

**DALEVILLE, INDIANA
CODE OF ORDINANCES**

Local legislation current through Ordinance 2015-04, passed 5-11-2015

Published by:

American Legal Publishing Corporation

One West Fourth Street, Third Floor

Cincinnati, Ohio 45202

Tel: (800) 445-5588

Fax: (513) 763-3562

Internet: <http://www.amlegal.com>

TITLE I: GENERAL PROVISIONS

Chapter

10. GENERAL CODE CONSTRUCTION; GENERAL PENALTY

CHAPTER 10: GENERAL CODE CONSTRUCTION; GENERAL PENALTY

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§ 10.01 TITLE OF CODE.

All ordinances of a permanent and general nature of the town, as revised, codified, rearranged, renumbered and consolidated into component codes, titles, chapters and sections, shall be known and designated as the "Daleville Town Code", for which designation "code of ordinances", "codified ordinances" or "code" may be substituted. Code title, chapter and section headings do not constitute any part of the law as contained in the code.

§ 10.02 INTERPRETATION.

Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition and application shall govern the interpretation of this code as those governing the interpretation of state law.

§ 10.03 APPLICATION TO FUTURE ORDINANCES.

All provisions of Title I compatible with future legislation shall apply to ordinances hereafter adopted amending or supplementing this code unless otherwise specifically provided.

§ 10.04 CONSTRUCTION OF CODE.

(A) This code is a codification of previously existing laws, amendments thereto and newly enacted laws. Any previously existing law or amendment thereto reenacted by this code shall continue in operation and effect, as if it had not been repealed by this code. All rules and regulations adopted under laws reenacted in this code shall remain in full force and effect unless repealed or amended subsequent to the enactment of this code.

(B) Any appropriation repealed and reenacted by this code is continued only for the period designated in the original enactment of that appropriation.

(C) The numerical order and position of sections in this code does not resolve a conflict between two or more sections.

(D) Any irreconcilable conflict between sections shall be resolved by reference to the dