the requirements of the City of Elkhart and State Board of Health, as applicable.

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I. Public or Semi-Public Space

All developments including public or semi-public space must contain acceptable covenants insuring adequate maintenance of these spaces.

**24.9 Development Plan Design Standards - Type II**

The following design standards shall apply to all improvements within any development plan district where Type II design standard review is required. These standards shall be considered in the review process by the Planning staff or Plan Commission along with the requirements of the underlying zoning district and the Type I design standards. In the case of a conflict between the provisions of this Section and other regulations in this Ordinance, the more restrictive standard shall apply, unless otherwise determined by the Planning Staff. (as amended per Ordinance No. 5618 on August 20, 2017.)

A. Definitions

The following definitions pertain to Type II design standards:

1. **Arcade:** A permanently affixed covered wall composed of rigid roofing material supported by vertical columns extending along a facade of a building.
2. **Canopy:** A roof-like cover attached to a building generally of a material different from that of the building and which projects from the wall of the building.
3. **Cornice:** Exterior trim on a structure at the meeting of the roof and wall consisting of architectural elements including bed molding, soffit, fascia and crown molding.
4. **Façade:** Any exterior wall of a building.
5. **Mansard Roof:** A roof having a double slope on all sides, the lower slope being nearly vertical and the upper slope nearly horizontal.
6. **Mass:** The three dimensional volume of a building.
7. **Parapet:** A wall which extends above the plane of the adjacent roof.
8. **Pitch:** The slope of a roof expressed as a ratio of vertical distance (rise) over horizontal distance (run).
9. **Portico:** A porch or covered walk at a building entrance or exit consisting of a roof supported by columns.
10. **Primary Façade:** Any facade of a building at least fifty percent (50%) of which is visible from a public street, the Riverwalk or from a customer parking lot for that building. (As amended per Ordinance No. 4533, dated November 8, 2000)

- 11. **Relief:** The projection of shapes and forms from a flat surface.
- 12. **Trellis:** An open grating or lattice work of either metal or wood.
- 13. **Wing Wall:** A subordinate wall, one end of which is built against an abutment, usually acting as support for the abutment and as a retaining wall.

**B. Facade Standards**

All primary facades of a building shall be designed with consistent architectural style, detail and trim features. Primary facades of accessory structures have detail, trim features, and an architectural style that is consistent with the primary building.

- 1. The horizontal lengths and curves of exterior facades shall be interrupted by recesses and projections. Exterior facades shall be designed to employ the following design treatments;
  - a. Buildings in excess of ten thousand (10,000) square feet (based upon footprint not total square footage):
    - i. No uninterrupted horizontal length or curve of a non-arcaded facade shall exceed one hundred (100) linear feet.
    - ii. No uninterrupted horizontal length or curve of an arcaded facade shall exceed one hundred twenty (120) linear feet. Varied lengths and curves are preferred.
    - iii. Projections and recesses shall have a minimum depth of thirty-two (32) inches.
    - iv. Projections and recesses shall have a minimum width of forty-eight (48) inches.
  - b. Buildings of less than ten thousand (10,000) square feet (based upon footprint, not total square footage):
    - i. No uninterrupted horizontal length or curve of a non-arcaded facade shall exceed fifty (50) linear feet.
    - ii. No uninterrupted horizontal length or curve of an arcaded facade shall exceed eighty (80) linear feet.
    - iii. Projections and recesses shall have a minimum depth of eight (8) inches.
    - iv. Projections and recesses shall have a minimum width of twenty-four (24) inches.
- 2. Each primary facade shall incorporate a minimum of three of the following design treatments from items a.-k. and at least one from items l. or m. within fifty percent (50%) of its area for buildings in excess of ten thousand (10,000)

square feet, and within thirty-three percent (33%) of its area for buildings of less than ten thousand (10,000) square feet.

- a. Arcades with a minimum width of eight (8) feet clear for buildings in excess of ten thousand (10,000) square feet and six (6) feet clear for buildings of less than ten thousand (10,000) square feet.
- b. Display windows.
- c. Color banding through the use of colored exterior building materials or paint.
- d. Canopies or porticos.
- e. Roofs which extend (overhang) at least eight (8) inches beyond the wall.
- f. Sculpted art work.
- g. Raised cornice parapets over doors.
- h. Arches.
- i. Towers.
- j. Landscaping along a primary facade in excess of landscaping otherwise required by this Ordinance. The additional landscaping shall be of sufficient quantity to meet the intent of a separate design treatment.
- k. Color change.
- l. Change in the exterior building material.
- m. Vertical or horizontal banding of architectural (not color) features.

C. Roof Standards

Roof features shall be in scale with the building and complement the character of adjacent buildings. Roofs shall comply with the following standards:

- 1. The roof edge of each primary facade shall have at least one (1) vertical change of at least three (3) feet from the predominant roof design. Roof mounted mechanical equipment shall be concealed through the use of parapet walls or enclosures with an architectural and design style consistent with the parent building.
- 2. Each roof shall incorporate at least two of the following design elements:
  - a. Overhangs of not less than two (2) feet beyond the supporting walls with a minimum fascia of eight (8) inches or;

- b. Multiple plane slopes on each primary façade or;
  - c. Three-dimensional cornice treatment which is at least twelve (12) inches in height and contains at least three (3) reliefs; or
  - d. Vertical roof changes with a minimum change in elevation of two feet other than the vertical roof changes required above.
- 3. Roofing material shall be constructed of durable high quality material. Use of the following types of roofing materials and designs is prohibited, except as noted:
  - a. Asphalt shingles, except laminated twenty-five (25) year architectural grade asphalt shingles or a higher grade of asphalt shingles;
  - b. Mansard roofs and canopies with a vertical distance of less than eight feet or an angle of less than twenty-five (25) degrees or an angle greater than seventy degrees (70°);
  - c. Roofs with less than or equal to a two (2) to twelve (12) pitch unless full parapet coverage is used; and
  - d. Back-lit awnings used as a mansard or canopy roof.

**D. Material Standards**

- 1. Exterior building colors and materials shall be integrated into a comprehensive design style for the building. The following materials shall be prohibited:
  - a. Smooth concrete masonry units.
  - b. Stone construction with a rubble appearance.
  - c. Sheet plywood and other similar paneling products used as exterior building materials.
- 2. All facades which face roadways, parking areas or residential districts shall utilize vinyl or aluminum siding for no more than fifty percent (50%) of the facade and shall utilize corrugated metal for no more than twenty-five percent (25%) of the facade.

**E. Parking Structure Standards**

A minimum of sixty percent (60%) of the area of any primary facade of a parking structure or covered parking facility shall be composed of at least two (2) of the following elements.



1. Transparent windows, with clear or lightly-tinted glass, where businesses are located within the parking structure, at street level along a primary facade of the parking structure;
2. Display windows;
3. Decorative metal grille-work or similar detailing which provides texture and partially and/or fully covers the parking structure opening(s);
4. Art or architectural treatment such as sculpture, mosaic, glass block, opaque art glass, or relief work;
5. Vertical trellis;
6. Landscaping; or
7. An entryway plaza which complies with all entryway standards.

#### **24.10 Preliminary Review and Approval Procedure**

##### **A. Planning Staff Review**

For those development plans not designated for review by the Plan Commission, the following procedure shall be followed:

1. Review by the Planning staff may be conducted without a public hearing. Plans will be reviewed in accordance with a schedule adopted by the staff.
2. The development plan shall be reviewed by the Planning staff with input from other City departments, government agencies or public utilities as deemed necessary to insure compliance with the requirements of this ordinance and any other applicable, codes, regulations and ordinances.
3. In the event that Type II Design Standards apply, the development plan shall be reviewed by the Plan Commission Architectural Review Committee. The Architectural Review Committee shall issue an advisory opinion to the Planning staff on whether the Type II Design Standards have been met. The Planning staff may adopt or reject the Architectural Review Committee opinion in rendering its decision to grant or deny preliminary approval of the development plan.
4. Staff may request that the applicant attend any review meetings to facilitate the review and approval process.
5. Review of a development plan may be continued to permit resolution of outstanding issues, however, staff must render a decision within forty-five (45) days of submission of the development plan, unless the applicant agrees to extend this period.
6. Following its review Planning staff may approve, approve with modifications or conditions, or deny preliminary approval. The decision shall be in writing

and shall include written reasons for the actions taken and shall be signed by a member of the Planning staff.

- a. If approved with no changes the preliminary approval shall be considered as final approval.
  - b. If approved with conditions, preliminary approval shall be for a period of one (1) year from the date of approval, unless the applicant, prior to the expiration of such one (1) year period, shall have applied for and received the Planning staff's approval for an extension to obtain final approval. If by the expiration of the initial one (1) year period, or during any period of extension approved by the Planning Staff, the applicant does not obtain final approval of all or part of the area included in the development plan for which preliminary approval has been granted, then such preliminary approval shall lapse and be considered null and void.
  - c. If preliminary approval is denied, a new application must be submitted for any subsequent request for development plan approval on the property.
7. The Planning staff shall send notice of its decision to the applicant and make such notice available to other interested parties upon request. The notice shall indicate whether final approval of the development plan is required. Notice shall be furnished within five (5) working days after a decision has been rendered by the Planning staff.

**B. Plan Commission Review**

In the event Plan Commission review and approval of a development plan is required as a condition of a zoning map change or by staff determination, the following procedure shall apply:

1. An application for preliminary approval with the appropriate filing fee shall be submitted to the Planning & Zoning Office at least thirty (30) days prior to the Plan Commission meeting at which it is to be reviewed.
2. The Planning staff shall review the development plan prior to the meeting at which the plan is to be heard and provide written findings of fact and a recommendation.
3. In the event that Type II Design Standards apply, the development plan shall be reviewed by the Plan Commission Architectural Review Committee. The Architectural Review Committee shall issue an advisory opinion to the Plan Commission on whether the Type II Design Standards have been met. The Plan Commission may adopt or reject the Architectural Review Committee opinion in rendering its decision to grant or deny preliminary approval of the development.
4. The Plan Commission shall conduct a public hearing prior to taking any action. At least ten (10) days prior to the hearing the Plan Commission staff shall have a legal notice of the hearing published in the local newspaper and

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a notice sent by regular mail to all property owners of record located within three-hundred (300) feet of the proposed development.

5. Following the public hearing the Plan Commission shall determine if the proposed development plan complies with the requirements of this ordinance.
6. Unless review of the development plan is tabled the Plan Commission shall either approve, with or without conditions, or deny preliminary approval of the proposed development plan and enter written findings in accordance with such decision, which shall be signed by the President of the Plan Commission.
  - a. If approved with no changes the preliminary approval shall be considered as final approval.
  - b. If approved with conditions, preliminary approval shall be for a period of one (1) year from the date of approval, unless the applicant, prior to the expiration of such one (1) year period, shall have applied for and received the Plan Commission's approval for an extension to obtain final approval. If by the expiration of the initial one (1) year period, or during any period of extension approved by the Plan Commission, the applicant does not obtain final approval of all or part of the area included in the development plan for which preliminary approval has been granted, then such preliminary approval shall lapse and be considered null and void.
  - c. If preliminary approval is denied, a new application must be submitted for any subsequent request for development plan approval on the subject property.
7. In rendering its decision the Plan Commission shall take into consideration all pertinent information presented by the Planning staff, the applicant, the Architectural Review Committee, other City departments, boards and commissions, other governmental agencies, and the general public.
8. The Plan Commission shall send notice of its decision and written findings to the applicant and make such notice available to other interested parties upon request. The notice shall indicate whether final approval is required and whether the Plan Commission intends to retain authority over final approval. Notice shall be furnished within five (5) working days after a decision has been rendered by the Plan Commission.

#### **24.11 Final Approval of Development Plans: Authority and Procedure**

##### **A. Authority**

The Planning staff shall have the authority to grant final approval of a development plan, except in those instances in which the Plan Commission has retained authority. Final approval shall not require a public hearing, however, the Plan Commission may, if it deems necessary, require a public hearing for the final approval of a development plan over which it has retained authority.

**B. Procedure**

The applicant shall submit the final development plan with all revisions, additions or deletions as prescribed in the preliminary plan approval to the Planning & Zoning Office. The proposed final plan may include less than the entire area for which preliminary approval was granted. In the event final approval is granted for only a portion of the development plan, the applicant thereafter will not be obligated to adhere to any time limitations for requesting final approval of the remainder of the development plan.

1. Where final review and approval have been delegated to the Planning staff:
  - a. Staff shall review the final development plan to insure that the conditions specified at preliminary approval have been satisfied.
  - b. A written notice of action, including the reasons therefore, shall be signed by the Planning staff and provided to the applicant and to other interested parties upon request. Notice shall be furnished within five (5) working days after a decision has been rendered by the Planning staff.
2. Where final review and approval has been retained by the Plan Commission:
  - a. The final development plan shall be submitted at least thirty (30) days prior to the meeting at which the plan will be discussed.
  - b. If the Plan Commission has determined that a public hearing is required then the appropriate filing fee shall be paid.
  - c. The Plan Commission shall review the final development plan to insure that the conditions specified at preliminary approval have been satisfied.
  - d. In rendering its decision the Plan Commission shall take into consideration all pertinent information presented by the Planning staff, the applicant, the Architectural Review Committee, other City departments, boards and commissions, other governmental agencies, and the general public.
  - e. A written notice of action, including the reasons therefor, shall be signed by the Plan Commission President and provided to the applicant and to other interested parties upon request. Notice shall be furnished within five (5) working days after a decision has been rendered by the Plan Commission.
  - f. A copy of the approved final site plan shall be recorded at the Elkhart County Recorder's Office, and proof of such action in the form of a receipt of filing for recording of the documents provided to the Planning and Zoning staff shall be provided prior to the issuance of a certificate of occupancy for any such project. (As amended per Ordinance 4762 on August 1, 2003)

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#### **24.12 Appeal of Staff Decision to Plan Commission**

An appeal of a staff decision, or a portion thereof, for either preliminary or final development plan approval, shall be in accordance with the following:

- A. A written appeal shall be filed with the Planning and Zoning Office within thirty (30) days of the date of the Planning staff's written decision with the prescribed filing fee.
- B. The appeal shall be on a form prescribed by the Plan Commission and include the following:
  - 1. Copy of the Staff decision, or portion thereof, that is being appealed and the reasons for the appeal;
  - 2. Any additional documentation supporting the appeal; and
  - 3. List of property owners of record within three hundred (300) feet of the proposed development.
- C. The Plan Commission shall conduct a public hearing prior to taking any action. At least ten (10) days prior to the hearing the Plan Commission staff shall have a legal notice of the hearing published in the local newspaper and a notice sent by regular mail to all property owners of record located within three hundred (300) feet of the proposed development.
- D. Staff shall provide copies of all documentation supporting the decision under appeal.
- E. Following the public hearing the Plan Commission shall either affirm, modify or reverse the staff decision.
- F. In order to reverse or modify the staff decision, the Plan Commission must find that the development plan maintains the intent of the applicable development requirements and design standards.
- G. A written notice of action, including the reasons therefore, shall be signed by the Plan Commission President and provided to the applicant and to other interested parties upon request. Notice shall be furnished within five (5) working days after a decision has been rendered by the Plan Commission.

#### **24.13 Amendments to an Approved Development Plan**

- A. Authority to Review and Approve Development Plan Amendments
  - 1. The Planning staff may review and approve proposed minor amendments provided that the changes:
    - a. Maintain the purpose and intent of the original approved development plan; and
    - b. Do not result in: the addition, deletion or relocation of approved curb cuts onto public streets or cross access drives onto adjoining

properties; increase the density or size of the development; reduce or alter the perimeter treatment of the site; change the use of the development; reduce approved setbacks for buildings, structures and other site elements; or create a significant impact on surrounding properties or the development plan district in which it is located.

- c. Such review shall be completed within ten (10) working days of submittal.
- 2. All other amendments shall be deemed major and must be reviewed and approved by the Plan Commission following a public hearing.
- B. After preliminary or final approval of a development plan has been granted, any amendments thereto shall be submitted by the applicant to the Planning & Zoning Office. The submission shall be on a form prescribed by the Plan Commission, signed by the owner(s) of record and include all supporting documentation and plans pertinent to the proposed amendment, and the appropriate filing fee if a public hearing is required.
- C. Review and approval of a development plan amendment by either the Planning staff or the Plan Commission shall be governed by the procedures specified for final plan approval by that authority.
- D. The Plan Commission may require a public hearing on amendments to a development plan regardless of the procedure applied for preliminary or final approval of that development plan. The Plan Commission may waive any procedural or submission requirements otherwise specified under this Section, as it deems necessary, when reviewing an amendment of an approved development plan.

#### **24.14 Waiver of Design Criteria and Ordinance Standards**

The reviewing authority may waive any of the design criteria and/or development requirements under which the development plan is reviewed, if:

- A. The intent of the standard being waived is maintained;
- B. The waiver does not significantly impact surrounding development or adjoining public streets; and
- C. The waiver results in an overall design quality superior to that which would otherwise be attained by complying with the design criteria or Ordinance standards.

#### **24.15 Authority of Reviewing Authority**

When reviewing a development plan for preliminary or final approval, the reviewing authority may:

- A. Impose conditions on the approval of the development plan which are reasonably necessary to satisfy the applicable development standards and conditions of this ordinance.

- B. Condition approval of the development plan on the furnishing of a bond or satisfactory written assurance guaranteeing the timely completion of any proposed public improvements.
- C. Allow or require the property owner to make a written commitment.

## **SECTION 25**

### **AIR SPACE CONTROL AREA OVERLAY DISTRICT**

#### **Sections**

- 25.1 Purpose**
  - 25.2 Establishment of Zones**
  - 25.3 Height Limitations**
  - 25.4 Use Restrictions**
  - 25.5 Markers and Lights on Nonconforming Structures and Trees**
  - 25.6 Permits**
- 

#### **25.1 Purpose**

This district is an overlay district and may be established in addition to the underlying districts and shall place additional regulations upon the property located therein.

The purpose of this Section is to protect the airport environs by controlling the utilization of space above normal ground level which may interfere with or obstruct the proper operation of aircraft, the safety of persons and the effective operation of the airport.

#### **25.2 Establishment of Zones**

The following zones are established within the Air Space Control Area District. These zones are shown on the Municipal Airport Zoning Map which is made a part of the Official Zoning Map.

##### **A. Precision Instrument Approach Zone**

A Precision Instrument Approach Zone is established at each end of the precision instrument runways of the airport for precision instrument landings and take-offs. The precision instrument approach zones shall have a width of one thousand (1,000) feet at a distance of two hundred (200) feet beyond each end of the runways, widening thereafter uniformly to a width of sixteen thousand (16,000) feet at a distance of fifty thousand two hundred (50,200) feet beyond each end of the runways, its centerline being the continuation of the centerline of the runways.

##### **B. Nonprecision Instrument Approach Zone**

Nonprecision Instrument Approach Zones are established at each end of the nonprecision runways of the airport for nonprecision landings and take-offs. The nonprecision instrument approach zones shall have a width of five hundred (500) feet beginning at a distance of two hundred (200) feet beyond each end of the runways, widening thereafter uniformly to a width of two thousand (2,000) feet and three thousand five hundred (3,500 feet), respectively, at a distance of five thousand two hundred (5,200) feet and ten thousand two hundred (10,200) feet, respectively, beyond each end of the runways, its centerline being the continuation of the centerline of the runways.



C. Transition Zones

Transition zones are hereby established adjacent to each runway and approach zone. Transition zones extend outward and upward, at right angles to the runway centerline and runway centerline extended and at a slope of seven (7) feet horizontally for each one (1) foot vertically from the side of the primary zones and from the sides of the approach zones to a point where they intersect the horizontal zone. Transitional zones for those portions of the precision approach zone which project through and beyond the limits of the conical zone extend a distance of five thousand (5,000) feet measured horizontally from the edge of the approach zone and right angles to the runway centerline.

D. Horizontal Zone

A horizontal zone is hereby established as the area which is constructed by swinging arcs of ten thousand (10,000) feet radii from each end of the precision instrument primary zone and the east end of the east-west nonprecision primary zone and connecting the adjacent arcs by lines tangent to those arcs.

E. Conical Zone

A conical zone is hereby established as the area that commences at the periphery of the horizontal zone and extends outward there from a distance of four thousand (4,000) feet. The conical zone does not include the instrument approach zones and transition zones.

F. Primary Zone

The primary zone is a surface longitudinally centered on a runway extending two hundred (200) feet beyond each end of that runway. The width of the primary surface is five hundred (500) feet for nonprecision runways and one thousand (1,000) feet for precision instrument runways.

### 25.3 Height Limitations

Except as otherwise provided in the Section, no structure or tree shall be erected, altered, allowed to grow, or maintained in any zone created by this Ordinance to a height in excess of the height limit herein established for such zone. Such height limitations are hereby established for each of the zones in question as follows:

A. Precision Instrument Approach Zone

One (1) foot in height for each fifty (50) feet horizontal distance beginning at a point two-hundred (200) feet from and at the elevation of the end of the precision instrument runway and extending to a distance of ten thousand two hundred (10,200) feet from the end of the runway, thence one (1) foot in height for each forty (40) feet horizontal distance to a point fifty thousand two hundred (50,200) feet from the end of the runway;

B. Nonprecision Instrument Approach Zones

For the east-west nonprecision zone - one (1) foot in height for each thirty-four (34) feet horizontal distance beginning at the ends of the primary zone and extending for a distance of ten thousand (10,000) feet. For the north-south nonprecision zone - one (1) foot in height for each twenty (20) feet horizontal beginning at the ends of the primary zone and extending for a distance of five thousand (5,000) feet;

C. Transition Zones

One (1) foot in height for each seven (7) feet horizontal distance beginning at any point on the sides of the primary zone and approach zones, extending to a height of one-hundred fifty (150) feet above the airport elevation which is seven hundred seventy-seven (777) feet above mean sea level. Further, where the precision instrument approach zone projects through and beyond the conical zone, a height limit of one (1) foot for each seven (7) feet horizontal distance shall be maintained beginning at the edge of the instrument approach zone measured normal to the centerline of the runway extended;

D. Horizontal Zone

One hundred and fifty (150) feet above the airport elevation or a height of nine-hundred twenty-seven (927) feet above mean sea level; and

E. Conical Zone

One (1) foot in height for each twenty (20) feet horizontal distance beginning at the periphery of the horizontal zone, extending to a height of three hundred fifty (350) feet above the airport elevation;

F. Primary Zone

The elevation of any point on the primary zone is the same as the elevation of the nearest point on the runway centerline.

Where an area is covered by more than one height limitation, the more restrictive limitation shall prevail. Nothing in this Section shall be construed as prohibiting the growth, construction or maintenance of any tree or structure to a height consistent with the provisions of this Ordinance.

## **25.4 Use Restrictions**

A. No use may be made of the land within any zone established by this Ordinance in such manner as to create interference with any form of communication whose primary purpose is for air navigation.

B. All lights in such zones shall be:

1. Located in such a manner that they do not interfere with the runway, taxiway, tower or any other airport lights.

2. Shielded such that no light is directed, focused or beamed to an angle greater than five (5) degrees above horizontal.
3. Prohibited which may result in glare in the eyes of air crews using the airport in the landing, taking off or maneuvering of aircraft.

## **25.5 Markers and Lights on Nonconforming Structures and Trees**

The owner of any nonconforming structure or tree is hereby required to permit the installation, operation and maintenance thereon of such markers and lights as shall be deemed necessary by the Board of Aviation Commissioners to indicate the presence of such airport hazards to the operators of aircraft in the vicinity of the Airport. Such markers and lights shall be installed, operated and maintained at the expense of the City.

## **25.6 Permits**

### **A. Future Uses**

Except as specifically provided in this Section, no material change shall be made in the use of land and no structure or tree shall be erected, altered, planted, or otherwise established in any zone hereby created unless a zoning clearance permit therefore shall have been applied for and granted. Each application for a zoning clearance permit shall indicate the purpose for which the permit is desired with sufficient particularity to permit it to be determined whether the resulting use, structure or tree would conform to the regulations herein prescribed.

1. In the area lying within the limits of the Horizontal Zone and the Conical Zone, no permit shall be required for any tree or structure less than seventy-five (75) feet in height, except when, because of terrain, land contour or topographic features, such tree or structure would extend above the height limits prescribed for such zone.
2. In the areas lying within the limits of the instrument and non-instrument approach zones but at a horizontal distance of not less than four thousand two hundred (4,200) feet from each end of the runways, no permit shall be required for any tree or structure less than seventy-five (75) feet in height, except when such tree or structure would extend above the height limit prescribed for such instrument or non-instrument approach zone.
3. In the areas lying within the limits of the Transition Zones beyond the perimeter of the Horizontal Zone, no permit shall be required for any tree or structure less than seventy-five (75) feet in height, except when such tree or structure, because of terrain, land-contour or topographic features, would extend above the height limit prescribed for Transition Zones.

Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction or alteration of any structure or growth of any tree in excess of any of the height limits established by this Ordinance, as set forth in Section 25.3.

B. Existing Uses

No permit shall be granted that would allow the establishment or creation of any airport hazard or permit a nonconforming use, structure or tree to be made or become higher or become a greater hazard to air navigation, than it was on the effective date of this Ordinance or than it is when the application for a permit is made.

C. Hazard Marking and Lighting

Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this Section and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to permit the Board of Aviation Commissioners, at its own expense, to install, operate and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

D. Any person desiring to erect any structure or increase the height of any structure or permit the growth of any plant life or use his property not in accordance with the regulations prescribed in this Section may apply to the Board of Zoning Appeals for a variance in accordance with the procedure set forth in Section 29.8, plus the mandatory referral of such applications to the Board of Aviation Commissioners for their recommendation.

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## SECTION 26

### DEVELOPMENT STANDARDS

#### Sections

- 26.1 Accessory Structures**
  - 26.2 Landscape and Screening Requirements**
  - 26.3 Permitted Obstructions in Required Yards**
  - 26.4 Fence Requirements**
  - 26.5 Roadway Regulations**
  - 26.6 Exterior Lighting Standards**
  - 26.7 Off-Street Parking and Loading**
  - 26.8 Adult Entertainment Facilities**
  - 26.9 Bed and Breakfast Homes**
  - 26.10 Sign Regulations**
- 

#### **26.1 Accessory Structures**

##### **A. Intent**

The provisions set forth in this Section are intended to qualify and supplement the district regulations in the interest of public health, safety, and welfare. The following provisions shall apply to all structures that are accessory to residential, commercial and manufacturing uses as permitted herein, including but not limited to detached garages, sheds, swimming pools, pool houses, and other structures subordinate to the principal dwelling unit. Fences shall not be considered accessory structures.

##### **B. Accessory Structures - General Provisions**

1. An accessory structure shall not be erected prior to the establishment or construction of the principal building to which it is accessory or to which it is intended to be accessory.
2. No portion of an accessory structure may be closer to the front lot line than the nearest point of the principal structure.
3. An accessory structure shall not be located closer than three (3) feet to an interior side yard lot line and not closer than five (5) feet to the rear lot line.
4. On a corner lot, an accessory structure shall not be located closer to the side lot line nearest the intersecting street than the established building line along that street on the same side.
5. All accessory structures, except free standing amateur television and radio towers, shall be limited to a maximum height of fifteen (15) feet in residential and business districts, and a maximum height of thirty (30) feet in manufacturing districts. (as amended per Ordinance No. 4462 on January 13, 2000.)

6. Free-standing amateur television and radio towers shall be limited to a maximum height of thirty-five (35) feet. The Planning Staff may approve an increase in height of up to seventy (70) feet for a radio tower that is:
  - a. Structurally attached to primary structures;
  - b. Owned by federally licensed amateur ham radio operators; and
  - c. When it has been demonstrated by study that the additional height is necessary for effective operation of the radio tower.  
(as amended per Ordinance No. 4457 on December 9, 1999.)
7. An accessory structure in a manufacturing, office, or business district shall be located at least ten (10) feet from the side and rear lot lines.
8. Size:
  - a. Accessory buildings on property occupied by a one- or two-family residential use shall be limited to a maximum floor area of seven hundred twenty (720) square feet for the largest structure, with a maximum total of eight hundred forty (840) square feet for all accessory buildings combined. Accessory buildings on all other residential use properties shall be limited to a maximum floor area of nine hundred sixty (960) square feet, both individually and aggregate. A maximum of two (2) accessory buildings (not including a swimming pool or satellite dish) is allowed on each lot.
  - b. Carports and detached garages within apartment complexes containing ten (10) or more dwelling units are exempted from these requirements.
9. Accessory buildings shall have roof pitch and exterior materials and color consistent with those of the principal building unless approved otherwise by the Planning and Zoning Office.
10. Filling station pumps, pump islands, and canopies shall not be less than fifteen (15) feet from a property line.
11. No accessory structures shall be used for permanent or temporary habitation.

C. Swimming Pools

A swimming pool shall be permitted as an accessory structure subject to the following additional provisions:

1. A swimming pool may not be constructed closer than six (6) feet to an adjacent property line.
2. A swimming pool shall not be counted as part of lot coverage.
3. A swimming pool or the yard in which the pool is located, or any part thereof, shall be enclosed with a fence, six (6) feet in height, measured from the

natural grade on the exterior side of the fence. All gates within such a fence shall be self-closing and self-locking.

4. Swimming pool construction and operation shall meet all appropriate municipal, county or state requirements.
5. Swimming pools shall not be constructed under utility lines. (as amended by Ordinance 5044 on July 11, 2007).

D. Satellite Antennas

1. Any satellite antenna one (1) meter or less in diameter shall be permitted in any zoning district regardless of location.
2. Any satellite antenna two (2) meters or less in diameter shall be permitted in any business or manufacturing district regardless of location.
3. Any satellite antenna more than one (1) meter in diameter located in any residential district or more than two (2) meters in diameter located in any business or manufacturing district shall be permitted provided that such antenna is located:
  - a. On an interior lot, in the rear yard at least five (5) feet from both side and rear yard lines; or
  - b. On a corner lot, in the rear yard, setback at least five (5) feet from either the established building line along that side of the intersecting street or the façade of the principal structure on the lot facing the intersecting street, whichever is greater; and five (5) feet from both the rear and interior side lot lines; or
  - c. Mounted on the rear portion of any structure in a business or manufacturing district, or on the rear portion of a structure containing a minimum of six (6) dwelling units in an R-4, Multiple-Family Dwelling District, provided that such antenna is not conspicuous from any public right-of-way.

E. Vehicular Storage

A vehicle or recreational vehicle may be stored in the side yard or in the rear yard on a paved surface. All vehicles stored outside on residentially zoned properties shall be operable and properly plated.

F. Decks

All decks twenty-four (24) inches or more in height above grade shall adhere to the following:

1. If attached to a principal structure, the deck shall be considered part of the principal structure and shall comply with all required setbacks for principal structures within the zoning district.

2. If attached to an accessory structure or free-standing, the deck shall be considered an accessory structure and shall comply with all required setbacks for accessory structures.

## **26.2 Landscape and Screening Requirements**

### **A. Intent**

The requirements set forth in this Section are intended to qualify and supplement the district regulations. Landscaping requirements shall be provided for an improved aesthetic quality of development, a visual barrier to partially or completely screen the view of structures or activities or as an acoustic screen to aid in absorbing or deflecting noise.

Landscape plans and requirements shall apply to all developments:

1. In the R-4, O, CBD, OP, BP, PUD and all "B" zoning districts;
2. In "M" zoning districts fronting an arterial street (front and corner side yard only);
2. Requiring a development plan;
3. Requiring parking lot landscaping; and
4. When specified by this ordinance.

### **B. Landscape Plan**

A landscape plan must be submitted to the Planning and Zoning Office for approval. The plan may be submitted and approved following the issuance of a zoning clearance/building permit, however, a specified date for submission shall be agreed upon in writing at the time the zoning clearance permit is issued. Staff may also require that a bond be filed for all required landscape improvements. This plan shall be drawn to scale and include the following information:

1. Property owner's name, address, and telephone number.
2. Landscape designer's and/or contractor's name, address, and telephone number, if such has been hired.
3. Existing and proposed structures.
4. Parking areas and driveways.
5. Walkways.
6. Location of existing trees or wooded areas (showing trees over eight (8) caliper inches diameter at breast height (d.b.h.); tree groupings may be shown as a mass with a general range of tree sizes). Plan shall indicate those existing trees or wooded areas that will be preserved.



7. General type (evergreen, deciduous, shade or ornamental tree, shrub, hedge, groundcover, etc.), location, size at planting or placement, and number of all plant material to be installed.
8. Type and location of all other landscape materials, both natural and man-made.

The Planning staff may request other information as may be deemed necessary for review and approval of the landscape plan.

C. Areas to be Landscaped

1. All areas within the development portion of a lot not occupied by buildings, parking and other paved areas, and permanent water features shall be landscaped and maintained. Within a front or corner side yard, landscaping shall consist of any combination of canopy and/or ornamental trees, shrubs, and ground cover with:
  - a. At least one (1) canopy or ornamental tree per four thousand (4,000) square feet of yard area for the first twenty-five thousand (25,000) square feet; and
  - b. One (1) additional canopy or ornamental tree per six thousand (6,000) square feet of yard area above twenty-five thousand (25,000) square feet

Within "M" zoning districts these requirements shall be limited to those yards fronting on arterial streets.

Those streets designed as arterial streets shall include the functional classification map housed at the Department of Public Works and Utilities:

Baldwin Street, Beardsley Avenue, Benham Avenue, Bristol Street, Bypass Road, California Road, Cassopolis Street, County Road 1, County Road 3, County Road 4, County Road 5, County Road 6, County Road 7, County Road 9, County Road 10, County Road 11, County Road 12, County Road 13, County Road 15, County Road 17, County Road 20, Edwardsburg Avenue, Elkhart Avenue, Franklin Street, Goshen Avenue, Jackson Boulevard, Jefferson Street, Johnson Street, Hammond Avenue, Harrison Street, High Street, Hively Street, Indiana Avenue, Jeanwood Drive, John Weaver Parkway, Lexington Avenue, Lusher Avenue, Main Street, MacDonald Street, Marion Street, Michigan Street, Middlebury Street, Middleton Run Road, Mishawaka Road, Mishawaka Street, Nappanee Street, Oakland Avenue, Old US 20, Osolo Road, Prairie Street, Richmond Street, Second Street, State Road 19, State Road 120, Sterling Avenue, Third Street, Tipton Street, Toledo Road, Vistula Street, Washington Street, and Waterfall Drive. (Amended per Ordinance No. 4762, on August 1, 2003).

2. Areas as described in the zoning district regulations.
3. Parking areas shall be screened according to Section 26.7(c) (1) of this Ordinance.

4. Roadway right-of-ways shall be landscaped with grass and trees as per city standards. No walls, fences, signs or hedges shall be permitted in a right-of-way without the approval of the Board of Public Works. Landscaping shall not impede visual clearance according to Section 26.5 of this Ordinance.
5. Retention ponds located in front yards or other areas visible to the public, either from within the site or from the street, shall be free-form (curvilinear) in shape and incorporated into the overall landscape design for the site. Architectural shapes consistent with the site and building design may be used with the approval of the Planning staff.
6. All dumpsters visible from public right-of-way or an adjacent property shall be screened on at least three (3) sides with an opaque wall or fence that is architecturally compatible with the primary facility on the property consisting of the same material and color scheme as is found on the majority of the exterior of the primary structure on the property. In addition, gates shall be provided if dumpsters are visible from the public right-of-way, an adjacent property, or areas of the site open to the public. Gates shall consist of an opaque material, and shall not be constructed of chain link with tinted slats or other weaved material. (As amended per Ordinance No. 4683 July 10, 2002)
7. Storage areas for materials, equipment and vehicles shall be located behind the front or corner side building facade. All storage areas located on properties containing business uses(s) that are visible from the property line shall be screened. The screening material shall be one hundred (100) percent opaque and shall include fencing, retaining walls, plant material, or a combination thereof. In addition, loading docks and mechanical equipment shall be screened from public view.

D. Landscape Materials

Landscaping materials selected shall be appropriate to local growing and climatic conditions. Wherever possible, existing trees should be conserved and integrated into the landscaping plan. Landscape materials may be used in any combination unless otherwise specified and include the following:

1. Plant Material
  - a. Trees or existing wooded areas. Minimum sizes are:
    - i. Deciduous canopy trees: 2 ½" d.b.h.
    - ii. Ornamental trees: 2" d.b.h.
    - iii. Evergreen trees: 6' in height
  - b. Shrubs or hedges. Shrubs shall have a minimum height of twenty-four (24) inches unless otherwise specified.
  - c. Ground cover, including grass.
  - d. Vines.

2. Other Landscape Materials.

- a. Boulders, rocks, or mulch (including stone, pebbles, sand, or bark) limited to walks, paths, seating areas, planting beds and around individual plants. When used in planting beds or around individual trees shall not exceed twenty percent (20%) of the total square footage of the landscaped area.
- b. Berms.
- c. Lakes, ponds, streams, or fountains.
- d. Ornamental fences or masonry walls, architecturally compatible with surrounding development.
- e. Patios, decks, trellises, and other similar landscape features.

3. Prohibited Species (as amended per Ordinance No. 5618 on August 20, 2017.)

Large Shade Trees		
Botanic Name	Common Name	Primary Issue/Concern
<i>Acer negundo</i>	Box Elder	Susceptible to Asian Longhorn Beetle
<i>Acer nigrum</i>	Black Maple	Susceptible to Asian Longhorn Beetle
<i>Acer platanoides</i>	Norway Maple	Susceptible to Asian Longhorn Beetle, general decline
<i>Acer saccharinum</i>	Silver Maple	Susceptible to Asian Longhorn Beetle, weak branches
<i>Aesculus flava</i>	Yellow Buckeye	Susceptible to Asian Longhorn Beetle
<i>Aesculus glabra</i>	Ohio Buckeye	Susceptible to Asian Longhorn Beetle
<i>Aesculus hippocastanum</i> <sup>1</sup>	Common Horsechestnut	Susceptible to Asian Longhorn Beetle
<i>Ailanthus altissima</i>	Tree of Heaven	DNR invasive list
<i>Betula papyrifera</i>	Paper Birch	Susceptible to Asian Longhorn Beetle
<i>Betula populifolia</i>	Grey Birch	Susceptible to Asian Longhorn Beetle
<i>Chionanthus retusus</i>	White Fringetree	Susceptible to Emerald Ash Borer
<i>Chionanthus virginicus</i>	Chinese Fringetree	Susceptible to Emerald Ash Borer
<i>Diospyros virginiana</i>	Persimmon	Messy fruit
<i>Elaeagnus angustifolia</i>	Russian Olive	Invasive
<i>Elaeagnus umbellata</i>	Autumn Olive	DNR invasive list
<i>Fraxinus spp.</i>	White, Green, Black Ash	Susceptible to Emerald Ash Borer
<i>Ginkgo biloba</i> <sup>2</sup>	Ginkgo	Messy fruit
<i>Lonicera spp.</i>	Honeysuckle	Invasive
<i>Maclura pomifera</i>	Osage orange/Hedge apple	Large fruit
<i>Malus spp.</i> <sup>3</sup>	Apples	Messy fruit
<i>Morus spp.</i>	Mulberry	Messy fruit, invasive
<i>Populus deltoides</i>	Cottonwood	Large leaf litter, pollen allergy

<i>Pyrus spp.</i>	Pears (including ornamentals)	Messy fruit, weak branches
<i>Rhamnus cathartica</i>	Common Buckthorn	Invasive
<i>Rhamnus frangula</i>	European Buckthorn	Invasive
<i>Robinia spp.</i>	Black locust	Invasive
<i>Salix alba</i>	White Willow	Susceptible to Asian Longhorn Beetle
<i>Salix alba x matsudana</i>	Hybrid Austree	Fast growing, weak limbs
<i>Salix babylonica</i>	Weeping Willow	Susceptible to Asian Longhorn Beetle
<i>Salix nigra</i>	Black Willow	Susceptible to Asian Longhorn Beetle
<i>Tilia cordata</i>	Littleleaf Linden	Susceptible to Japanese Beetles
<i>Ulmus spp.</i> <sup>4</sup>	Elms	Susceptible to Dutch Elm Disease; Asian Longhorn Beetle
<b>Shrubs</b>		
Botanic Name	Common Name	Primary Issue/Concern
<i>Euonymus alatus</i>	Burning Bush	Invasive
<i>Berberis vulgaris</i>	European Barberry	Invasive, thorny
<i>Berberis thunbergii</i>	Japanese Barberry	Invasive, thorny
<sup>1</sup> Excluding <i>Aesculus x carnea</i> 'Briotii'		
<sup>2</sup> Including all female varieties; excluding male varieties such as <i>G. biloba</i> 'Colonnade', 'Halka', 'The President', 'Autumn Gold', and 'Princeton Sentry'		
<sup>3</sup> Excluding crabapples or ornamental types that don't produce large fruit		
<sup>4</sup> Excluding hybrids and cultivars with excellent resistance to Dutch Elm Disease and phloem necrosis		

#### E. Landscaping Installation and Maintenance

1. All landscaped areas shall be maintained to the standard to which they were designed and installed. Areas shall be maintained free of trash and weeds and shall not deteriorate into an unsafe condition.
2. Whenever landscape screening is required adjacent to parking areas or driveways, such landscaping shall be protected by bumper blocks, posts, or curbing to avoid damage to landscaping by vehicles.
3. All approved landscaping plans shall be installed during the first planting season after the start of any construction in the development, unless otherwise required by the Planning and Zoning Office.

### 26.3 Permitted Obstructions in Required Yards

#### A. Intent

The provisions set forth in this Section are intended to qualify and supplement the district regulations established earlier in this document. The following obstructions shall be permitted in required yards, subject to the conditions and limitations set forth in this Section.

#### B. Obstructions Permitted in Front Yards

1. Open terraces.
2. Awnings and canopies.
3. Chimneys projecting two (2) feet or less into yard.
4. Arbors and trellises.
5. Residential paved driveways.
6. One-story bay windows projecting three (3) feet or less into yard.
7. Overhanging eaves and gutters projecting three (3) feet or less into yard.
8. Handicap access ramps located no further than six (6) feet from the structure.
9. Open porches or stoops projecting six (6) feet or less into front yard.

C. Obstructions Permitted in Side Yards

1. All obstructions permitted in front yards.
2. Open paved parking areas.
3. Outside stairway, open or enclosed, projecting four (4) feet or less into the yard.
4. Handicap access ramps located no further than six (6) feet from the structures.

## **26.4 Fence Requirements**

A. General Provisions--All Districts

1. No fence or wall shall be constructed of or contain barbed wire, broken glass, spikes or sharp and dangerous objects nor be electrically charged, except in manufacturing districts where barbed wire may be used at the top portion of a permitted fence or wall if located more than seven (7) feet above the adjacent ground level. Such permitted barbed wire shall be considered part of the fence and subject to the fence height restrictions.
2. All fences shall be maintained to the standard to which they were designed and installed.
3. The provisions of Section 26.5 shall take priority over the provisions of this Section in restricting the height and location of permitted fences.
4. All fences and walls permitted herein shall be located entirely on the zoning lot and may be located immediately adjacent to the lot lines.

5. Fences or walls not permitted herein but established in conjunction with a planned unit development plan or special exception may be authorized as part of that planned unit development plan or special exception.
6. No fences, other than split rail, wrought iron or open picket fences (with forty percent (40%) open spacing between pickets) not to exceed four (4) feet in height, shall be permitted in any front yard or corner side yard. (as amended per Ordinance No. 4462, on January 13, 2000 & as amended per Ordinance No. 4762, on August 1, 2003).
7. In all districts except manufacturing, all fences shall be no greater than six (6) feet in height, with an additional 6 inches allowed for fence posts.
8. Fence materials may include treated wood, painted wood, treated split rail, ornamental wrought iron, brick, stone, masonry block, decorative painted or vinyl coated aluminum, or other materials as approved by the Planning and Zoning Office. Scrap lumber, plywood, sheet metal, plastic or fiberglass sheets are specifically prohibited. In business and manufacturing districts, in the side and rear yards only, chain link fences with vinyl slats when the slats have been permanently installed by the fence manufacturer. The color of the slats must be coordinated with the color of the building and approved by the Planning Services staff. (as amended by Ordinance 5044 on July 11, 2007.)
9. All fences shall be erected with the finished side facing outward toward the property line. (as amended per Ordinance No. 4462, on January 13, 2000)

**B. Fences Permitted in Residential and Business Districts**

A fence or wall not more than six (6) feet in height may be placed, built or installed in the side and/or rear yards of any lot in a residential or business district, excepting in that portion of any required yard that lies within the corner lot visibility area (Section 26.5) and excepting further that, in a corner lot, no fence, wall, or vegetation exceeding four (4) feet in height or a fence, wall, or vegetation that is opaque may be placed, built or installed: (as amended per Ordinance No. 4762, on August 1, 2003).

1. In the required side yard adjacent to the street; or
2. In any portion of the rear yard lying closer to said street than the point of the principal building nearest said street.

**C. Fences Permitted in Manufacturing Districts**

Except as specified in Subsection 26.4(D) below, a fence or wall not to exceed eight (8) feet in height may be placed, built or installed at the property lines in required side and rear yards, excepting in that portion of any required yard that lies within the corner lot visibility area (Section 26.5), and excepting further that, in a reversed corner lot, no fence or wall may be placed, built, or installed:

1. In the required side yard adjacent to the street; or
2. In any portion of the rear yard lying closer to said street than the point of the principal building nearest the street.

---

Additionally, the height of such fences may be increased by six (6) inches for each three (3) feet of distance from the property line, to a maximum height of twelve (12) feet.

D. Fences Around Junk Yards, Motor Vehicle Impoundment Yards, Scrap or Recycling Yards, or Motor Vehicle Wrecking Yards

1. An opaque fence, a minimum of eight (8) feet in height and a maximum of fifteen (15) feet in height (including any barbed wire), constructed of painted or treated wood, painted or textured block, or brick and set fifteen (15) feet or more inside the lot lines, shall be maintained in good repair around junk yards, motor vehicle impoundment yards, scrap yards, or motor vehicle wrecking yards (see Figure 26.A).

In a front or corner side yard the fence shall not project beyond the front façade of buildings located on adjacent lots on the same side of the street.

2. Entryways to junk yards, motor vehicle impoundment yards, scrap yards, or motor vehicle wrecking yards shall be gated and closed at all times when not in use. Gates shall be opaque and match the style of the fence.
3. A landscaped strip shall be maintained between the fence and property line in the following yards:
  - a. All front and corner side yards;
  - b. The front one-third of any side yard; and
  - c. Any yard abutting a residential zoning district.

The landscape strip shall consist of evergreen or deciduous trees, shrubs, and groundcover with a minimum of one tree every thirty (30) lineal feet of landscape strip.

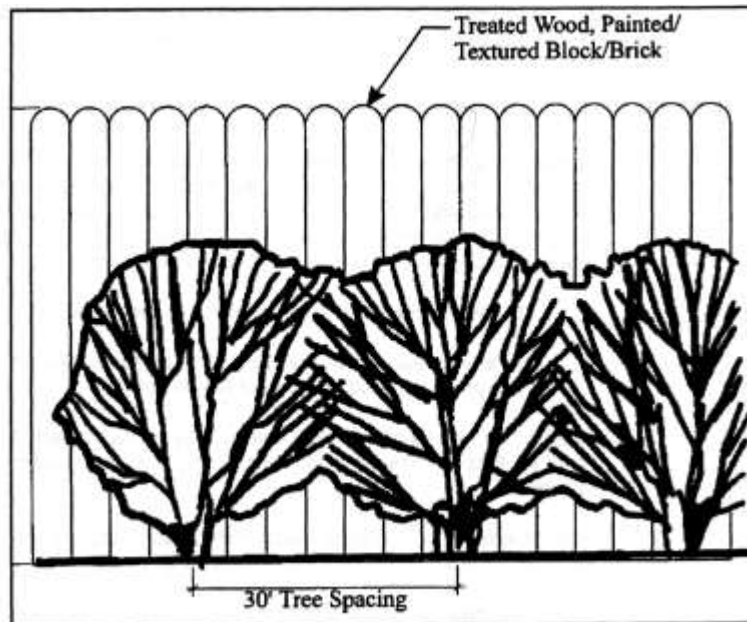


Figure 26.A Fences and Landscaping Around Junk Yards

E. Fences Around Retention Ponds

Every retention pond required by the City for water runoff storage and in which the deepest point is more than two (2) feet below adjacent ground level with a slope from water's edge being no greater than four to one (4:1), shall be enclosed with a fence or protective barrier a minimum of six (6) feet in height. This requirement may be waived for those retention ponds that are incorporated within an approved landscape plan as a design feature.

## 26.5 Roadway Regulations

A. Intent

The provisions set forth in this Section are intended to qualify and supplement the district regulations in the interest of public safety. The following regulations shall apply to all development along primary streets and major thoroughfares and at roadway intersections.

B. Intersection Visibility Area

1. Intersection Visibility Requirements:

On a corner lot in any district, no fence, hedge, wall, sign or other structure shall be erected, placed, planted or allowed to grow, and no motor vehicle or recreational vehicle may be placed in such a manner as to impede vision between a height of three (3) feet and eight (8) feet above the established curb level of the intersecting streets in the area bounded by the street lines (curbs) of such corner lots and a line joining points along said street lines fifty (50) feet from the point of the intersection; except that the location of



principal buildings, traffic control devices and public utility fixtures shall not be affected by this requirement (see Figure 26.B).

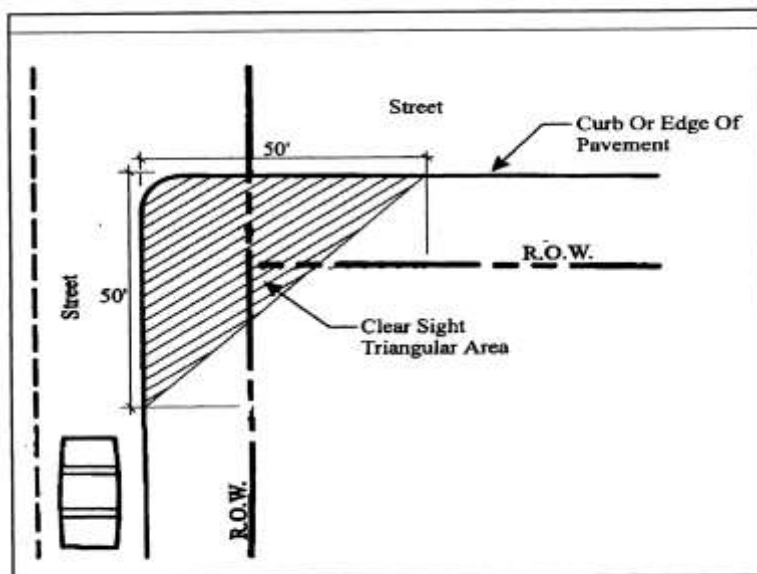


Figure 26.B Intersection Visibility Requirement

## 2. Driveway and Alley Visibility Requirements.

At intersections of driveways and alleys with streets, no fence, hedge, wall, sign or other structure shall be erected, placed or allowed to grow, and no motor vehicle or recreational vehicle may be placed in such a manner as to impede vision between a height of three (3) feet and eight (8) feet above the established driveway or alley grade level in the area bounded by the driveway or alley lines and lot lines and a line joining points along said lines eight (8) feet from the point of intersection of such driveway or alley lines and such lot lines (see Figure 26.C).

## C. Primary Street Setback

The following setback requirements shall apply to property located along primary streets as designated in this Ordinance:

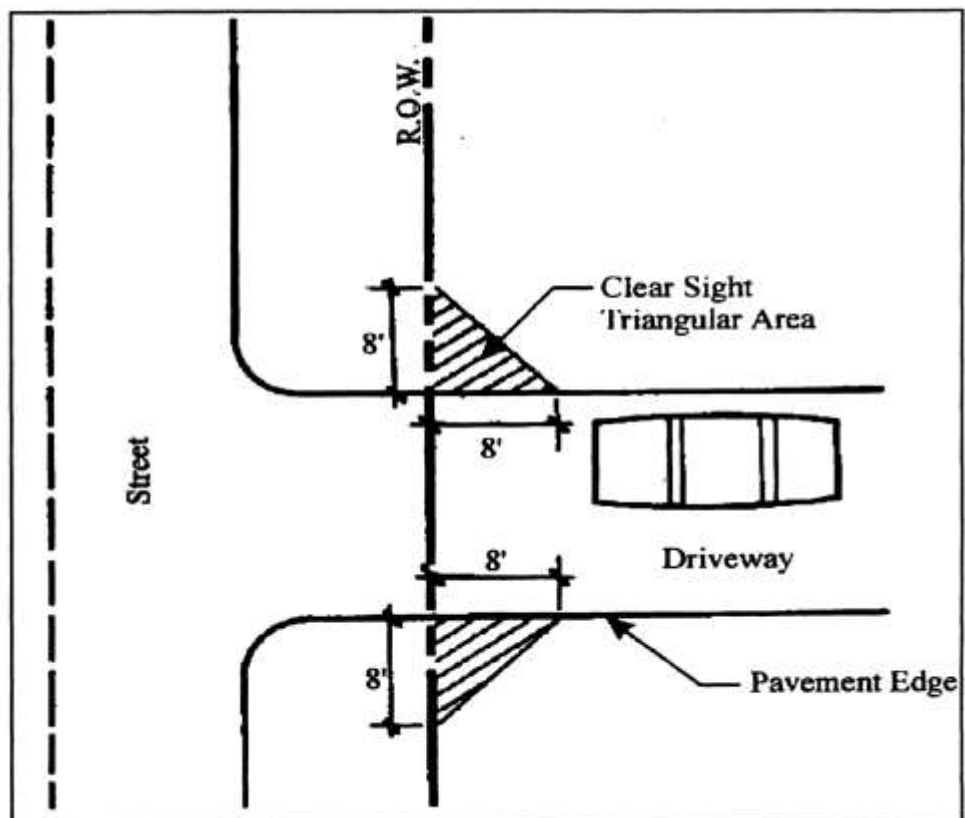


Figure 26.C Driveway Visibility

1. No structure (excepting monument signs, portable display signs, temporary signs, public information signs, public safety signs, and front yard fences), parking area, loading area, or service drive shall be placed within fifty-five (55) feet of the center line of the right-of-way of any primary street. No existing structure, parking area, loading area, or service drive or part thereof within fifty-five (55) feet of the center line shall be reconstructed, extended, enlarged, or altered, except as herein provided.
  - a. Monument signs, public information signs, and permitted front yard fences may be placed within the primary street setback subject to the filing of an agreement prepared by the city which forfeits the property owner's rights to hold the city liable for the cost of the improvement or improvements should the primary street ever be widened.
  - b. Portable display signs and temporary signs may be placed within the primary street setback no closer than five (5) feet to any public right-of-way subject to all other requirements of this section.
2. Property located in the city but fronting a primary street located entirely outside the city shall conform to the setback requirements for that street under applicable Elkhart County ordinances.
3. The following streets in the city are designated as primary streets: (as amended per Ordinance No. 5618 on August 20, 2017.)

---

Baldwin Street .....	From Cassopolis Street to Bristol Street
Beardsley Avenue .....	From Osolo Road to West City Limits
Benham Avenue .....	From Harrison Street to South City Limits
Bristol Street.....	From East City Limits to West City Limits
California Road .....	From Nappanee Street to West City Limits
County Road 3 .....	From Fort Wayne Road to California Road
County Road 108 .....	From County Road 3 to West City Limits
County Road 15 .....	From North to South City Limits
Edwardsburg Avenue.....	From Riverside Drive to Bristol Street
Elkhart Avenue.....	From Franklin Street to Johnson Street
Fort Wayne Road.....	From Nappanee Street to West City Limits
Franklin Street.....	From Vistula Street to West City Limits
Goshen Avenue .....	From Jackson Boulevard to South City Limits
Hively Avenue .....	From East City Limits to West City Limits
Indiana Avenue .....	From East City Limits to West City Limits
Jeanwood Drive .....	From Bristol Street to North City Limits
Johnson Street.....	From Jackson Boulevard to North City Limits
Lexington Avenue .....	From Vistula Street to West City Limits
Main Street.....	From Railroad Tracks to South City Limits; From Beardsley Avenue to Bristol Street
Michigan Street .....	From Beardsley Avenue to North City Limits
Middleton Run Road .....	From Jackson Boulevard to South City Limits
Middlebury Street .....	From Main Street to East City Limits
Mishawaka Road.....	From East City Limits to West City Limits
Mishawaka Street.....	From Nappanee Street to Edwardsburg Avenue
Nappanee Street .....	From North City Limits to South City Limits
Oakland Avenue .....	From Franklin Street to South City Limits
Osolo Road .....	From Bristol Street to North City Limits
Pleasant Plain Avenue.....	From Hively Avenue to South City Limits
Prairie Street .....	From Jackson Boulevard to South City Limits
Richmond Street .....	From Waterfall Drive to McDonald Street
Sterling/Hammond Avenue .....	From Indiana Avenue to South City Limits
Toledo Road.....	From Goshen Avenue to East City Limits
Vistula Street.....	From Franklin Street to Jackson Boulevard
Waterfall Drive .....	From Jackson Boulevard to Richmond Street

D. Major Thoroughfare Setback

The following setback requirements shall apply to property located along major thoroughfare streets as designated in this Ordinance:

1. No principal building or structure shall be placed within one hundred twenty (120) feet of the center line of the right-of-way of any street designated a major thoroughfare.
2. No structure (excepting monument signs, portable display signs, temporary signs, public information signs, public safety signs, and front yard fences), parking area, loading area, or service drive shall be placed within fifty-five (55) feet of the center line of the right-of-way of any designated major thoroughfare. No existing structure, parking area, loading area, or service drive or part thereof within fifty-five (55) feet of the center line shall be reconstructed, extended, enlarged, or altered, except as herein provided.

- a. Monument signs, public information signs, and permitted front yard fences may be placed within the major thoroughfare setback subject to the filing of an agreement prepared by the city which forfeits the property owner's rights to hold the city liable for the cost of the improvement or improvements should the major thoroughfare ever be widened.
  - b. Portable display signs and temporary signs may be placed within the major thoroughfare setback no closer than five (5) feet to any public right-of-way subject to all other requirements of this section.
3. Property located in the city but fronting a major thoroughfare located entirely outside the city shall conform to the setback requirements for that street under applicable Elkhart County ordinances.
4. The following streets in the City are hereby designated as major thoroughfares:  
  
Cassopolis Street.....From Bristol Street to North City Limits  
County Road 6 ..... From the East to West City Limits  
County Road 17 .....From the North to South City Limits  
John Weaver Parkway.....County Road 6 to Nappanee Street

## **26.6 Exterior Lighting Standards**

### **A. Intent**

The provisions set forth in this section are intended to qualify and supplement the zoning district regulations. In order to provide for the community's health, safety, and welfare, regulations for the placement, type and intensity of lighting for multi-family residential, commercial, and manufacturing properties are set forth.

### **B. Exterior Lighting Standards**

1. All exterior lighting shall be designed in a consistent and coordinated manner for the entire site.
2. All exterior lighting shall be shielded to avoid casting light above three-tenths (0.3) foot candles or glare upon any property located in a residentially zoned district or used for residential purposes.
3. All exterior lighting shall be shielded to avoid casting light above five-tenths (0.5) foot candles or glare upon any non-residential adjacent property.
4. Flood or area site lighting of high intensity whose light source is visible from off-site shall be prohibited. Specialized or decorative parking, site and pedestrian lighting with a visible light source is permitted with the approval of the Planning and Zoning Office.

5. All lighting structures within a property or planned development shall be of uniform design and materials. Parking lot and street lights shall also be of uniform height.
6. Lighting poles and structures shall be located within landscaped areas where possible.
7. All exterior lighting shall be shielded so as not to cast direct light on street right-of-ways or adjacent properties.
8. Ceiling lights in gas pump island canopies shall be recessed.

## **26.7 Off-Street Parking and Loading**

### **A. Intent**

To maintain the public health, safety and welfare, it is necessary to establish standards regulating off street parking and loading, pedestrian movement, screening, landscaping, and lighting for the enhancement of the community. The regulations of this section are designed to alleviate congestion of the public streets by establishing minimum requirements for the off-street parking and loading/unloading of motor vehicles in accordance with uses permitted under this Ordinance.

### **B. General Provisions**

#### **1. Scope of Regulations**

Off-street parking and loading provisions of this Section shall apply as follows:

- a. For all buildings and structures erected and all uses of land established after the effective date of this Ordinance, accessory parking and loading facilities shall be provided as required by the regulations herein.
- b. Whenever the existing use of a building or structure is changed to a new use, parking or loading facilities shall be provided as required for such new use.
- c. Accessory off-street parking facilities required herein shall not be used for the storage, display, sale, repair, dismantling, or wrecking of any vehicles, equipment or material. Parking of commercial vehicles as defined in this ordinance is prohibited in residential zones.
- d. Accessory off-street parking and loading spaces shall be provided on the same zoning lot as the use served except as otherwise provided in this Ordinance. Adequate area shall be provided to permit any maneuvering necessary to reach off-street parking and loading areas.

- e. Within the Central Business District (CBD), regulations pertaining to off-street parking shall not apply to commercial buildings in existence at the time of adoption of this ordinance. No off-street parking is required for nonresidential uses in the CBD unless such uses exceed 3,000 square feet of gross floor area, in which case off-street parking must be provided for the floor area in excess of 3,000 square feet. Up to 25% of the number of public parking spaces within 400 feet of a proposed building in the CBD may be counted toward the required number of spaces. These regulations are intended to provide flexibility in site development while ensuring adequate parking for the Main Street and Jackson Boulevard corridors as a whole. (as amended per Ordinance No. 4542 dated December 4, 2000). (as amended per Ordinance No. 4985 on September 22, 2006). (as amended per Ordinance No. 5618 on August 20, 2017.).

## 2. Plan Review

Any off-street parking lots, parking structures, or loading areas required under this Chapter shall be required to submit a plan to the Planning and Zoning Office for review and approval of applicable regulations. The plan shall show the following:

- a. Total number of parking spaces provided, existing and proposed; and total required by Ordinance.
- b. Parking aisles.
- c. Vehicle circulation.
- d. Entrances and exits.
- e. Sidewalks and pedestrian circulation.
- f. Signage.
- g. Lighting.
- h. Storm water retention areas.
- i. Landscaping islands.
- j. Landscape and buffer areas.

All elements shall be dimensioned on the plan and distances from property lines and structures shall be noted.

## C. Regulations and Requirements

- 1. All open off-street parking areas for four (4) or more vehicles shall be screened by a solid fence, wall, densely planted evergreen screen, earthen berm, or a combination thereof to the following height:

- a. A minimum of four (4) feet if abutting or directly across an alley from either a residential district or a residential use if the development containing the parking area requires a development plan; or
- b. Two and one-half (2 ½) feet if across the street from either a residential district or a residential use if the development containing the parking area requires a development plan.

2. Number of Off-Street Parking Spaces

- a. Except as otherwise noted in this Section, the number of off-street parking spaces for each new principal use shall be provided in accordance with Section 26.7(D), Schedule of Off-Street Parking Requirements.
- b. The parking lot requirements for a use not specifically listed in the chart shall be the same as for a listed use of similar characteristics of parking demand generation as determined by the Planning and Zoning Office.
- c. For the purpose of determining off-street parking requirements, gross floor area shall be calculated as the sum of the gross horizontal area of the several floors of a building or buildings, including--if habitable--the horizontal areas of the basement. Basement space used solely for storage or utility shall be exempt.
- d. When computing the number of parking spaces, any number fraction or portion thereof, shall be rounded up to the next highest number.
- e. A maximum of one hundred thirty percent (130%) of the required number of parking spaces per Section 26.7(D), Schedule of Off-Street Parking Requirements, may be provided (rounded down to the nearest whole number). Each ten (10) percent increase in the number of parking spaces shall require an additional one (1) percent in the interior parking lot landscaping provisions provided in this Section of the Zoning Ordinance. Provision of more than one hundred thirty percent (130%) of the requirement will require a variance from the Board of Zoning Appeals.
- f. In determining the number of parking spaces required for a business, industry, or institution or any other concern which encompasses a number of different, yet related activities, the Planning staff may determine the total number of parking spaces required by adding the amount of spaces required for each specific activity as listed in Section 26.7(D), Schedule of Off-Street Parking Requirements.
- g. In off-street parking areas with greater than twenty-five (26) automobile parking spaces, bicycle parking spaces may be substituted for automobile parking spaces at the rate of ten (10) bicycle spaces per one off-street parking space, up to four (4) percent of the total number of required automobile parking spaces

with a maximum of ten (10) automobile spaces replaced with bicycle parking.

3. Location of Parking Facilities

- a. The off-street parking areas required for residential buildings or uses shall be located on the same lot with the building or use served. The parking requirements for one- and two-family residential uses shall be accommodated in paved (concrete, asphalt, concrete and brick pavers and other approved materials) driveways which may be located in the front, side, or rear yard but may not occupy more than fifty percent (50%) of any yard.  
Off-Street parking areas located in the R-1, R-2, R-3 and R-5 residential zoning districts shall not be located in the front yard. This requirement shall not include paved driveways leading to an attached and/or detached garages or to rear yard parking areas.  
(as amended per Ordinance No. 4462, on January 13, 2000.)
- b. Two or more owners of buildings may join together in providing the required off-street parking spaces per Section 26.7(D), Schedule of Off-Street Parking Requirements.
- c. Off-street parking areas may be located on any part of a lot, unless otherwise specified herein or within the zoning district development conditions. Parking spaces shall not be located in any required greenbelt or buffer yard area.

4. Joint Parking Facilities

- a. Joint use of up to fifty percent (50%) of required parking areas may be permitted for two or more uses located on the same or adjacent parcels provided that the developer or owner demonstrates to the satisfaction of the Planning staff that the uses will not overlap in hours of operation or in demand for shared spaces. The owners of all parcels used for or making use of shared parking areas shall execute and record a commitment stating that the uses will not overlap in hours of operation or in demand for shared spaces. Said commitment shall be binding on future owners of the property(s) and shall be enforceable by the Board of Zoning Appeals.
- b. Shared parking areas shall be located not more than three hundred (300) feet from the uses they are intended to serve and shall be connected to that use by a defined pedestrian walkway.
- c. Any subsequent change in land uses among the shared parking users shall require adequate parking as defined in Section 26.7(D), Schedule of Off-Street Parking Requirements.

5. Reduction of Spaces/Land Banking

- a. For development in any zoning district, the Planning and Zoning Staff may approve a total reduction of not more than thirty percent (30%)



of the required off-street parking spaces where it has been demonstrated by study of the proposed use(s) and the customary operation of the use(s) that adequate parking would be provided.

- b. When such a reduction is approved, an area of sufficient size to include the number of parking spaces necessary to meet the minimum requirements stated herein shall be designated on the site plan and no structure or paved surface shall be permitted within such designated area. Such area shall not be included in any required buffer yards. Such areas shall be reserved to accommodate additional parking so as to meet the otherwise applicable minimum requirements. In the event additional parking is required, a site plan shall be submitted to the Staff for approval. The additional parking shall be constructed within four (4) months thereafter.

6. Access

Driveway entrances and exits to parking lots shall be located as far away from street intersections as possible to prevent impeding the flow of traffic in the parking lot and prevent hazards in the street. Entrances shall be designed to allow vehicles entering the site to be stacked to prevent backup on the adjacent street. Parking lot entrances and exits shall be consolidated when possible to limit the number of access points to the site. In instances where parking areas are one hundred (100) feet or more wide, the parking lot entrance shall be a minimum of fifty (50) feet from the nearest existing access drive.

7. Parking Lot Design

- a. All off-street parking areas, driveways, loading areas, and maneuvering access thereto and outdoor display areas shall be surfaced with an all-weather, dustless, impervious, hard-surface pavement, including drainage which shall meet City specifications as prescribed by the Board of Public Works. This surface shall be maintained in good condition and free of weeds, dirt, trash, and debris.
- b. All parking areas and drives for commercial, manufacturing, institutional, and residential uses shall be paved with concrete, asphalt, or decorative concrete, brick, or asphalt pavers.
- c. In all "M" zoning districts, storage yards for construction equipment, raw materials, or partially or fully finished product, may be surfaced with gravel or slag when located in a rear yard. The storage yard shall be properly graded and maintained to insure proper drainage and shall be kept free of weeds, trash, and other debris.
- d. Required parking spaces for all uses shall be at least one hundred sixty-two (162) square feet in size, exclusive of access drives or aisles and have a minimum width of nine (9) feet and a minimum length of eighteen (18) feet, except parallel parking spaces which shall have a minimum length of twenty-two (22) feet.

- e. The number and dimensions (see Figure 26.D) of handicapped parking spaces are to be provided in conformance with the requirements of the Americans with Disabilities Act as follows:

Number of Parking Spaces in Lot	Required Minimum Number of Accessible Spaces <sup>1</sup>
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	2 Percent of Total Spaces
1,001 and Over	20 Plus 1 for Each 100 Over 1,000 Spaces

<sup>1</sup>For every 8 accessible spaces, at least one must be a van accessible space.

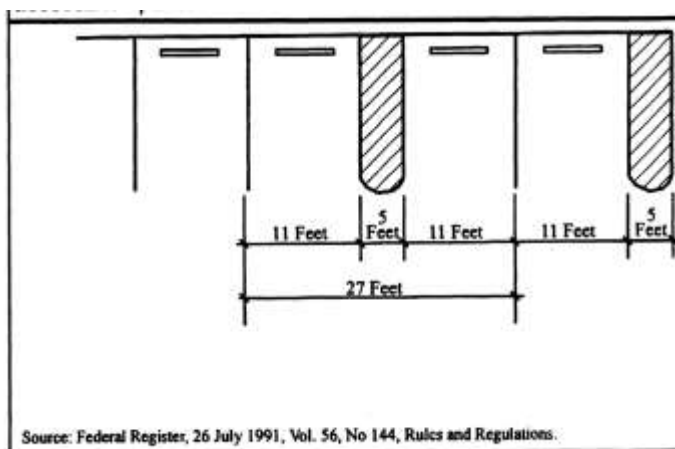


Figure 26.D Accessible Parking Space Width Dimensions

- f. All parking lots for commercial, institutional, and multi-family residential (ten (10) or more dwelling units) uses shall be separated from adjoining non-paved surfaces with a continuous Portland cement concrete straight faced or rolled curb at least six (6) inches in height. All parking lots shall be designed to provide adequate storm water drainage, including onsite detention capabilities. Curbed traffic islands are to be located on both ends of each parking row to facilitate safe traffic circulation within the parking lot. All curbing shall

conform to City of Elkhart standards, unless approved otherwise by the Planning and Zoning Office.

- g. Required off-street parking spaces shall be so designed, arranged and regulated as to have individual spaces marked, be unobstructed and have access to an aisle or driveway so that any vehicle may be moved without moving another and so that no maneuvering directly incidental to entering or leaving a parking space shall be on any public right-of-way or in a required setback. (as amended per Ordinance No. 5618 on August 20, 2017.)
- h. All parking areas shall be provided with circulation aisles of adequate dimension to assure efficient internal circulation. The minimum aisle dimension requirements indicated in Figure 26.E shall be provided for parking lots using various parking angles.

Parking lots with three hundred (300) or more spaces shall include perimeter drives and a central access drive leading to the main building.

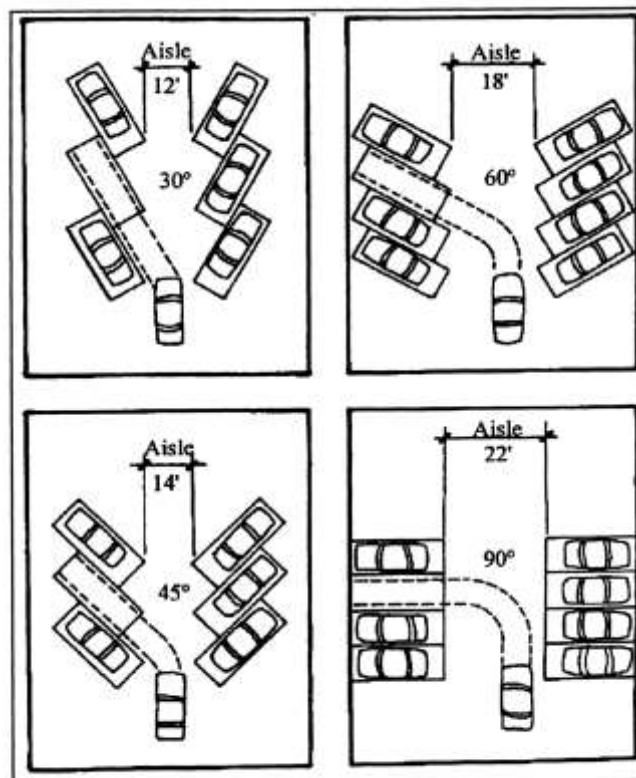


Figure 26.E Parking Area Aisle Widths

- i. A shelter of not more than fifty (50) square feet in size for use by a parking lot attendant may be maintained on a parking lot containing at least twenty-five (25) spaces.

j. All signage within parking areas shall conform to the standards within the Sign Regulation section of this Ordinance.

k. Lighting

i. A parking lot lighting plan--including pole heights, pole location, light spread, and intensity--shall be submitted as a part of the parking lot landscape plan.

ii. All parking lot lighting within a development shall be of uniform design, color, and materials.

iii. Lighting levels within parking areas shall be consistent with the recommendations found in the IES Lighting Handbook, latest edition, by the Illuminating Engineering Society of North America.

iv. In all projects, lighting shall not cause illumination in excess of five-tenths (0.5) foot candles of light beyond the project property line, except illumination which spills into a residential zoned or used property, which shall not exceed three-tenths (0.3) foot candles.

v. Unless otherwise approved, all project light standards shall be of uniform height, not to exceed thirty (30) feet in height, except when lights abut or fall within seventy-five (75) feet of a residential use property, where the maximum height shall not exceed twenty (20) feet.

For parking lots in excess of three hundred (300) spaces, light standards may be a maximum of fifty (50) feet in height provided they are located at least two hundred (200) feet from any residential use property.

vi. To minimize visual clutter, parking lot lighting should be incorporated into planting areas where possible.

l. Parking Lot Landscaping

i. Parking lot landscape requirements shall be applicable to all parking areas in all districts, and a parking lot landscape plan shall be provided.

ii. A landscape strip shall be provided around the perimeter of the parking lot, as defined below:

(a). When the parking lot abuts a building(s) the strip shall be:

(1). Four (4) feet wide--parking lot with one to forty (1-40) spaces or a single parallel driving aisle,

or any other configuration of equal or greater square footage.

- (2). Six (6) feet wide--parking lot with forty-one (41) or more spaces, or any other configuration of equal or greater square footage.
  - (3). For single use buildings with front façades less than one hundred (100) feet in length a minimum one hundred fifty (150) square feet of landscape area may be installed at the building entrance (total square footage for both sides of entrance) in place of the required planting strip along the front façade.
  - (4). For buildings with an arcade across the front facade or an access aisle immediately adjacent and parallel to the front facade, the required landscaping may be consolidated at focal points along the front facade and/or incorporated into other required parking lot landscape areas (perimeter or interior).
  - (5). A landscape strip abutting a building shall have at least fifty percent (50%) of its length occupied by shrubs.
- (b). When the parking lot abuts a right-of-way, the strip will be:
- (1). In the CBD District--Six (6) feet or the building setback, whichever is greater.
  - (2). In all other zoning districts:
 

1-75 spaces:	10 feet
76-150 spaces:	20 feet
151+ spaces:	30 feet
- (c). When the parking lot abuts vacant land or an existing parking area with no landscape strip, the strip will have a minimum width as follows:
- |                |         |
|----------------|---------|
| 1-75 spaces:   | 6 feet  |
| 76-150 spaces: | 8 feet  |
| 151+ spaces:   | 12 feet |
- (d). When the parking lot abuts an existing parking lot which provides for a perimeter landscape strip, the width of the strip will be equal to the additional width needed to create a strip with an overall minimum

width as prescribed in Item (C) above. However, a landscape strip of at least four (4) feet wide must extend from the property line inward.

- (e). When a parking lot abuts a residentially zoned or used property, a landscape area shall be provided as prescribed in the individual zoning district and shall have a screen as prescribed in 26.7(C)(1).
- (f). When a new development is constructed either adjacent to or in between existing developments, the type and placement of street trees in the right-of-way along the new development shall be consistent with the type and placement of street trees along the existing development right-of-way (see Figure 26. F)

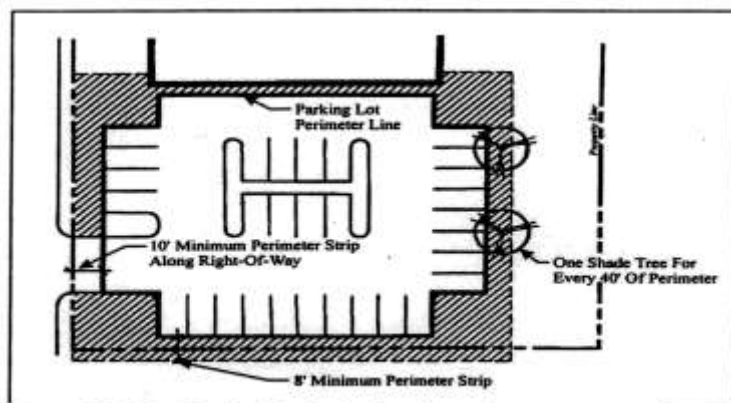


Figure 26. F Parking Lot Perimeter Landscaping

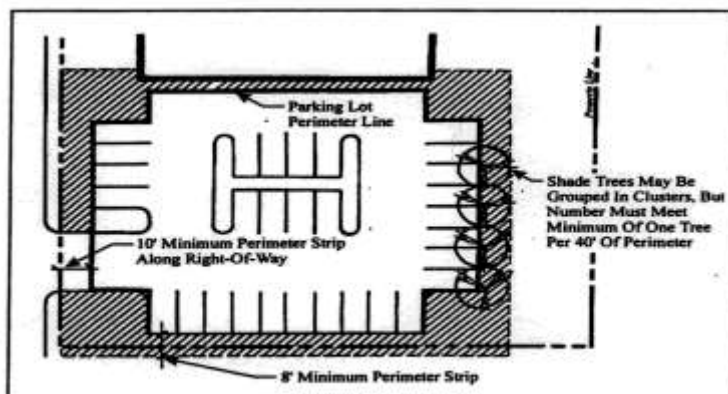


Figure 26. G Parking Lot Perimeter Landscaping

- (g). All landscape strips shall be planted with shrubbery, trees, and groundcover. There shall be one (1) tree for every forty (40) feet of landscape strip.

- (h). Piped utilities, such as water, sewer, and gas, may cross through, run parallel and adjoining to, or within the outer two (2) feet of a landscape strip.
  - (i). Cable utilities, such as electricity, cable television, and telephones located within a landscape strip must be placed a minimum of twenty-four (24) inches below grade.
- iii. Landscaping of Interior Parking Areas
- (a). Parking areas totaling seventy-six (76) or more spaces shall provide a minimum of ten percent (10%) interior landscaping. Parking areas totaling seventy-five (75) or less spaces shall provide a minimum of five (5) percent interior landscaping, which may be transferred to the perimeter of the lot(s) if interior landscaping is not possible.
- Plant material within parking lots shall provide for safe visibility and maintain clear site lines between three (3) and eight (8) feet from the top of the curb.
- (b). Interior landscaping shall occur in any combination of planting islands, planting peninsulas, and entrance ways (see Figure 26.H)
  - (c). Unless otherwise approved all parking lot interior landscape areas shall have a minimum width of six (6) feet.

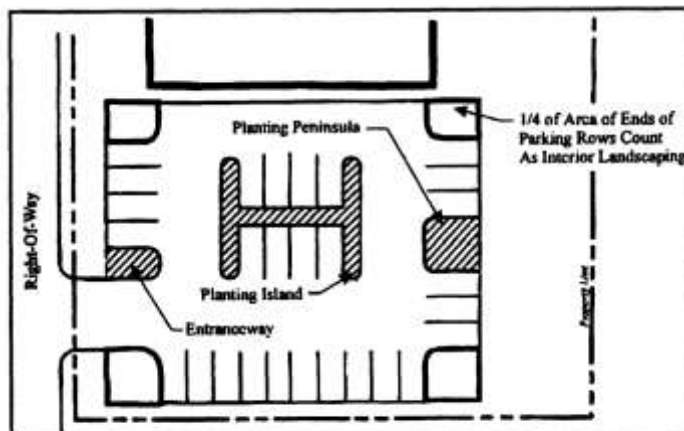


Figure 26.H Parking Lot Interior Landscaping

- (d). Unless otherwise approved, plantings within islands and peninsulas shall consist of at least one tree and mulch or groundcover for each one hundred sixty-two (162) square feet, or portion thereof, of required

landscape area. Shrubs may also be used as long as they do not exceed three (3) feet in height.

- iv. In cases in which trees exist on the property where the parking lot is proposed, the existing trees shall be maintained where they do not impede construction on the site and shall count toward the interior landscape requirement. Accepted best management practices for tree preservation shall be used. The location of existing trees to be saved shall be included in the landscape plan submitted to the Planning and Zoning Staff prior to site clearance.
- v. Parking lots for three hundred (300) or more spaces requiring a central access drive shall have a minimum six (6) foot wide landscape area on both sides and running the length of the drive. A minimum of one shade tree for every fifty (50) lineal feet of landscape area shall be provided. This landscape area may count toward fifty percent (50%) of the interior landscape requirement for the adjoining parking area of the development.

m. Planting Standards

Planting areas can be landscaped with a variety of trees, shrubs, or other planting materials. The variety of planting materials used should be tolerant of the existing urban conditions including exhaust, salt, and poor and/or compacted soils.

- i. Deciduous canopy trees shall be a minimum of two and one-half (2 ½) caliper inches d.b.h.; ornamental trees shall be a minimum two (2) caliper inches; coniferous trees shall be a minimum of six (6) feet in height; evergreen and deciduous shrubbery shall be a minimum of eighteen (18) inches in height, except where required as a screen.
- ii. All deciduous and coniferous trees and shrubs shall be prepared and planted in accordance with industry standards.
- iii. Planting islands and peninsulas shall encompass an area of not less than one hundred sixty-two (162) square feet for single parking rows and three hundred twenty-four (324) square feet for double parking rows.

n. Visibility Requirements

- i. All landscape plantings, shrubs, trees, walls, fences, temporary and permanent, shall permit completely unobstructed vision within a clear sight triangle in accordance with Section 26.5(B) Intersection Visibility Area.



- 
- ii. Landscaping installed in parking areas shall be spaced and maintained so that a visual obstruction that represents a traffic hazard is not created.
  - o. Pedestrian Access
    - i. For business and office use developments with parking lots abutting a public right-of-way there shall be a designated route(s) for pedestrians between the public sidewalk and the main entrance of the building or to the sidewalk fronting the building in the case of a multi-entrance building as per the following:
      - (a). For properties with one hundred (100) feet or less of frontage abutting a public right-of-way there shall be a minimum of one (1) designated route.
      - (b). For properties with more than one hundred (100) feet of frontage abutting a public right-of-way a minimum of one (1) designated route per vehicular access or three hundred (300) feet of frontage, whichever is greater.
      - (c). For properties with frontage abutting two or more public streets, the minimum required designated routes shall be provided along each street.
    - ii. When a public sidewalk does not exist, the following shall apply:
      - (a). For new construction on vacant land, both a public sidewalk as per City standards and the required designated pedestrian connections shall be installed. The sidewalk must be constructed with a minimum five (5) foot landscaped green space (tree lawn) between the curb and the outside edge of the sidewalk. Street trees must be planted at intervals of not less than 40 feet apart. (as amended by Ordinance 5044 on July 11, 2007).
      - (b). For reconstruction on an existing development, a public sidewalk shall be installed if at least forty percent (40%) of the properties on both sides of the street in the same block have public sidewalks, as well as the required designated pedestrian routes.
    - iii. Walkways shall be designed to be recognizable to both drivers and pedestrians. Any combination of at least two (2) of the following walkway treatments shall be used:
      - (a). Constructing the walk/crosswalk from different materials, such as concrete or brick or other material

approved or recognized under The Americans with Disabilities Act (ADA) requirements.

- (b). Placing bollards at sufficient regular intervals to delineate the walk/crosswalk.
  - (c). Aligning planting islands to define the walk/crosswalk.
  - (d). Raising the walk/crosswalk.
  - (e). Painting pavement with walk/crosswalk striping.
- p. Drive-thru Facilities (as amended per Ordinance No. 5618 on August 20, 2017.)
  - i. Drive-thru lanes shall be of sufficient width so as to allow for the passage of two cars side-by-side in two (2) marked driving lanes. In no case shall the required width be less than 16 feet. This requirement shall apply to the entire length of the queuing line of the drive-thru business. This requirement also applies to the area of the parking lot necessary for the overflow of waiting cars in the extended queuing line for drive-thru businesses. (As amended per Ordinance No. 4683 July 10, 2002)
  - ii. Uses which offer drive-thru operations shall have a minimum first floor area of 800 square feet.
  - iii. Internal circulation and access to and egress from the site shall not substantially impair the movement of other modes of transportation, such as bicycles and pedestrians, to and through the site.
  - iv. Each facility shall provide sufficient queue area of a minimum of 20 feet per vehicle in advance of the service window to accommodate a minimum of three (3) vehicles per establishment. The queue area may not interfere with other on-site circulation and parking facilities.
  - v. Pedestrian walkways must have clear visibility and be emphasized by enhanced paving or markings when they intersect the drive-through aisles.
  - vi. The drive-thru use shall be screened from adjacent rights-of-way and properties through placement of the drive-thru, screening, landscaping or other site design techniques.
  - vii. Any curb cuts serving the use are not located within two hundred feet of any intersection of the rights-of-way of the major streets or major arterials.

- viii. The location, size, design and operating characteristics of the proposed facility are such that the drive-thru operation will be reasonably compatible with and have minimal negative impact on the use of nearby properties.

D. Schedule of Off-Street Parking Space Requirements

Accessory off-street parking spaces shall be provided as required for the following uses:

Type of Use	Space Requirements
<b>Residential Uses</b>	
Single- two-, multi-family, and townhouse dwelling	2 spaces per dwelling unit
Boarding and lodging houses, fraternities, and sororities	1 space per bed
Home occupation	1 space per 200 square feet devoted to the home occupation (in addition to the dwelling unit requirement)
Residential Uses in the R-5 District (amended per Ordinance No. 4960 on April 10, 2006)	1 space per dwelling unit (amended per Ordinance No.4960 on April 10, 2006)
<b>Commercial Uses</b>	
Automobile, mobile home, truck, recreational vehicle, boat, and farm implement sales	1 space per 300 square feet of showroom floor area plus 1 space per 2,000 square feet of outdoor sales area
Auto service station and repair	1 space per pump plus 2 spaces per service bay
Car wash (self service or automatic)	1 space per employee on the largest shift
Convenience retail	6 spaces per 1,000 square feet
Greenhouse	1 space per 1,000 square feet
Hotel, motel, and bed-and-breakfast	1 space per room plus 1 space per employee on the largest shift
Video Rental Store	1 space per employee on the largest shift plus 1 space per every 350 square feet
Movie theater	1 space per 2 seats
Office (Professional, Government, and Business)	1 space per 300 square feet
Plant nursery	1 space per 300 square feet of sales area plus 1 space per acre
Rental agency	1 space per 300 square feet plus 1 space per 1,000 square feet outdoor display area

Type of Use	Space Requirements
Restaurants and fast food establishment	1 space per 2.5 seats plus 1 space per employee on the largest shift
Retail sales and services establishment, under 150,000 SF	1 space per 300 square feet
Retail sales and services establishment, 150,000 SF or greater	1 space per 400 square feet
Roadside sales	5 spaces per stand
Tavern and night club	1 space per 100 square feet
Wholesale sales	1 space per 600 square feet plus 1 space per employee on the largest shift
<b>Schools, Churches, Health Care Facilities, and Other Institutions</b>	
Assisted Living Facility	1 space per two dwellings plus 1 space per employee on the largest shift.
Religious Institutions	1 space per 4 seats in the main place of assembly plus other uses
College; university; business, trade, or commercial; and high school	10 spaces per classroom
Day care and kindergarten	1 space per employee plus 1 space per 6 students
Elementary and middle schools	1 space per 2 employees plus 2 spaces per classroom
Hospital	1 space per 2 beds plus 1 space per employee on the largest shift
Medical office building	1 space per 250 square feet
Nursing or convalescent facility	1 space per 3 beds plus 1 space per employee on the largest shift
Penal or correctional institution	1 space per employee on the largest shift plus 1 space per 5 cells
Research, medical, or optical laboratory	1 space per 300 square feet
<b>Cultural and Entertainment Facilities</b>	
Bowling alley	5 spaces per lane
Carnival, circus, and fair	50 spaces per acre
Golf course	6 spaces per hole
Meeting or party hall, banquet facility, country club, or dance hall	1 space per 50 square feet of dining or activity space. (amended 7-10-2002)
Private club or lodge	1 space per 200 square feet plus 1 space per 2 seats in main place of assembly

Type of Use	Space Requirements
Race track	1 space per 4 seats or six feet of benches
Riding stable (public)	1 space per stall
Stadium or coliseum	1 space per 3 seats or six feet of benches
Tennis or racquetball facility	2 spaces per court plus 1 space per employee on the largest shift
<b>Manufacturing, Warehouse, and Miscellaneous</b>	
Cemetery	1 space per employee on the largest shift
Airport	1 space per employee on the largest shift plus 1 space for every 1,000 square feet of hangar space or outdoor aircraft storage space
Manufacturing establishment	1 space per employee on the largest shift, plus 1 space per 300 square feet of public office area
Mineral extraction, borrow pit, top soil removal and storage	1 space per employee on the largest shift
Mortuary or crematory	1 space per 50 square feet of public area
Motor bus or railroad passenger station	1 space per 4 seats of waiting area seat
Post office	1 space per official vehicle plus 1 space per employee on the largest shift plus 1 space per 200 square feet
Sanitary landfill or refuse dump; sewage, trash, garbage disposal or recycling plant	1 space per employee on the largest shift plus 1 space per 4 acres
Self-service storage	1 space per 2,000 square feet
Truck terminal	1 space per 1,000 square feet
Warehouse and storage facility	1 space per employee on the largest shift, plus 1 space per 300 square feet of public office space
Water treatment or storage facility	1 space per employee on the largest shift

**E. Off-Street Loading Requirements**

1. Every building which requires the receipt or distribution of materials or merchandise by trucks or similar vehicles shall be required to have off-street loading zones in accordance with requirements of this Ordinance.
2. All required off-street loading facilities which serve a building, structure, or use of land erected, established, altered, enlarged, or intensified after the effective date of this Ordinance shall be located on the same lot as the building, structure, or use of land to be served.

3. All required off-street loading facilities shall be located within the side or rear yard of the lot on which the principal structure or use is located. In the M-1 Limited Manufacturing District and the M-2 General Manufacturing District, loading facilities may be located in front of the principal building but not in the required front yard. Off-street loading facilities shall be located in a manner to prevent vehicle maneuvering in or blockage of rights-of-way. (Amended by Ord. No. 4994 on October 18, 2006)
4. Areas designated as off-street loading facilities may not be used to satisfy the parking requirements established in Section 26.7(D), Schedule of Off-Street Parking Requirements.
5. Off-Street Loading Space Requirement: Each loading berth shall have a minimum dimension of not less than twelve (12) feet in width; sixty-five (65) feet in length; and fourteen (14) feet vertical clearance, exclusive of access drives, aisles and maneuvering space.
6. Off-street loading areas shall not be closer than fifty (50) feet to any property in a residential district unless completely enclosed by building walls, a compact evergreen screen, a uniformly painted fence or any combination thereof not less than six (6) feet in height.

## **26.8 Adult Entertainment facilities**

### **A. Intent**

The requirements set forth in this Section are intended to qualify and supplement the district regulations in order to manage the development, operation, and maintenance of adult entertainment facilities in the interest of public health, safety, and welfare.

### **B. Adult entertainment facility development standards.**

The following provisions shall apply to all adult entertainment facilities:

1. No adult entertainment use shall be located within a one thousand (1,000) foot radius of any other such use.
2. Adult entertainment uses shall not be located within one thousand (1,000) feet of schools whether public or private, religious institutions, parks, playing fields, or other areas in which large numbers of minors regularly travel or congregate.
3. These provisions may be waived by the City Council if it is found that:
  - a. The proposed use would not be contrary to the public interest or injurious to nearby properties, and the spirit and the intent of this section will be observed; and
  - b. All other applicable regulations of the zoning code of the City will be observed.

4. Signage for adult entertainment facilities shall be regulated as provided in Section 26.10 of this Zoning Ordinance. (as amended per Ordinance No. 4431 on July 23, 1999)

## **26.9 Bed and Breakfast Homes**

### **A. Intent**

The provisions set forth in this Section of the Zoning Ordinance are intended to qualify and supplement the district regulations in the interest of public health, safety, and welfare in order to assure that bed and breakfast homes are developed, maintained, and operated in a manner consistent with the neighborhood in which they exist.

### **B. Development Standards**

The following provisions shall apply to all bed and breakfast homes:

1. Food shall be offered only to overnight guests.
2. The Board of Zoning Appeals may attach other conditions to the operation of the Bed and Breakfast Home including but not limited to: parking, signs, number of rooms, patrons and time of operation.
3. No special exception shall be granted until the Board of Zoning Appeals, in their deliberations, determines that the Bed and Breakfast home will not change the residential character of the neighborhood.
4. All uses and operations shall be conducted within completely enclosed buildings. All on-site vehicular circulation and traffic patterns shall be approved by the Planning and Zoning Staff. (As amended Ord. No. 4683 July 10, 2002)
5. No show windows or other exterior display, except for one sign which shall be a non-illuminated identification sign attached to the residence not exceeding six (6) square feet.
6. Bed and Breakfast homes shall provide one parking space per guest room, plus one parking space per staff member. All parking shall be located in rear yards and shall be screened from adjoining land uses.
7. Accessory buildings and structures such as barns, sheds, and the like may not be used for guest rooms in a Bed and Breakfast home.
8. A landscaping plan shall be submitted for approval by the Planning and Zoning Staff.
9. All bed and breakfast homes located in an R-1, R-2, R-3, or R-5 Residential District must be owner occupied, and shall have a maximum of 5 guest rooms.

## **26.10 Sign Regulations**

A. Purpose

The use of signs to identify uses, advertise business and provide general orientation in the City is a recognized need and right of property owners within appropriately zoned districts. It is the purpose of this Section to provide a balanced system of signage to facilitate communication between people and their environment and to avoid visual clutter that is potentially harmful to traffic safety, property values, community appearance and the economic vitality of the city.

B. Prohibited Signs

The following signs are prohibited in all districts:

1. Flashing Signs
2. Strings of pennants, propellers, pinwheels, streamers, and similar small objects except as temporary signs.
3. Signs imitating or resembling official traffic or government signs or signals.
4. Signs attached to trees, rocks or natural formations or public property including but not limited to utility poles, benches, trash containers and parking meters, except as specifically authorized by the City.
5. All signs not specifically identified within this Zoning Ordinance.
6. Roof-mounted signs
7. Animated message boards, except when located in the Central Business District at a motion picture theatre or performing arts center with a minimum seating capacity of two hundred (200) seats, or when located on the City's freestanding sign on Civic Plaza.
8. Signs that contain moving parts, including signs that spin or rotate. (as amended per Ordinance No. 4462 on January 13, 2000)
9. All signage located in the public right-of-way excepting public information, directional, emergency, and traffic signs as approved by the City Engineer or his/her duly authorized agent." (amended per Ord. No. 4683 July 10, 2002)

C. Illumination of Signs

1. Sign illumination shall be designed and placed to not cause glare which may result in traffic hazards or which may interfere with the customary use of nearby residences in accordance with Section 26.6 of this Ordinance.
2. In residential districts, only nameplates and bulletin boards may be illuminated. In non-residential districts, all signs may be illuminated provided they meet the other provisions established in this Ordinance.



- 
3. The following restrictions shall apply to signs located in, adjacent to or across a street or alley from a residential zoning district:

No commercial or industrial sign shall be illuminated between the hours of 11:00 p.m. and 7:00 a.m. except for:

- a. Those businesses open to the public during that time, in which case, illumination shall cease upon closing.
- b. Apartment complex, subdivision and mobile home park signs.
- c. Signs for hospitals and emergency health care facilities.
- d. Off-premise signs may be illuminated except between the hours of 12:00 a.m. and 6:00 a.m.  
(as amended per Ordinance No. 4542 dated December 4, 2000).

D. General Location Standards

- 1. All on-premise signs, except wall, marquee and awning signs, shall be located no closer than five (5) feet from any right-of-way.
- 2. Signs shall be erected so as not to obstruct sight lines along any right-of-way or so as to obstruct sight lines to traffic control lights, street name signs at intersections, or signals at railroad grade crossings.
- 3. Vertical Clearance. The lowest element of any sign which occupies the vertical space above a pedestrian or vehicular way and is designed to permit traffic thereunder shall be at least ten (10) feet above the finished grade of a sidewalk and at least sixteen (16) feet above the finished grade of a pavement used for vehicular traffic, unless otherwise specified

(see next page)

**Table 1: Maximum Sign Area in Square Feet (SF)**

	Residential Districts		O-Office, BP-Business Park, and OP-Office Park Districts
	All Single-Family and Two-Family Uses	All Other Uses Specifically Permitted in Residential Districts	
Free-Standing Signs	1 SF Name and Address Only	10 SF for Office Uses; 32 SF for Places of Worship & Educational Institutions, "An integrated message board may be mounted on the same supporting structure as the principal freestanding sign. When using such message board, the sign face may be increased to a maximum of forty-eight (48) square feet in size." One Sign Structure; Two Sign Faces; All Other Uses, 4 SF; One Sign Structure; Two Sign Faces *see below	50 SF or One (1) Times the Lot Frontage, Whichever is Smaller; One Sign Structure; Two Sign Faces An integrated message board may be mounted on the same supporting structure as the principal freestanding sign. Such a message board shall be limited in size to 50% of the sign area of the principal sign and shall not count against the maximum permitted sign size identified within this table or elsewhere within this Zoning Ordinance
	<i>One (1) 32 SF freestanding sign shall be permitted at each entry to a subdivision, apartment complex, office park, business park, or multi-tenant building to identify the development; one (1) sign structure, two (2) sign faces or two sign structures, one (1) sign face</i>		
Wall Signs	2 SF; One Wall Sign; Name and Address Only	10% of the Signable Area or 20 SF Whichever is Smaller	20% of the Signable Area or 50 SF, Whichever is Smaller
		See Section 26.10(D) (6) (b) for "Signable Area." See Section 26.10(D) (6) (d) for "Wall Sign Increase."	
Projecting Signs	Not Permitted	Not Permitted	6 SF in O-Office District; All Other Districts, not Permitted
Temporary Signs (as described in Sec. 26.10(F)(5))	5 SF per Sign; Two Sign Faces	5 SF	32 SF for Construction Signs; all others 25 SF
Directional Signs	Not Permitted	1 SF Not to Exceed Two Signs per Driveway	2 SF Not to Exceed Two Signs per Driveway

	<b>B-1 Business District</b>	<b>B-2, B-3, and B-4 Business Districts</b>	<b>CBD-Central Business District</b>	<b>M-1 and M-2 Manufacturing Districts</b>
Free-Standing Signs	50 SF or One (1) Times the Lot Frontage, Whichever is Smaller	50 SF or One (1) Times the Lot Frontage, Whichever is Smaller	40 SF or One (1) Times the Lot Frontage, Whichever is Smaller	60 SF or One (1) Times the Lot Frontage, Whichever is Smaller
	An integrated message board may be mounted on the same supporting structure as the principal freestanding sign. Such a message board shall be limited in size to 50% of the sign area of the principal sign and shall not count against the maximum permitted sign size identified within this table or elsewhere within this Zoning Ordinance.			
Wall Signs	30% of the Signable Area per facade for single tenant buildings; 30% of the Signable Area per store front for multiple tenant buildings	40% of the Signable Area per facade for single tenant buildings; 40% of the Signable Area per store front for multiple tenant buildings	50% of the Signable Area to a maximum of 50 SF per facade for single tenant buildings; 50% of the Signable Area to a maximum of 25 SF per store front for multiple tenant buildings	50% of the Signable Area
	See Section 26.10(D) (6) (b) for "Signable Area"; See Section 26.10(D) (6) (d) for "Wall Sign Increase."			
Projecting Signs	6 SF; Two Sign Faces	9 SF; Two Sign Faces	9 SF; Two Sign Faces	Not Permitted
Temporary Sign (as described in Sec. 26.10(F)(5))	32 SF for Construction Signs; all others 25 SF	32 SF for Construction Signs; all others 25 SF	32 SF for Construction Signs; all others 25 SF	32 SF
Directional Signs	4 SF Not to Exceed Two Signs per Driveway	4 SF Not to Exceed Two Signs per Driveway	4 SF Not to Exceed Two Signs per Driveway	4 SF not to Exceed Two Signs per Driveway
SF = Square feet.				

(As amended by Ordinance No. 4431 on July 23, 1999)

(As amended by Ordinance No. 4592 on June 13, 2001)

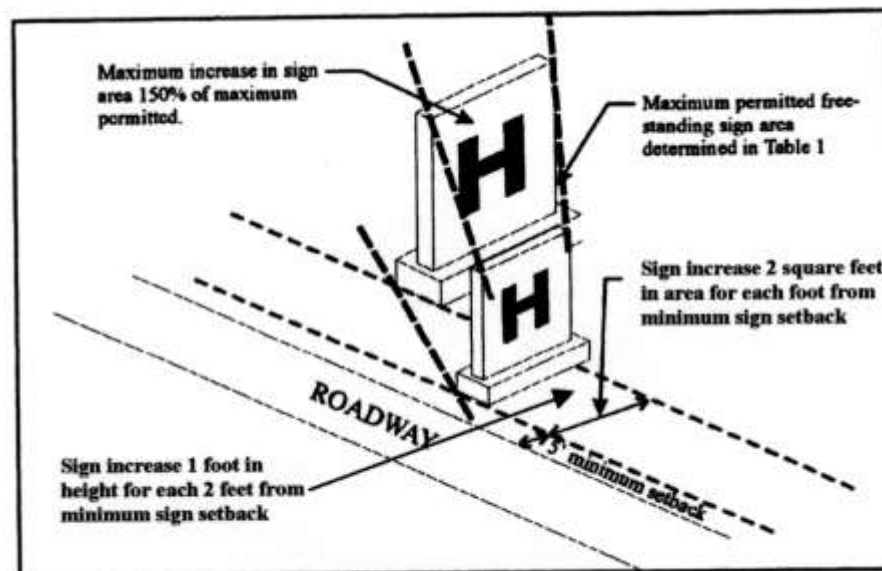
(As amended per Ordinance No. 4762, on August 1, 2003).

(As amended by Ordinance No. 5044 on July 11, 2007)

#### 4. Free-standing Signs

- a. One free-standing sign is permitted per zoning lot frontage excluding temporary and portable display signs.
- b. A free-standing sign located in a front yard shall be set within a landscaped island or area a minimum of one hundred (100) square feet in area.

- c. Free-Standing Sign Increases.
  - i. The permitted size of a free-standing sign face may be increased at the rate of two square foot for every one (1) foot the sign is located in excess of the required five (5) feet minimum distance from the right-of-way. The sign may be increased to a maximum size of one-hundred fifty percent (150%) of the permitted sign area identified in Table 1.  
(As amended Ord. No. 4683 July 10, 2002)
  - ii. The permitted height of a free-standing sign may be increased at the rate of one foot for every two (2) feet the sign is located in excess of the required five (5) feet minimum distance from the right-of-way. The sign may be increased in height to a maximum of twenty (20) feet. Freestanding signage shall not be permitted within the perimeter of the parking area. For the purpose of this requirement, perimeter shall be considered the area of a parking lot between the building and the outer curb, including all interior parking lot landscape areas such as peninsulas and islands.  
(As amended Ord. No. 4683 July 10, 2002)
- d. Free-standing signs shall be centered on the property, or if not possible, at least twenty (20) feet from any adjacent side property line (see Figure 26.I).



**Figure 26.I Free-Standing Sign Area Increase**

- e. Poles, supports, pedestals, and other means of supporting a free-standing sign shall not be included in the determination of sign area.

## 5. Projecting Signs

A projecting sign shall not extend above the wall to which it is attached and shall not extend horizontally more than five (5) feet from the wall surface, shall not extend closer than two (2) feet to a curb, and shall be located no less than four (4) feet from an interior side lot line or party wall. In no case shall a projecting sign be attached to a building so that the sign is suspended more than thirty-five (35) feet above the ground (see Figure 26.J).

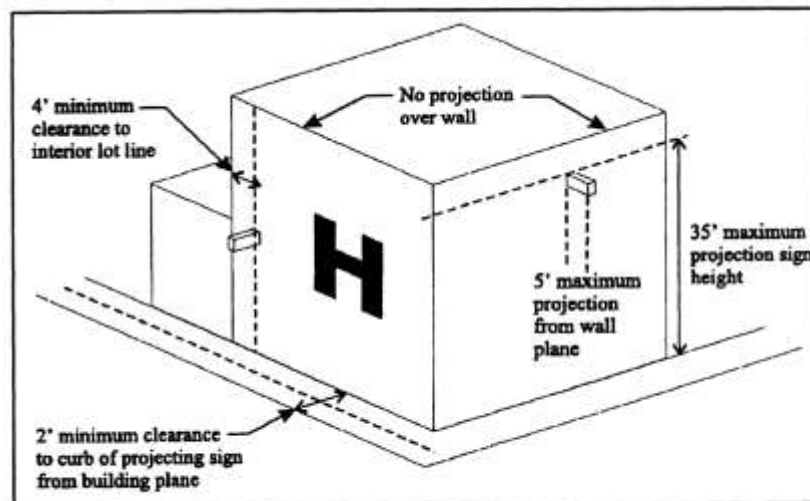


Figure 26.J Projecting Signs

## 6. Wall Signs

- a. A wall sign shall not extend above the wall to which it is attached, and such signs shall be set back from the ends of the building or party wall lines a minimum distance of one (1) foot.
- b. **Signable Area**
  - (i). For walls or buildings with architectural detailing (windows, doors, cornices, moldings columns, etc.), the signable area shall be the two-dimensional area that describes the square, rectangle, or parallelogram on the facade of a building free of architectural details where a wall sign would be placed. (See Figure 26.K).
  - (ii). The signable area for a building facade, with or without architectural detailing, shall not exceed twenty-five percent (25%) of the total square footage of the facade.
- c. **Wall Sign Area**

The total square footage of wall sign(s) on a facade of a building shall be limited to the permitted sign area specified in Table 1.
- d. **Wall Sign Increase**

The permitted size of a wall sign may be increased by an additional twenty percent (20%) of the wall sign square footage requirements as stipulated in 26.10 (D) Table 1, if a six (6) foot high and 50 SF monument sign is installed in lieu of a pole sign. This provision shall apply to all permitted free-standing signs regardless of the number of zoning lot frontages. (as amended per Ordinance No. 4592 June 13, 2001)

7. Single-Tenant Buildings

The number of façades containing wall signage shall not exceed the number of zoning lot frontages for the property on which the building is located.

- a. Wall, marquee, or awning signage may be placed on any façade of a building facing a public street or a customer parking lot provided a monument style sign not to exceed six (6) feet in height is used as the only free-standing signage on the zoning lot. (amended per Ordinance No. 4683 July 10, 2002)

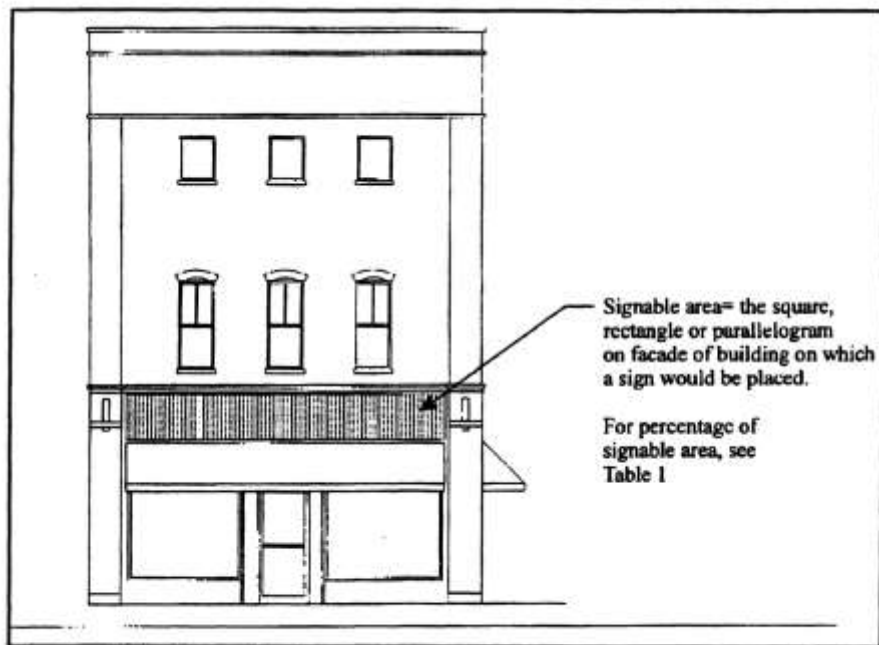
8. Multi-Tenant Buildings

- a. One free-standing sign shall be permitted per zoning lot frontage. In addition, wall, marquee, or awning signage may be used as per the following:

- i. Where the business name of individual tenants is not placed on the free-standing sign; wall, marquee, or awning signage may be used in accordance with Table 1 herein.
- ii. Where individual tenants business names are located on the permitted free-standing sign; wall, marquee, or awning signage shall be limited to seventy-five percent (75%) of the maximum permitted sign square footage for the storefront on which the signage is to be placed.

Anchor stores shall be exempt from the above restriction. A maximum of four (4) stores in an enclosed mall may qualify as anchor stores. A maximum of three (3) stores in an unenclosed shopping center may qualify as anchor stores.

- iii. All wall, marquee and awning signage for multi-tenant buildings or developments shall be of a consistent size and character, except for anchor stores which shall be permitted proportionately larger signage.
- b. Wall, marquee, or awning signage may be placed on any storefront fronting a public street or a customer parking lot. (As amended per Ordinance No. 4683 on July 10, 2002)



**Figure 26.K Signable Area**

9. Informational signage, whether wall or free-standing, shall be limited to that necessary to direct the public to particular uses of a building or site with lettering no larger than one (1) foot in height.

**E. Area and Height of Signs for All Districts**

Table 1 establishes the maximum sign area and Table 2 the maximum sign height for freestanding, wall, projecting, temporary and directional signs in all established zoning districts. All other signs permitted within the City of Elkhart are discussed in Section 26.10(F), Supplemental Sign Regulations.

**Table 2  
Maximum Sign Height<sup>1</sup>**

	<b>All Residential Districts</b>		<b>O-Office, BP-Business Park, and OP-Office Park District</b>
	<b>All single-family and Two-family uses</b>	<b>All Other Uses Specifically Permitted in Residential Districts</b>	
Free-Standing Sign	5 Feet	5 Feet	6 Feet
Projecting Sign	Below Eave Line	Below Eave Line	Not Permitted, except in O-Office District; Within such Districts, Below Eave Line
Directional	Not Permitted	3 Feet	3 Feet

	<b>B-1 Business District</b>	<b>B-2, B-3, and B-4 Business Districts</b>	<b>CBD-Central Business District</b>	<b>M-1 and M-2 Manufacturing Districts</b>
	6 Feet	6 Feet	6 Feet	6 Feet
Free-Standing Sign	<i>The maximum height of a freestanding sign may be increased at the rate of 1 foot in height for each two feet of additional setback. In no case shall the sign exceed a maximum height of 20 feet.</i>			
Projecting Signs	35 Feet Maximum, but in no Case Higher than Building Wall	35 Feet Maximum, but in No Case Higher than Building Wall	35 Feet Maximum, but in No Case Higher than Building Wall	35 Feet Maximum, but in No Case Higher than Building Wall
Directional	3 Feet	3 Feet	3 Feet	3 Feet
<sup>1</sup> Sign height measured from existing curb height.				

#### F. Supplemental Sign Regulations

##### 1. Drive-thru Signs

Two (2) drive-thru menu or information signs shall be permitted at each building which has a drive-thru facility. Drive-thru signs shall not exceed six (6) feet in height with a minimum setback of twenty (20) feet from any property line. Drive-thru signs are not permitted in any front yard. Information signs shall be limited to the name of the drive-thru business and information regarding the drive-thru services provided by the business. (As amended per Ordinance No. 4683 on July 10, 2002)

##### 2. Gas Pump Signs

A maximum of two (2) square feet of signage shall be permitted on each of the two sides of each gas pump. This restriction does not apply to any sign required by law.

##### 3. Window Signs

No more than twenty-five percent (25%) of any window panel shall be covered by a window sign.

##### 4. Off-Premises Signs

- a. Off-premises signs shall only be permitted in the B-3 and "M", Manufacturing Districts.
- b. Off-premises signs shall be permitted only as either free-standing or wall signs unless otherwise restricted by this Zoning Ordinance.



- c. Off-premises sign faces shall not exceed three hundred (300) square feet in area. The sign faces of off-premises signs shall be constructed back-to-back.
- d. Off-premises signs shall not exceed thirty (30) feet in height.
- e. The minimum distance between off-premises signs shall be one thousand (1,000) feet measured linearly along the right(s)-of-way to which they are visible.
- f. Off-premises signs shall be located behind the required building setback line of the lots on which they are located. Off-premises signs shall be located a minimum distance of twenty-five (25) feet measured in any direction from the point of intersection of the right-of-way lines of two intersecting streets.
- g. Off-premises signs shall be set back at least sixty (60) feet from residential districts and parks, except when measured along a common right-of-way, in which case the setback shall be no less than 120 feet.
- h. Off-premises signs shall be illuminated only by means of continuous reflected light. Internally-illuminated or back-lit billboards are prohibited. Off-premises signs shall not include automatically changeable copy signs.
- i. Off-premises signs shall not be located within one thousand (1,000) feet of any local, state, or federally-created historic district or structure.
- j. Off-premises signs shall not be located within thirteen hundred (1,300) feet of the St. Joseph River, the Elkhart River, and/or Christiana Creek as measured from the stream bed.
- k. Off-premise signs shall not be located in the front yard.
- l. The owners of all off-premises signs shall provide to the Planning and Zoning Office an annual inventory of all such signs by March 15 of each year. The inventory shall include the following information:
  - i. Location by address and legal description;
  - ii. Height of sign;
  - iii. Number of faces and orientation;
  - iv. Size of sign(s); and
  - v. Setbacks from property lines.
- m. Cigarette and Alcoholic Beverage Advertisements

- i. No person may place any sign, poster, placard, device, graphic display or other form of advertising that advertises cigarettes and/or alcoholic beverages in a publicly visible location. In this section, "publicly visible location" includes any off-premise freestanding or wall sign. This section shall not apply to:
  - (a) The placement of signs, including advertisements, on commercial vehicles used for transporting cigarettes and/or alcoholic beverages;
  - (b) Any off-premise sign located in an M-1 or M-2 district located more than six hundred (600) feet away from the boundary of any other zoning district which is not an M-1 or M-2 district, provided such sign faces away from any such other adjoining zoning district.
- ii. Subsection 26.10(F)(4)(m)(i) will be applied to or interpreted to effect any contract executed after the effective date of this ordinance and to any renewal term of a pre-existing contract beginning after the effective date of this ordinance.
- iii. If any section, provision, clause, sentence or phrase of Subsection 26.10(F) (4)(m) is for any reason held to be unenforceable or void, such holding shall not affect the reliability, enforceability or validity of the remaining provisions of Subsection 26.10(F)(4)(m).

## 5. Temporary Signs

"Temporary signs shall be permitted in addition to otherwise permitted signs and sign area in accordance with the following regulations. A zoning lot may utilize two (2) of the following three types of temporary signs (inflatable display, yard sign, balloons) at a given time.

a. Inflatable display. Non-Residential Lot (This item refers to a large, bag-like, flexible item filled with air or other gas to a point where it takes on a discernible shape. Display is usually rented, delivered to the site, filled with air or other gas and secured to the ground.)

- i. Shall be permitted in "B" zoning districts or on lots containing a "B" use.
- ii. Display is limited to one item per zoning lot.
- iii. Display shall not encroach over right-of-way nor have motion caused by a varying supply of air or gas.
- iv. Inflatable display shall not be roof mounted.
- v. A zoning lot may utilize a display for a total of thirty (30) days per calendar year. (Example: five uses at six days each)
- vi. Fee shall be fifteen dollars (15) per site per calendar year.

b. Yard signs, Non-Residential Lot

- i. Shall be permitted in “B” zoning districts or on lots containing a “B” use.
  - ii. Shall be allowed in yard and/or landscaped areas. Shall not be allowed in right-of-way.
  - iii. Size of yard sign is limited to four (4) square feet. Height is limited to three (3) feet.
  - iv. A zoning lot may display two (2) yard signs per street frontage.
  - v. A zoning lot may display one (1) additional yard sign for each two hundred fifty (250) feet of frontage.
  - vi. A zoning lot may utilize yard signs for a total of thirty (30) days per calendar year. (Example: five uses at 6 days each)
  - vii. Fee shall be fifteen dollars (\$15) per site per calendar year.
- c. Balloons (This item refer to small balloons secured to an item by string or stick-like device, as opposed to large inflatable display as described in item a. above.)
- i. Shall be permitted as attachment device to product which is for sale and is normally displayed out-of-doors.
  - ii. Use of balloons is limited to one hundred twenty days (120) in a calendar year.
  - iii. Fee shall be fifteen dollars (\$15) per site per calendar year.
- d. Light pole banner (This item refers a piece of fabric secured to a light pole in interior parking lots; does not refer to light poles in the public right-of-way.)
- i. Shall be permitted in “B” zoning districts or on lots containing a “B” use.
  - ii. Banner shall be secured at top and bottom and shall be maintained in good repair.
  - iii. Minimum clearance from ground shall be twelve (12) feet.
  - iv. Maximum of one banner per light pole.
  - v. Maximum square footage of banner shall be twenty-five (25).
  - vi. Fee shall be fifteen dollars (\$15) per site par calendar year.
  - vii. Length of display shall be unlimited as long as banner is maintained in good repair.
- e. Inverted V or inverted T sign (This refers to a small sign shaped as described by its name. Example of inverted V sign is an outdoor menu board at a restaurant. Example of inverted T sign is a sign often seen at a gas station or oil change facility.)
- i. Shall be subject to Board of Public Works jurisdiction when proposed to be located on a public sidewalk.
  - ii. One sign shall be allowed per zoning lot
  - iii. Sign shall be taken indoors at close of business each day.
  - iv. Sign shall be limited in size to eight (8) square feet.
  - v. Sign location shall not compromise pedestrian or vehicle traffic.

vi. Fee shall be fifteen dollars (\$15) per site per calendar year.”

f. Banners

i. Banners shall not be permitted on residentially-zoned or used properties.

ii. Banners shall be displayed so as not to be mounted in excess of twenty (20) feet in height.

iii. Banners shall not be constructed as free-standing signs. A banner may be placed within the signable area of a façade that faces a parking area or right-of-way. (amended by Ordinance No. 5044 on July 11, 2007)

iv. The use of banners shall be limited to one hundred eighty (180) days per calendar year on a zoning lot in all business and manufacturing districts, and thirty (30) days per calendar year for all institutional uses, as defined in Section 26.10 F.6.a. (as amended per Ordinance No. 5044 on July 11, 2007)

v. Banners shall be limited to one (1) per zoning lot, with a maximum forty (40) SF in sign face area and 7.5 feet in height. (amended by Ordinance No. 5044 on July 11, 2007).

vi. Banners shall be maintained as installed and not allowed to droop, sag, flap, or become torn and frayed. (amended Ordinance No. 5044 on July 11, 2007)

vii. All banners shall require a zoning clearance permit and a permit fee as is shown in Section 29.12 Fee Schedule. (amended by Ordinance no. 5044 on July 11, 2007)

g. Temporary Window Signs

Temporary window signs shall cover no more than twenty-five percent (25%) of the window (glass) area where it is placed.

h. Pennants

The display of strings of pennants, streamers, pinwheels, balloons, and similar objects, shall be prohibited except as permitted for carnivals and open-air festivals.

i. Other Temporary Signs

Real estate, construction, and signs for new businesses shall be permitted as temporary signs. Temporary signs for new businesses shall be limited to ninety (90) days, by which time a permanent sign may be installed pursuant to permit requirements identified in this Zoning Ordinance. Temporary construction signs shall not display

the name or any other markings identifying a home occupation that is being operated on the property where the construction is taking place. Temporary construction signs shall be limited to no more than five (5) square feet in area in R-1, R-2, and R-3 residential zones, and to no more than thirty-two (32) square feet in area in all other zoning districts. Temporary construction signs shall be removed immediately upon completion of the construction, which completion shall be deemed to have occurred either upon the issuance of a certificate of occupancy for new construction, or upon completion of the last required inspection in cases of other than new construction. Temporary real estate signs shall not display the name or any other markings identifying a home occupation that is being operated on the property that is for sale or lease. (Amended per Ordinance No. 4396 on January 4, 1999)

- j. Municipal agency Award or Recognition Signs shall be limited to a period of sixty (60) days. Homeowner or business beautification or recognition signs placed by Municipal agencies shall qualify for this requirement. Such signs must be placed according to freestanding sign location requirements. Signs of this type may not exceed twenty (20) square feet in area or four (4) feet in height. (As amended per Ordinance No. 4683 on July 10, 2002)

#### 6. Portable Display Signs

- a. The use of portable display signs shall be limited to one hundred eighty (180) days per calendar year on a zoning lot in all business and manufacturing districts, and thirty (30) days per calendar year for all institutional uses, as defined below, on a zoning lot in any residential district.

Institutional Uses shall include: churches, schools, libraries, charitable organizations, non-profit organizations, private clubs and lodges, and other similar uses approved by the Planning and Zoning Office.

- b. Portable display signs shall be prohibited in all residential zones except as specified in Paragraph (a) above.
- c. Double-faced portable signs shall be limited to one (1) per zoning lot, with a maximum forty (40) square feet in sign face area and 7.5 feet in height.
- d. Sign shall be set back a minimum of five (5) feet from the street right-of-way lines and five (5) feet from any adjacent property line, except if adjacent property is zoned "R", in which case the setback shall be fifteen (15) feet.
- e. Sign shall not be located in the intersection visibility area as defined in this Ordinance.
- f. Permits

- i. All portable display signs shall require a portable sign zoning clearance and a permit fee. Permit and fee are valid for any period or periods up to ninety (90) days in a calendar year. Original permit must be amended for each additional sign placement to record days of use in order to be valid.
  - ii. Signs placed without a valid permit (original or amended) shall be red-tagged and required to pay a fifteen dollar (\$15.00) penalty fee in addition to the original permit fee and any fine levied.
  - iii. Any person or business who rents, leases and/or places portable sign(s) within the City of Elkhart (on property other than his/her own), shall post an annual bond of one thousand dollars (\$1,000).
- e. Additional Requirements
  - i. Lighting shall be limited to twenty-five (25) watt bulbs. Flashing lights are prohibited.
  - ii. All electric connections to portable display signs shall comply with the City Electrical Ordinance (No. 3460, as amended) and the National Electrical Code (NFPA-70, Article 600) as adopted by the City Electrical Ordinance.
  - iii. During times that street repairs interrupt the conduct of business, permits may be issued at locations approved by the Planning and Zoning Office for such time as construction hinders visibility and/or access to the business, as determined by the Planning and Zoning Office.
  - iv. No portable sign may be converted to a permanent sign.

## 7. Flags

- a. Flags bearing the official design of a nation, state, municipality, or organization are permitted within the City of Elkhart according to the following standards:
  - i. In residential districts, one (1) flagpole shall be permitted per lot.
  - ii. In all other districts, three (3) flagpoles shall be permitted per lot.
- b. Flagpoles shall not be located closer than ten (10) feet to an adjacent residential lot line.
- c. In residential districts, flagpoles may be no more than twenty-five (25) feet in height.

8. Marquee, Canopy or Awning Signs.

- a. The signable area of a marquee, canopy, or awning shall be limited to fifty percent (50%) of the area of the front or top plane, and fifty percent (50%) of the side plane of the marquee, canopy, or awning. Signage shall be attached directly to the marquee, canopy, or awning and shall not extend vertically or horizontally beyond. (As amended per Ordinance No. 4683 on July 10, 2002)
- b. Such signs may be located no more than twenty (20) feet above curb level and shall not extend above the window sill of the second story of a multi-story building.
- c. There shall be a minimum clearance of eight (8) feet between the bottom of the marquee, canopy or awning and the sidewalk or ground. (As amended per Ordinance No. 4683 on July 10, 2002)

9. Each property shall contain a sign identifying the address of the property. This sign shall not count against the permitted sign areas identified in Table 1, but in no case shall the address sign exceed two (2) square feet in area.

10. Termination of Use: At the termination of any use of any premises, building, structure or lot, the permission to display signs associated with such use shall terminate. All wall signs shall be removed within three hundred sixty-five (365) days from the date of termination of such use. Freestanding signs whose height or size or setback no longer comply with regulations shall be removed in their entirety, including all support structures within three hundred sixty five (365) days from the date of termination of such use. Freestanding signs whose height, size and setback are in compliance with regulations shall have the sign faces removed within three hundred sixty-five (365) days from the date of termination of use.

All signs associated with the premises must be kept clean, neatly painted, and free from all hazards, such as, but not limited to faulty wiring or loose fastenings, and must be maintained at all times in such safe condition so as not to be detrimental to the public health or safety.

G. Maintenance (as amended per Ordinance No. 4431 on July 23, 1999)

All signs shall be maintained in a good state of repair, including but not limited to, repair of defective parts, painting and cleaning. The replacement of the structural members of a non-conforming sign for the purpose of extending the life of such non-conforming sign, shall not constitute maintenance as defined in this section, but shall be considered as new construction and must thereby satisfy all requirements of this Zoning Ordinance.

The owner of any property on which a sign is located and those responsible for maintenance of the sign shall be jointly responsible for the maintenance of the area in the vicinity of the sign and shall be required to keep this area mowed in accordance with City standards and maintained in a safe, clean and sanitary condition free of noxious or offensive substances and rubbish.

The Planning and Zoning Office or authorized representative shall have the right of entry in order to inspect all signs for compliance with the provisions of this Zoning Ordinance.

When any sign or adjacent area is not maintained within the provisions of this Zoning Ordinance, or determined otherwise unsafe, the Planning and Zoning Office or the authorized representative shall send written notice to both the owner of the property on which such sign is located and the sign owner. Notice shall direct the owners to remove, repair or alter the sign or to maintain the property in accordance with City Standards. If said sign is not removed, replaced, or altered or the property not properly maintained within ninety (90) days, the City or authorized representative shall cause the sign to be removed, repaired, or altered or the property to be maintained at the expense of the property and/or sign owner in accordance with the procedures of this Ordinance. (Nonconforming Signs deleted as amended per Ordinance No. 4431 on July 23, 1999)

H. Special Exceptions/Conditional Uses

Signs accessory to special exceptions or conditional uses may be approved by the Board as a part of the special exception or conditional use. If not specifically approved as part of the special exception or conditional uses, signs accessory to such uses shall conform to the sign standards of the district in which they are located.

I. Permits

1. A Zoning Clearance Permit shall be obtained from the Planning and Zoning Office prior to the issuance of a zoning permit for the signs as permitted herein.
2. A sign permit shall be obtained from the Building Department prior to the erection of any sign listed in Section 26.10(D).
3. A Sign Permit may, at the sole discretion of the Planning and Zoning Staff, be issued for a new sign face if the existing sign base, pole, and frame are located in the primary street setback provided that:
  - a. The new sign face will not exceed the size of the existing sign frame; and
  - b. The Planning and Zoning Office may, but shall not be required to, waive the requirement of petitioning and receiving a variance from the Board of Zoning Appeals for the placement of an on-premise sign within a primary street/major thoroughfare setback. Basis for any waiver shall include, but not be limited to, the prevailing on-premise sign setback along the primary street/major thoroughfare within five hundred (500) feet of the property. Permittee shall sign and record a primary street/major thoroughfare agreement with the City.



4. An electrical permit shall be obtained from the Building Department for the erection, installation, or replacement of any sign requiring electrical power for lighting, movement or copy change.

J. Fees, Penalties, or Appeals

1. Fees

The fees for permits to erect or place signs shall be prescribed in the Building and Electrical Codes of the City.

2. Penalties

In addition to any other penalties prescribed herein, signs which are located without valid permit or in violation of this Ordinance, more than once within any six (6) month period may result in revocation of the bond and/or permit and no additional permits may be issued for a period of twelve (12) months to said person or subsequent transferee.

3. Appeal

The decision of the Planning and Zoning Staff shall be final except upon appeal of its decision to the Board of Zoning Appeals pursuant to the requirement of Section 29.2 of this ordinance.

K. Construction Standards

The construction materials and details for all signs erected in the City shall be of the quality and grade as specified for buildings in the Uniform Building Code as adopted by the Administrative Building Council of the State of Indiana. (as amended per Ordinance No. 4431 on July 23, 1999)

## SECTION 27

### WIRELESS COMMUNICATIONS

#### Section

- 27.1 General Provisions
  - 27.2 Definitions
  - 27.3 Plan Commission Approval
  - 27.4 Development Standards
  - 27.5 Application Requirements
  - 27.6 Collocation Policy
  - 27.7 Removal of Abandoned Wireless Communication Facilities
  - 27.8 Revocation Procedure
- 

#### 27.1 General Provisions

##### A. Intent

To encourage the orderly development of wireless communication technologies throughout the City while controlling the proliferation of communication towers. Particular emphasis should be to promote the collocation of wireless communication facilities. This section shall not apply to amateur television or radio towers attached to primary structures or to free-standing amateur television or radio towers that are thirty-five (35) feet in height or less, as measured from grade to the highest point of the antenna.

##### B. Requirements

The following requirements shall apply to all wireless communication facilities regardless of location and are to be supplemented with the specific requirements set forth below.

1. The location of any wireless communication facility shall comply with other applicable standards of the zoning ordinance not specifically indicated in this section, including but not limited to those for floodplains and wetlands.
2. All wireless communication facilities, with the exception of television and radio towers, shall be fully automated, shall not require attention on a daily basis and shall be visited only for periodic and necessary maintenance or emergencies.

#### 27.2 Definitions

For purposes of this Section, the following definitions shall apply.

**Wireless Communications:** Wireless communications shall mean television and radio towers, as well as any personal wireless service as defined in the Telecommunications Act of 1996, which includes FCC licensed commercial wireless telecommunications services including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and similar services that currently exist.

**Wireless Communication Facility:** A Wireless Communication Facility is any facility for the transmission and/or reception of wireless communications services, usually consisting of an Antenna Array, connection cables, an Equipment Facility and a Support Structure. A Wireless Communication Facility also includes an Antenna Array attached to an existing building or structure (Attachment Structure).

**Attachment Structure:** Attachment Structures include but are not limited to utility poles, signs, water towers, rooftops, towers with any accompanying pole or device (Attachment Device) which attaches the Antenna Array to the existing building or structure and associated connection cables, and an Equipment Facility which may be located either inside or outside of the Attachment Structure.

**Antenna Array:** An Antenna Array is one or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antenna (rod), directional antenna (panel) and parabolic antenna (disc). The Antenna Array does not include the Support Structure.

**Temporary Wireless Communication Facility:** Temporary Wireless Communication Facility shall mean a Wireless Communication Facility to be placed in use for ninety (90) or fewer days.

**Colocation/Site Sharing:** Colocation/Site Sharing shall mean use of a common Wireless Communication Facility or common site by more than one wireless communication license holder, or by one wireless license holder for more than one type of communication technology and/or placement of a Wireless Communication Facility on a structure owned or operated by a utility or other public entity.

**Equipment Facility:** An Equipment Facility is any structure used to contain ancillary equipment for a Wireless Communication Facility which includes cabinets, shelters, a build out of an existing structure, pedestals, and other similar structures.

**Federal Aviation Administration:** FAA.

**Federal Communications Commission:** FCC.

**FTA:** Federal Telecommunications Act of 1996.

**Height:** When referring to a Wireless Communication Facility, Height shall mean the distance measured from ground level to the highest point on the Wireless Communication Facility, excluding the Antenna Array.

**Setback:** Setback shall mean the required distance from the property line of the parcel on which the Wireless Communication Facility is located to the base of the Support Structure and equipment shelter or cabinet where applicable, or, in the case of guy-wire supports, the guy anchors.

**Support Structure:** A Support Structure is a structure designed and constructed specifically to support an Antenna Array, and may include a monopole, self supporting (lattice) tower, guy-wire-support tower and other similar structures. Any device (Attachment Device) which is used to attach an Attachment Structure shall be excluded from this definition.

### 27.3 Plan Commission Approval

The Plan Commission shall approve or deny applications for wireless communications facilities that exceed seventy (70) feet in height based on consideration of the following factors:

- A. Whether the facility offers opportunities for collocation/site sharing.
- B. Whether all applicable developmental standards will be met.
- C. The previous or existing use of the site and its impact on surrounding properties.
- D. Compatibility of the proposed use with existing use of the site and existing neighboring uses.
- E. The extent to which granting the conditional use would substantially serve the public safety and welfare.
- F. The particular physical suitability of the site for the proposed use.
- G. Whether conditions may be imposed by the Plan Commission or commitments made by the applicant which are sufficient to mitigate any potential adverse impact on neighboring property.
- H. Other factors that the Plan Commission may deem relevant.

### 27.4 Development Standards

Notwithstanding any provision of this zoning ordinance to the contrary, the following Development Standards shall apply to all Wireless Communication Facilities.

- A. Height Standards: The maximum height of Wireless Communications Facilities shall be less than 200 feet above the surface grade.
- B. Tower Separation: Towers shall be separated from residentially-zoned or used properties by a minimum distance in feet determined by multiplying the height of the tower (in feet) by a factor of 2.5 (The minimum separation distance is 2½ times the height of the tower).
- C. Setback Standards: Wireless Communication Facilities located on properties zoned B-2 Community Business District, B-3 Service Business District and B-4 Regional Business District, shall be located to the rear of the primary building.
  - 1. Wireless Communication Facilities located on properties zoned M-1 Limited Manufacturing District and M-2 General Manufacturing District shall comply with setback requirements for accessory structures, unless attached to the primary structure.

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D. Fencing and Landscaping Requirements

1. Fencing: An opaque fence, a minimum of eight (8) feet in height and a maximum of fifteen (15) feet in height, constructed of painted or treated wood, painted or textured block, or brick shall be maintained in good repair around each Wireless Communication Facility. Nothing herein shall prevent fencing that is necessary to meet requirements of State or Federal agencies.
2. Landscaping: There shall be a minimum of a four (4) foot landscape strip along the perimeter of the fence enclosure. The landscaped strip shall be planted with shrubbery, trees and groundcover, and shall comply with the planting standards as set forth in this ordinance.

E. Aesthetics, Placement, Materials and Colors

Wireless Communication Facilities shall be designed to be compatible with the existing structures and its surroundings to the extent feasible, including placement in a location which is consistent with proper functioning of the Wireless Communications Facility, the use of compatible or neutral colors, or camouflage technology.

F. Lighting

Wireless Communication Facilities shall not be artificially illuminated, directly or indirectly except for security and safety lighting, and other illumination as may be required by the FAA or other applicable authority. All lighting shall be installed in a manner that will minimize impacts on adjacent properties.

G. Maintenance Inspections

All guyed towers, including those installed prior to this ordinance, shall be inspected every two years. Self-supporting towers shall be inspected every four years. Each inspection shall be by a qualified professional engineer or other qualified inspector, and any inspector-recommended repairs and/or maintenance should be completed without unnecessary delay. A copy of the final inspection report shall be filed in the Planning and Zoning office. At a minimum each inspection shall include the following:

1. Tower structure: Including bolts, loose or damaged members, signs of unusual stress or vibration.
2. Guy wires and fittings: Check for age, strength rust, wear, general condition and any other signs of possible failure.
3. Guy anchors and foundations: Assess for cracks in concrete, signs of corrosion, erosion, movement, secure hardware, and general site condition.
4. Condition of antennas, transmission lines, lighting, painting, insulators, fencing, grounding, and elevator, if any.
5. For guyed towers: Tower vertical alignment and guy wire tension (both required tension and present tension).

#### H. Radio Frequency Emissions/Sound

The following radio frequency emissions standards shall apply to all Wireless Communications Facility installations.

1. Radio Frequency Impact: The FTA gives the FCC Jurisdiction of the regulation of Radio Frequency (RF) emissions, and Wireless Communications Facilities that do not exceed the FCC standards shall not be conditioned or denied on the basis of RF impact.
2. FCC Compliance: In order to provide information to its citizens, copies of ongoing FCC information concerning Wireless Communications Facilities and RF emissions standards may be requested. Applicants for Wireless Communications Facilities shall be required to provide information with the application on the measurement of the effective radiated power of the facility and how this meets the FCC standards.
3. Sound Prohibited: No unusual sound emissions such as alarms, bells, buzzers or the like are permitted.

#### I. Structural Integrity

Wireless Communications Facilities with Support Structures shall be constructed to the Electronics Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision F Standard entitled "Structural Standards for Steel Antennas Towers and Antenna Support Structures" (or equivalent), as may be updated and amended. Each Support Structure shall be capable of supporting multiple antenna arrays.

#### J. Permitted Wireless Communication Facilities

Wireless Communication Facilities attached to Attachment Structures or Monopoles that are seventy (70) feet or less in height and that meet the Development Standards as set forth in this Section, may be administratively approved by the Zoning Administrator in the B-2, B-3, B-4, M-1 and M-2 zoning districts except as hereinafter specified. All others located in the B-2, B-3, B-4, M-1 and M-2, regardless of type or location shall be subject to review in a public hearing by the Plan Commission and may not be approved by the Administrative Review process. (As amended Ord. No. 4683 July 10, 2002)

#### K. Historic Districts and Overlay Districts

1. Wireless Communication Facilities to be located within an established Historic District, including single site historic designations shall be subject to review by the Historic and Cultural Preservation Commission (HCPC). Review by the HCPC shall be in accordance with procedures for a Certificate of Appropriateness. (As amended Ord. No. 4683 July 10, 2002)

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## 27.5 Application Requirements

### Application Submission

All requests for a Zoning Clearance regardless of Wireless Communications Facility type, including but not limited to a Temporary Wireless Communication Facilities shall submit an application in accordance with the requirements of this section.

#### 1. Application Contents

Each applicant requesting a Wireless Communication Facility or Temporary Wireless Communication Facility shall submit a sealed complete set of drawings prepared by a licensed architect and/or engineer that will include a site plan, elevation view and other supporting drawings, calculations and other documentation showing the location and dimensions of the wireless communications facility and all improvements associated therewith, including information concerning specifications, antenna locations, equipment facility and shelters, landscaping, curb cuts, parking, stormwater retention, screening and landscaping. Applicants proposing to colocate on an existing wireless communication facility shall include a Radio Frequency Intermodulation Study with their application.

#### 2. Proof of Filing FAA Form 7460-1

A letter of receipt from the Federal Aviation Administration (FAA) providing proof of filing FAA Form 7460-1 and indicating the assigned AGL/File Number must be submitted along with application for all Wireless Communication Facilities within twenty thousand (20,000) feet any airport runway, that exceed one hundred (100) feet in height.

#### 3. Existing Network Locations

If a proposed Wireless Communication Facility is part of a larger network of similar facilities, a geographic and written depiction of all locations in this network shall accompany the petition for a proposed Wireless Communication Facility.

#### 4. Affidavits of Colocation Agreement

All applicants for Wireless Communication Facilities must sign and provide a City of Elkhart Affidavit for Wireless Communication Facility indicating:

- a) That no other colocation opportunities exist on a list of towers within a one-mile radius provided by the office of Planning and Zoning, including proof that a good faith effort has been made; names, addresses, and telephone numbers of all owners of Wireless Communication Facilities to whom inquiries have been made; and
- b) Agreement to allow and reasonably market colocation of other Wireless Communication Facility users at rates that are comparable and competitive to those charged for location at comparable Wireless Communication Facilities. The statement shall include the applicant's policy regarding collocation of other providers and the methodology to be used by the applicant in determining reasonable rates to be charged to other providers.

The Colocation Agreement shall be considered a condition of issuance of a Zoning Clearance.

#### 5. Application Fees

A plan review fee of \$100 and a Radio Frequency Intermodulation Study review fee of \$100 (colocation applicants only) shall accompany each application. These fees may be used by the City to engage an engineer(s) or other qualified consultant(s) to review the technical aspects of the application and the Radio Frequency Intermodulation Study (if required).

#### 6. Technical Assistance

In the course of its consideration of an application, the Zoning Administrator, the Plan Commission or the Board of Zoning Appeals may deem it necessary, in complex situations, to employ an engineer(s) or other consultant(s) qualified in the design and installation of Wireless Communication Facilities (chosen by the City) to assist the City in the technical aspects of the application. In such cases, any additional reasonable costs incurred by the City not to exceed three thousand dollars (\$3,000) for the technical review and recommendation shall be reimbursed provided in the form of a cashier's check or money order by the applicant prior to the final hearing on filing a petition for the proposed Wireless Communication Facility. (Items 2 through 6 as amended Ord. No. 4683 July 10, 2002)

### **27.6 Colocation Policy**

All new wireless communication facilities shall be engineered, designed and constructed to be capable of sharing the facility with other providers, to colocate with other existing wireless communication facilities and to accommodate the future collocation of other wireless communication facilities. A Zoning Clearance shall not be issued until the applicant proposing a new wireless communication facility shall demonstrate that it has made a reasonable good faith attempt to locate its Wireless Communication Facility onto an existing structure. Competitive conflict and financial burden are not deemed to be adequate reasons against colocation.

All Wireless Communication Facilities with support structure up to a height of 150 feet shall be engineered and constructed to accommodate at least three (3) antenna array. All Wireless Communication Facilities with support structures up to a height of more than 150 feet shall be engineered and constructed to accommodate at least four (4) antenna array.

### **27.7 Removal of Abandoned Wireless Communications Facilities**

Any wireless communication facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the City, at its election, may require the wireless communication facility owner to remove the wireless communication facility within 90 days after notice from the City to remove the wireless communication facility. If the abandoned wireless communication facility is not removed within 90 days, the City may remove it and recover its costs from the wireless communication facilities owner. If there are two or more users of a single wireless communication facility, this provision shall not become effective until all providers cease to use the wireless communication facility. If the owner of an abandoned wireless communication facility cannot be located or is no longer in business, the requirements of this section shall be the responsibility of the landowner on whose property the wireless communication facility is located.



## **27.8 Revocation Procedure**

Any zoning clearance issued for a Wireless Communication Facility pursuant to this Section may be revoked after a hearing as provided hereinafter. If the Planning and Zoning Staff finds that any permit holder has violated any provision of this Section, or has failed to make good faith reasonable efforts to provide or seek collocation, the Planning and Zoning Staff shall notify the permit holder in writing that the zoning clearance is revocable due to the permit holder's non-compliance with the conditions of the permit. The Planning and Zoning Staff may recommend to the Plan Commission that the zoning clearance be revoked. After the appropriate public hearing, the Plan Commission may revoke the zoning clearance upon such terms and conditions, if any, that they may determine. Prior to the initiation of revocation proceedings, the Planning and Zoning Staff shall notify the permit holder, in writing, of the specific areas of non-compliance and specify the date by which such deficiencies must be corrected. The time for correction of deficiencies shall not exceed 60 days. The permit holder shall provide the City with evidence that the required corrective action has been taken. Should the permit holder fail to correct any deficiencies in the time required, the Plan Commission shall convene a public hearing to consider revocation of the zoning clearance. The hearing shall be conducted pursuant to notice by publication in a newspaper with general circulation in the City not less than 10 days prior to the hearing and by written notice to the permit holder. The public hearing shall be conducted pursuant to the Plan Rules of Procedure.

(As amended Ord. No. 4683 July 10, 2002)

**SECTION 28**  
**RESERVED FOR FUTURE USE**

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## SECTION 29

### ADMINISTRATION AND ENFORCEMENT

#### Sections

- 29.1 Planning and Zoning Staff**
  - 29.1.5 Technical Review (amended Ord. No. 4985 on 9/22/2006)**
  - 29.2 Board of Zoning Appeals**
  - 29.3 Plan Commission**
  - 29.4 Zoning Clearance Permits**
  - 29.5 Certificate of Occupancy**
  - 29.6 Commitments**
  - 29.7 Special Exception**
  - 29.8 Conditional Use**
  - 29.9 Variance**
  - 29.10 Appeal**
  - 29.11 Amendments**
  - 29.12 Fee Schedule**
  - 29.13 Violations and Penalties**
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#### **29.1 Planning and Zoning Staff**

The Planning and Zoning staff shall enforce this Ordinance, and in addition thereto and in furtherance of said authority, they shall:

- A. Issue all zoning clearance permits and keep permanent records thereof.
- B. Conduct such inspections of buildings, structures and uses of land as are necessary to determine compliance with the terms of this Ordinance.
- C. Maintain permanent and current records of this Ordinance, including all maps, amendments, special exceptions, variances and conditional uses, and records of hearings thereon.
- D. Provide and maintain a public information bureau relative to all matters arising under this Ordinance.
- E. Provide interpretation of this Ordinance when necessary and such technical and clerical assistance as the Board of Zoning Appeals and Plan Commission may require.
- F. Review all proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law.
- G. Review all applications for zoning clearance permits for new construction to ascertain whether the proposed construction or addition lies in a flood hazard area as defined by this Ordinance. If the proposed construction or addition is found to lie in either a floodway or floodplain the Planning staff shall forward all pertinent materials to the I.D.N.R. for appropriate review and action. Upon receiving the proper

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permit or letter of recommendations from I.D.N.R., the Planning staff may require such modifications to the design as they may deem appropriate to prevent flotation, collapse, or lateral movement of the structure and minimize potential future flood damages.

### **29.1.5 Technical Review**

All new commercial construction projects shall be reviewed by the Technical Review Committee who shall meet on a regular basis not less than twice a month and according to a calendar established at the beginning of each calendar year. Members of the committee shall include representatives from the office of Planning & Development, the Fire Department, and the Office of Public Works. Review shall include compliance with all applicable requirements of the Zoning Ordinance, Fire Code, Sewer Use and Rate Ordinance and Elkhart Water Works Rules and Regulations for water and sewer, City of Elkhart Standard Construction Specification for traffic control and drainage, and state and local MS4 regulations for erosion control. (as amended by Ordinance No. 4985 on September 22, 2006)

## **29.2 Board of Zoning Appeals**

### **A. Creation and Membership**

A Board of Zoning Appeals is hereby established, which shall consist of five (5) members all of whom shall be residents of the City, of which three (3) citizen members shall be appointed by the Mayor of whom one must be a member of the Plan Commission and two must not be members of the Plan Commission, one citizen member appointed by the Common Council who must not be a member of the Plan Commission, and one citizen member appointed by the Plan Commission, who must be a member of the Plan Commission other than the Plan Commission member appointed by the Mayor.

### **B. Terms of Office**

The members of the Board of Zoning Appeals shall be appointed for terms of four (4) years. The terms shall expire on the first day of January. The terms of the members representing the Plan Commission shall be coextensive with their term of office on such Commission. If a vacancy occurs, the appropriate appointing authority shall appoint a member for the unexpired term of the vacating member.

### **C. Offices**

At the first meeting of each year, the Board of Zoning Appeals shall elect a chairman and vice-chairman from its members. The Vice-Chairman shall have authority to act as chairman during the absence or disability of the chairman.

### **D. Quorum and Official Action**

A majority of members of the Board of Zoning Appeals shall constitute a quorum. No action shall be official, however, unless authorized by a majority of the Board of Zoning Appeals.

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E. Rules and Procedures

The Board of Zoning Appeals shall adopt such rules as shall be necessary to carry out its duties as defined herein. The Board of Zoning Appeals shall keep minutes of its proceedings, keep records of its examinations and other official acts and shall record and vote on all actions taken. All minutes and records shall be filed in the Planning and Zoning Office and shall be a public record.

F. Powers and Duties

The Board of Zoning Appeals shall have the power and duty to:

1. Hear and determine appeals from and review any order, requirement, decision or determination made by the Planning and Zoning staff charged with the enforcement of this Ordinance. In exercising its power, the Board of Zoning Appeals may modify the order, requirement, decision or determination of the Planning and Zoning staff.
2. Hear and decide on petitions for special exceptions and conditional uses as provided for in this Ordinance.
3. Hear and decide on petitions for variances from the terms of this Ordinance.
4. Impose conditions on the grant of any special exception, conditional use, or variance.
5. Permit or require petitioner to make written commitments concerning the use or development of parcel(s) which are the subject of a petition.
6. Consider such other matters and take such further actions as may be permitted by law.

G. Judicial Review

Every decision of the Board of Zoning Appeals shall be subject to review by certiorari.

### **29.3 Plan Commission**

A. Membership

The Plan Commission shall consist of nine (9) members. Four members shall be appointed as follows: One (1) member selected by the City Council from its membership; one (1) member selected by the Board of Park Commissioners from its membership; one (1) member of or a designated representative selected by the Board of Public Works; and the City Engineer. The Mayor shall appoint five (5) citizen members, not more than three (3) of whom shall be of the same political party. The citizen members shall be qualified by knowledge and experience in matters pertaining to the development of the City, shall hold no other office in the City government and shall be residents of the City.

B. Terms of Office

The members of the Plan Commission shall be appointed for terms of four (4) years. The terms shall expire on the first day of January. The term of each member representing the City Council, the Board of Park Commissioners or the Board of Public Works shall be coextensive with his or her term of office on such Council or Board unless such Council or Board shall, at its first regular meeting of each year, appoint another person to serve as its representative. The term of the City Engineer shall be coextensive with his term of office.

C. Officers

Each year, at its first regular meeting following the first day of January, the Plan Commission shall elect from its members a President and a Vice-President.

D. Quorum

A majority of the members shall constitute a quorum. No action, however, shall be official unless authorized by a majority of the Plan Commission.

E. Powers and Duties

The Plan Commission shall have the power and duties to:

1. Review and administer all matters upon which it is required to act under this Ordinance;
2. Prescribe uniform rules of procedure pertaining to petitions, hearings and the issuance of permits;
3. Review periodically the effectiveness of this Ordinance and initiate amendments or make recommendations in conjunction therewith;
4. Permit or require petitioner to make written commitments concerning the use or development of parcel(s) which are the subject of a petition.
5. Impose conditions on the approval of a development plan or PUD district.
6. Consider such other matters and take such further actions as may be permitted by law.

#### **29.4 Zoning Clearance Permits**

- A. No land shall be occupied or used, no excavation or construction shall be started, and no building or other structure hereafter erected, moved, added to or structurally altered shall be occupied or used, in whole or in part, for any purpose without zoning clearance permits issued by the Planning and Zoning Office.
- B. All applications for zoning clearance permits shall be submitted to the Planning staff on the prescribed application form and accompanied by a site plan showing the dimensions and shape of the lot to be built upon; the height and bulk of any existing

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and proposed buildings; the building lines in relation to lot lines; the use to be made of the building, structure or land; location and size of required landscaping improvements; and such other information as may be required by the Planning staff for the proper enforcement of this Ordinance.

- C. The Planning staff may require the relocation of any proposed building, structure, driveway, parking area or other elements or site development indicated or omitted on said site plan before issuing a zoning clearance permit, when such action is necessary to carry out the purpose and intent of this Ordinance.
- D. The issuance of a zoning clearance permit shall not be construed as waiving any provision of this Ordinance nor of the necessity to obtain any other permits required by law.
- E. If the work described in any zoning clearance permit has not begun within one year from the date of issuance thereof, said permit shall expire.
- F. Any zoning clearance permit issued in violation of any provision in this chapter or any ordinance or statute shall be void.
- G. Any property designated as a single site historic district or located within an established historic district shall obtain approval for all exterior development (buildings and site) from the Elkhart City Historic and Cultural Preservation Commission prior to issuance of a zoning clearance permit.

## **29.5 Certificate of Occupancy**

- A. It shall be unlawful to use or occupy or permit the use or occupancy of any structure or land or both or part thereof for any of the following until a Certificate of Occupancy has been signed by the Planning and Zoning Office stating that the proposed use complies with the requirements of this Ordinance:
  - 1. Occupancy or use of any structure hereafter erected, changed converted or wholly or partly altered or enlarged;
  - 2. Occupancy or use of vacant land;
  - 3. Change in the use of an existing structure;
  - 4. Change in the use of land;
  - 5. Change in the use or character of a nonconforming use.
- B. Every application for a zoning clearance permit shall be deemed to be an application for a Certificate of Occupancy.
- C. Within ten (10) days after notification that a structure or land or part thereof is ready for occupancy or use, it shall be the duty of the Planning and Zoning Office to make a final inspection thereof and to sign a Certificate of Occupancy if the structure or land or part thereof is found to comply with the provisions of this Ordinance. If the signature is refused, the Planning staff shall state the cause for the refusal in writing.

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- D. In the event that a development is not in complete compliance with this Ordinance, Planning staff may still sign the Certificate of Occupancy upon receipt of a written and signed statement by the developer or property owner, which to the Planning staff's satisfaction, specifies those items still to be completed, the manner in which they will be completed, and a schedule for their completion. Failure to comply with the agreement by the date specified shall constitute a violation of this Ordinance and may result in the revocation of the Certificate of Occupancy and/or other penalties.

## **29.6 Commitments**

Whenever a commitment may be permitted or allowed under the terms of this Ordinance the following regulations shall govern the creation, form, recording, enforcement, modification and termination of commitments.

### **A. Creation of Commitments**

A commitment shall be executed by the owner of record of the property (property owner) which is the subject of a petition or proposal and any other party necessary to give legal effect to the terms of the commitment. Terms of a proposed commitment shall be reviewed at a public hearing on the petition or proposal. A commitment shall be submitted in a form satisfactory to the body which permits or requires the commitment. The property owner shall be responsible for prompt recording of the commitment and shall submit evidence of recording to the Planning and Zoning Office.

### **B. Enforcement**

A commitment may be enforced by the body which permitted or required the commitment and any specially affected persons designated in the terms of the commitment. Specially affected persons may include, but are not limited to, owners of adjacent properties, public service organizations and neighborhood associations. Unless modified or terminated by the body which permitted or required the commitment, a commitment is binding upon the property owner, a subsequent property owner and any person who acquires an interest in the property. If, however, the commitment is not recorded, the commitment is binding only upon the property owner and any party who has actual notice of the commitment.

### **C. Modification and Termination**

A commitment may be modified or terminated only by a decision of the body which permitted or required the commitment after notice to interested parties and a public hearing. Written notice of the public hearing shall be provided to designated specially affected persons with authority to enforce the commitment. The body which permitted or required the commitment may modify or terminate the commitment only upon finding that:

1. A change in circumstances has occurred which makes unnecessary the purpose for which the commitment was originally made;
2. Due to a change in circumstances, the burden imposed by the commitment constitutes an undue hardship as weighed against the interest the commitment was intended to protect;



3. The purpose of the commitment will be better served by modification of the commitment; or
4. A change in law or circumstances has rendered performance of the commitment illegal or impossible.

## **29.7 Special Exception**

- A. The Board of Zoning Appeals shall consider applications only for such special exceptions as are specifically enumerated in this Ordinance and, as to each special exception that is granted, may impose such conditions on the exercise of such special exception as the Board may deem advisable. No special exception shall be granted by the Board unless the Board specifically finds that:
  1. The special exception is so defined, located and proposed to be operated that the public health, safety and welfare will be protected;
  2. The special exception will not reduce the values of other properties in its immediate vicinity;
  3. The special exception shall conform to the regulations of the zoning district in which it is to be located.
- B. An application for a special exception shall be filed with the Planning and Zoning Office in such form as may be prescribed from time to time by the Board.
- C. No application for a special exception shall be considered by the Board until the Plan Commission has considered such application and made a recommendation to the Board based upon land use considerations only. Said recommendation by the Plan Commission shall not require a public hearing.
- D. The Board shall hold a public hearing on each application for a special exception. At least ten (10) days prior to the date set for such hearing, public notice of the time, date and place thereof shall be given by publication in a newspaper of general circulation in the City and, in addition, actual notice of such hearing shall be given to all interested parties.
- E. Special exceptions shall be exercised in strict accordance with the terms of approval thereof by the Board, provided that minor changes in the location or use of proposed and existing structures and usage may be authorized by the Board without a public hearing if such changes are consistent with the purpose and intent of the terms of such original approval. Whether or not any such change constitutes a minor change shall be determined by the Board, in its sole discretion.
- F. Any use existing at the effective date of this Ordinance as to the land on which such use is exercised and which use is listed as a special exception in a zoning district under the terms of this Ordinance may be altered or enlarged only if a new special exception is granted by the Board as provided in this Ordinance.

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- G. If no construction has begun or no use established within twelve (12) months from the approval of a special exception, such special exception shall lapse and be of no further effect, and the provisions of this Ordinance which would govern such land and its usage without regard to such special exception shall thereafter apply, and the Planning and Zoning Office shall remove such special exception from the zoning map.

## **29.8 Conditional Uses**

A. Procedure and Requirements for Approval of Conditional Uses

This section is intended to provide a set of procedures and standards for specific land uses that will allow practical latitude for the developer, but at the same time maintain sound provisions for the protection of the health, safety and general welfare of the residents of the City of Elkhart. In order to provide controllable and reasonable flexibility, this section permits detailed review of certain specified types of land use activities which, because of their particular and unique characteristics, require special consideration in relation to the welfare of adjacent properties and to the community as a whole. Land and structure uses possessing these characteristics may be authorized when defined and permitted within a specific zoning district by the issuance of a conditional use permit. Through this procedure, the Board of Zoning Appeals has the opportunity to impose conditions and safeguards that are deemed necessary for the protection of the public welfare.

B. Contents of Application for a Conditional Use Permit

An application for a conditional use permit shall be filed with the Planning and Zoning Office and the Board of Zoning Appeals by at least one owner of the property for which such conditional use is proposed. At minimum, the application shall contain the following information. The Planning staff may request additional information as needed following submission.

1. Name, address, and phone number of applicant.
2. A legal description of the real estate involved.
3. Description of existing use.
4. Description of proposed conditional use
5. A narrative statement evaluating the effects of such elements as noise, glare, odor, fumes, and vibration upon adjoining property; and a discussion of the general compatibility with adjacent and other properties in the district.
6. A site plan of the property which shall include:
  - a. Location and size of all existing and proposed buildings and structures.
  - b. Location and dimensions of building lines, right-of-way lines, setbacks, regulated drains and public and private easements (existing and proposed).

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- c. Elevation contours and spot elevations sufficient to determine drainage (existing and proposed), if necessary.
  - d. Layout of drives and other traffic features on opposite side of street and/or adjacent properties.
  - e. Statement of availability of City sewer and water, if required for the proposed use.
  - f. Locations of parking and loading areas, traffic access and circulation, open space, landscaping, refuse and service areas, signs, turning radii, and proposed vehicle and projected turning paths from turning radius templates.
7. Vicinity map showing all existing land uses within a three hundred (300) foot radius of the property.
  8. Any supplemental information required for conditional use applications specified in the regulations of the zoning district in which the property is located.

C. General Standards Applicable to all Conditional Uses

The Board of Zoning Appeals shall review the particular facts and circumstances of each proposed use in terms of the following standards and shall find adequate evidence showing that such use at the proposed location:

1. Is in fact a conditional use as established under the permitted land uses within the zoning district.
2. Will be harmonious with and in accordance with the general objectives or with any specific objective of the City's Comprehensive Plan and/or the Zoning Ordinance.
3. Will be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance and function with the existing or intended character of the general vicinity and will not change the essential character of the area.
4. Will not be hazardous or disturbing to existing neighboring uses.
5. Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewer, and schools; or that the persons or agencies responsible for the establishment of the proposed uses shall be able to provide adequately any such services.
6. Will not create excessive additional requirements at public expense for public facilities and services and will not be detrimental to the economic welfare of the community.

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7. Will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.
  8. Will have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public thoroughfares.
  9. Will not result in the destruction, loss, or damage of a natural, scenic, or historic feature of major importance.

D. Conditions and Commitments

In granting any conditional use, the Board of Zoning Appeals may prescribe appropriate conditions or require the property owner to make written commitments regarding the use and development of the property which is the subject of the petition. Conditions or commitments may require special screening and buffering with reference to type, dimensions and character; additional setback distances, yards and open space or other measures necessary to ensure the compatibility of the proposed use and harmony of the proposed development with neighboring properties and other properties within the district. Conditions or commitments may address the following:

1. Off-street parking and loading areas;
2. Refuse and service areas;
3. Proposed signs and exterior lighting;
4. Noise, glare, odor, adverse economic effects or traffic hazards resulting from the proposed use;
5. Any other matter requiring particular attention in order to avoid adverse effects of the proposed use on neighboring properties and other properties in the district.

E. Notice of Public Hearing

Upon receipt of the application for a conditional use permit specified above, the Board of Zoning Appeals shall hold a public hearing. At least ten (10) days prior to the date set for such hearing, public notice of the time, date, and place thereof shall be given by publication in a newspaper of general circulation in the City, and give written notice to all interested parties.

F. Action by the Board of Zoning Appeals

Following the public hearing, the Board of Zoning Appeals shall either approve, approve with supplementary conditions, or disapprove the application as presented. If the application is approved or approved with modifications, the Board of Zoning Appeals shall instruct the Planning and Zoning Office in writing to issue a conditional use permit listing the specific conditions specified by the Board of Zoning Appeals for

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approval. If the application is disapproved by the Board of Zoning Appeals, it shall notify the applicant in writing listing specific reasons for such denial.

G. Expiration of Conditional Use Permit

A conditional use approval shall be deemed to authorize only one particular use, and said approval shall automatically expire if, for any reason, the use has not commenced within one year or an implemented use has been discontinued for a period of one year.

H. Construction Requirements

Any person granted conditional use approval who fails to commence construction within twelve (12) months after such permit is issued or fails to conform to the provisions of the development plan approved by the Board of Zoning Appeals, may be required by the Board of Zoning Appeals upon its own motion and shall be required by the Board of Zoning Appeals upon written petition by any third party, to show cause why such approval should not be withdrawn and such permit revoked.

I. Modifications

The holder of a zoning clearance permit for a conditional use may apply to the Board of Zoning Appeals at any time for an alteration, modification, amendment, or extension of the application or development plan upon which such permit was based.

1. Upon receipt of such application, the Board of Zoning Appeals shall proceed as in the case of original applications for a conditional use.
2. In the event that the Board of Zoning Appeals shall approve and order such applications or development plans modified, altered, amended, or extended, it shall notify the Planning and Zoning Office which shall issue an amended zoning clearance permit accordingly.
3. Any alteration, change, or amendment to a site plan (previously approved by the Board of Zoning Appeals through the conditional use process) and involving a new structure, combination of structures, or addition to an existing structure, may be issued a zoning clearance permit by the Planning and Zoning Office without the requirement of a public hearing or Board of Zoning Appeals approval provided that:
  - a. The net increase in floor area is less than one thousand (1,000) square feet but not to exceed fifty percent (50%) of the gross floor area of structures on the parcel.
  - b. The plans for the proposed use are submitted to and approved by the Planning and Zoning Office.
  - c. The plans are revised to incorporate any recommendations deemed appropriate by the Planning and Zoning Office.

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- d. The property of the proposed use is not located within one-hundred (100) feet of the property line of any existing residential land use.

## 29.9 Variance

### A. Variance from Development Standards

The Board of Zoning Appeals shall consider petitions for variances from the development standards (such as height, bulk, or area) of this Ordinance. As to each variance that is granted, the Board may impose such conditions on the grant of such variance as the Board may deem advisable. No variance shall be granted by the Board unless the Board under this section specifically finds that:

1. The approval will not be injurious to the public health, safety, morals and general welfare of the community.
2. The use and value of the area adjacent to the property will not be affected in a substantially adverse manner.
3. Granting the variance would be consistent with the intent and purpose of this Ordinance.
4. Special conditions and circumstances exist which are peculiar to the land involved and which are not applicable to other lands or structures in the same district.
5. The strict application of the terms of this Ordinance would deprive the applicant of the rights commonly enjoyed by other properties in the same district under the provisions of this Ordinance.
6. The special conditions and circumstances do not result from any action or inaction by the applicant.
7. In the designated flood hazard areas, the variance will not increase flood heights, create additional threats to public safety, cause additional public expense, create nuisances, or conflict with existing laws or ordinances.

### B. Variance of Use

The Board of Zoning Appeals shall consider applications for variances from the permitted uses of this Ordinance. As to each variance that is granted, the Board may impose such conditions on the grant of the variance as the Board may deem advisable. Variances shall only be granted by the Board pursuant to this Section, and Section 21, Article 5, of this Ordinance, when the Board specifically finds a showing of good and sufficient cause that:

1. The approval will not be injurious to the public health, safety, morals and general welfare of the community.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.

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3. The need for the variance arises from some condition peculiar to the property involved.
  4. The strict application of the terms of this Ordinance will constitute an unnecessary hardship if applied to the property for which the variance is sought.
  5. The approval does not interfere substantially with the Comprehensive Plan.
- C. Application for variances shall be filed with the Planning and Zoning Office in such form as may be prescribed from time to time by the Board.
- D. The Board shall hold a public hearing on each application for a variance. At least ten (10) days prior to the date set for such hearing, public notice of the time, date and place thereof shall be given by publication in a newspaper of general circulation in the City and, in addition, written notice of such hearing shall be given to all interested parties.

#### **29.10 Appeal**

- A. The Board of Zoning Appeals shall consider appeals from any order, requirement, decision or determination made by the Planning and Zoning staff who are charged with the administration and enforcement of this Ordinance.
- B. Appeals to the Board shall specify the error upon which the appeal is based.
- C. Within thirty (30) days after the alleged error, the appellant shall file such appeal with the Planning and Zoning Office in such form as may be prescribed from time to time by the Board.
- D. The Board shall hold a public hearing on such appeal. At least ten (10) days prior to the date set for such hearing, public notice of the time, date and place thereof shall be given by publication in a newspaper of general circulation in the City and, in addition, written notice of such hearing shall be given to all parties interested in such hearing.
- E. Immediately following the filing of an appeal, all actions pursuant to the order, requirement, decision or determination from which the appeal is taken shall be stayed unless the Planning and Zoning staff shall certify to the Board that, by reason of facts stated in such certificate, a stay of such action would cause imminent peril to life and property.

#### **29.11 Amendments**

- A. General

In preparing and considering proposals to amend this Ordinance, the Plan Commission and the City Council shall pay reasonable regard to:

1. The Comprehensive Plan;

2. Current conditions and the character of current structures and uses in each district;
3. The most desirable use for which the land in each district is adapted;
4. The conservation of property values throughout the jurisdiction; and
5. Responsible growth and development.

B. Map Amendments

The zone maps incorporated by reference into this Ordinance may be amended only by action of the City Council.

1. Map amendments may be initiated by the Plan Commission, requested by the City Council to the Plan Commission, or as a petition signed by property owners who own at least fifty percent (50%) of the land involved. Such petitions shall be filed in the Planning and Zoning Office on a form prescribed by the Plan Commission.
2. The Plan Commission shall hold a public hearing on a proposal for a map amendment within sixty (60) days of receiving or initiating the petition or proposal. At least ten (10) days prior to the date of the public hearing, the Plan Commission shall publish notice of the public hearing in a newspaper of general circulation in the City. The notice shall include the geographic location of the property involved, a description of the proposed change, the time, date and place of the public hearing, the place where a copy of the proposal is on file, that written objections filed with the Secretary of the Plan Commission will be considered, that oral comment concerning the proposal will be heard and that the hearing may be continued from time to time as necessary. The Plan Commission shall also give notice of the public hearing to interested parties as determined under the rules of the Plan Commission.
3. Following the public hearing, the Plan Commission shall determine its recommendation on the proposed map amendment. Within ten (10) business days after determining its recommendation, the Plan Commission shall certify the proposal with a favorable, unfavorable or no recommendation.
4. The City Council shall vote on the proposal within ninety (90) days after certification by the Plan Commission. At the first regular meeting of the City Council following certification of the proposal by the Plan Commission or at any subsequent meeting within the ninety (90) day period, the City Council may adopt or reject the proposal, provided that the City Council has published notice of its intent to consider the proposal at that meeting at least 48 hours prior to the meeting.
5. If the City Council adopts the proposal as certified it takes effect as other ordinances of the City Council. If the City Council rejects the proposal, it is defeated. If the City Council fails to act on the proposal within ninety (90) days after certification by the Plan Commission and the Plan Commission certified the proposal with a favorable recommendation, the proposal takes



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effect as if it had been adopted as certified. If the City Council fails to act on the proposal within ninety (90) days after certification by the Plan Commission and the Plan Commission certified the proposal with an unfavorable recommendation or no recommendation, it is defeated.

6. Neither the Plan Commission nor the City Council shall reconsider a defeated proposal until the expiration of one (1) year after its defeat.
7. The Plan Commission and City Council may permit or require the property owner to make written commitments regarding the use and development of the property which is the subject of the proposal.

C. Text Amendments

The text of this Ordinance may be amended or partially repealed only by action of the City Council.

1. Text Amendments may be initiated by the Plan Commission or by a request by the City Council to the Plan Commission.
2. The Plan Commission shall hold a public hearing on a proposal for an amendment to the text of this Ordinance within sixty (60) days of receiving or initiating the proposal. At least ten (10) days prior to the date of the public hearing, the Plan Commission shall publish notice of the public hearing in a newspaper of general circulation in the City. The notice shall include the geographic areas to which the proposal would apply, a summary of the subject matter of the proposal, the time, date and place of the public hearing, the place where a copy of the proposal is on file, that written objections filed with the Secretary of the Plan Commission will be considered, that oral comment concerning the proposal will be heard and that the hearing may be continued from time to time as necessary. If the proposal contains or would add or amend any penalty or forfeiture provisions, the entire text of those penalty or forfeiture provisions must also be included in the notice. The Plan Commission shall also give notice of the public hearing to interested parties as determined under the rules of the Plan Commission.
3. Following the public hearing, the Plan Commission shall determine its recommendation on the proposed text amendment. Within 10 business days after determining its recommendation, the Plan Commission shall certify the proposal to the City Council. The Plan Commission may certify the proposal with a favorable, unfavorable or no recommendation.
4. The City Council shall vote on the proposal within ninety (90) days after certification by the Plan Commission. At the first regular meeting of the City Council following certification of the proposal by the Plan Commission or at any subsequent meeting within the ninety (90) day period, the City Council may adopt or reject the proposal, provided that the City Council has published notice of its intent to consider the proposal at that meeting at least 48 hours prior to the meeting.

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5. The following applies if the Plan Commission certified the proposal with a favorable recommendation:
- a. If the City Council adopts the proposal, it takes effect as other ordinances of the City Council.
  - b. If the City Council fails to act on the proposal within ninety (90) days after certification, it takes effect as if it had been adopted as certified.
  - c. If the City Council rejects or amends the proposal, it shall be returned to the Plan Commission for its consideration with a written statement of the reasons for the rejection or amendment. The Plan Commission has forty-five (45) days in which to consider the rejection or amendment and report to the City Council as follows:
    - i. If the Plan Commission approves the amendment or fails to act within the forty-five (45) day period, the ordinance stands as passed by the City Council as of the date of the filing of the Commission's report of approval with the City Council or the end of the forty-five (45) day period.
    - ii. If the Plan Commission disapproves the rejection or amendments, the action of the City Council on the original rejection or amendment stands only if confirmed by another majority vote of the City Council within forty-five (45) days after the Plan Commission certifies its disapproval. If the City Council fails to confirm its action under this clause, the ordinance takes effect in the manner provided in subparagraph b.
6. The following applies if the Plan Commission certifies the proposal with an unfavorable or no recommendation:
- a. If the City Council adopts the proposal, it takes effect as other ordinances of the City Council.
  - b. If the City Council rejects the proposal or fails to act on it within ninety (90) days after the certification, it is defeated.
  - c. If the City Council amends the proposal, it shall be returned to the Plan Commission for its consideration with a written statement of the reasons for the amendment. The Plan Commission has forty-five (45) days in which to consider the amendment and report to the City Council as follows:
    - i. If the Plan Commission approves the amendment or fails to act within the forty-five (45) day period, the ordinance stands as passed by the City Council as of the date of filing of the Commission's report of approval with the City Council or at the end of the forty-five (45) day period.

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- ii. If the Plan Commission disapproves the amendment, the action of the City Council on the original amendment stands only if confirmed by another majority vote of the City Council

within forty-five (45) days after the Plan Commission certifies its disapproval. If the City Council fails to confirm its action under this clause, the ordinance is defeated as provided in subparagraph b.

#### **29.11.5 Revocation Procedure**

1. In addition to the other powers granted to the Board of Zoning Appeals ("BZA"), the BZA is hereby expressly granted the authority to revoke any variance, conditional use, or special exception previously issued.
2. The BZA may revoke a variance, conditional use or special exception whenever one or more of the following exist:
  - a. The BZA determines that the variance, conditional use or special exception was obtained by the applicant by fraudulent or misleading statements;
  - b. That there has not been compliance with any requirement contained in the variance, conditional use or special exception;
  - c. That circumstances have materially changed since a variance, conditional use or special exception was granted so that, if the sanction is not imposed, public health, safety or welfare will be adversely affected.
3. In order to revoke previously approved conditional uses, special exceptions, and variances, the Board shall hold a public hearing on each appeal to revoke. Prior to the initiation of revocation proceedings, the Zoning Administrator shall notify the permit holder, in writing, of the specific areas of non-compliance and specify the date by which such deficiencies must be corrected. The permit holder shall provide the City with evidence that the required corrective action has taken place. At least ten (10) days prior to the date set for such hearing, public notice of the time, date, and place thereof shall be given by publication in a newspaper of general circulation in the City, and in addition, written notice of hearing shall be given to all interested parties.
4. The revocation hearing shall be held in accordance to the rules of procedure of the Elkhart City Board of Zoning Appeals.

(as amended per Ordinance No. 4431 on July 23, 1999)

(as amended per Ordinance No. 4456 on November 5, 1999)

#### **29.12 Fee Schedule**

- A. The following fee schedule shall be amended only by action of the City Council.
- B. Until all applicable fees have been paid in full, no action shall be taken on any petition or application. No part of any fee paid pursuant to this Section shall be refundable.

C.     Schedule:

<b>Petition or Application</b>	<b>Approved Filing Fee</b>
Rezoning	
To Residential	\$200.00
To Commercial or Other	\$400.00
Planned Unit Development (PUD)	\$400.00
Use Variance	
Residential (One and Two Family)	\$200.00
Multi Family, Business & Manufacturing	\$300.00
Variance (Development Standards)	
Residential (One- and Two-Family)	\$200.00
Multi-Family, Business & Manufacturing	\$300.00
Special Exception Uses	
Residential (One and Two Family)	\$200.00
Multi-Family, Business & Manufacturing	\$300.00
Conditional Use	
Residential (One and Two Family)	\$200.00
Multi-Family, Business & Manufacturing	\$300.00
Annexations - Residential	
Developed: one (1) through four (4) units	\$100.00
Developed: five (5) or more units	\$300.00
Undeveloped: less than five (5) acres	\$200.00
Undeveloped: five (5) or more acres	\$500.00
Annexations-Business & Manufacturing	
Developed: less than five (5) acres	\$200.00
Developed: five (5) or more acres	\$500.00
Undeveloped: less than five (5) acres	\$300.00
Undeveloped: five (5) or more acres	\$500.00
Development Plan Review	
Preliminary (PC)	\$200.00
Final (PC with Public Hearing)	\$400.00
Amendment (PC)Major	\$200.00
Amendment - Minor	\$100.00
Administrative Appeal	\$200.00
Text Amendment	\$300.00
Zoning Clearance	
New Single Family & Two Family Dwellings	\$40.00
Residential addition/detached accessory structure, 120 SF up to 720 SF	\$20.00
Residential addition/detached accessory structure over 720 SF	\$40.00
Detached residential/nonresidential structure or addition less than 120 SF	\$20.00
Commercial	\$50.00
Fences	\$20.00
Single Family & Two Family	\$50.00
Multiple Family, Commercial, Manufacturing	\$1.00/sf - \$50.00 min.
Signs	\$2.00/sf - \$100 min.
Residential, Single Family & Two Family	\$15.00 each
Multi Family, Commercial, Manufacturing	\$25.00 minimum or
Banners and portable signs	\$0.25 per SF
Awnings and Panel Changes	

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Petition or Application	Approved Filing Fee
Technical Review (Site Plan Review)	\$200.00
Wireless Towers	\$300.00
Subdivisions	
Major	\$500.00
Minor	\$100.00
Written Verifications: zoning, floodplain, legal nonconforming, etc. – research No	\$10.00 per prop
Written Verifications: Zoning, floodplain, legal nonconforming, etc. – research Yes	\$50.00 per prop.

(as amended per Ordinance 5044 on July 11, 2007)

- D. The Plan Commission, City Council and any other local governmental agencies shall be exempt from such fees.

### 29.13 Violations and Penalties

A. Investigation and Enforcement

1. The Zoning Administrator, on receipt of information of a possible violation of the Zoning Ordinance, shall make investigation to establish reasonable belief that a violation has occurred.
2. The Zoning Administrator, any City Code Enforcement or Police Officer may issue a citation for violation of the Zoning Ordinance.
3. The City Attorney may file a complaint against the person(s) and prosecute the alleged violation.

B. Violations

1. Buildings erected, razed or converted, or land or premises used in violation of any provision of this Ordinance are hereby declared to be a common nuisance, and the owner of the building, land, or premises, shall be liable for maintaining a common nuisance, a Class C infraction; and upon conviction responsible parties will be liable for maintaining a common nuisance.
2. Any use of a building, structure and/or land not permitted in the applicable zoning district and any act or omission contrary to the provisions of this Ordinance shall constitute a violation of this Ordinance. The record owner(s), contract purchaser(s), tenant(s), and/or other occupant(s) of any structure, land, or part thereof, and other person(s) who commit, participate in, assist in, and/or maintain and/or allow a violation to continue shall each be considered responsible parties and may be found liable for separate violations.

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3. The following actions may be instituted when violations of this Ordinance occur:
    - a. The Plan Commission or Board of Zoning Appeals may institute a suit for injunction to restrain any individual or governmental unit from violating the provisions of this Ordinance.
    - b. The Plan Commission or Board of Zoning Appeals may institute a suit for mandatory injunction directing any individual or governmental unit to cease an illegal use, or remove a structure erected in violation of the provisions of this Ordinance.
  4. Violation of a condition imposed by the Board of Zoning Appeals, Plan Commission or City Council as a condition of approval of any special exception, variance, conditional use, development plan or PUD, as applicable, shall result in revocation of said approval and any use or development instituted pursuant to said approval shall be deemed in violation of this Ordinance.
  5. In the event of a violation of a written commitment made under this Ordinance, the body (Board of Zoning Appeals, Plan Commission or City Council) which permitted or required the property owner to make the commitment, may institute an action to enforce the commitment.
  6. In the event a condition constituting a violation of this Ordinance exists on real property, the Zoning Administrator, or his designee, may enter onto the property and take action to bring the property into compliance with this Ordinance if all persons with a substantial interest in the property have been given notice of the violation and have failed to bring the property into compliance after being provided with a reasonable opportunity to do so. The property owner of record shall be liable for the costs of such action and such costs may be made a lien on the property.
  7. Nothing herein contained shall prevent the City of Elkhart from taking other lawful action necessary to prevent, remedy, or issue a fine for any violation.

C. Penalties

The penalty for violation of this Ordinance shall be not less than one hundred dollars (\$100.00) no more than two thousand five hundred (\$2,500.00), and each day that a violation exists or continues shall constitute a separate violation. Any person found to be in violation of this Ordinance shall be required to compensate the City for costs incurred in enforcement of the Ordinance.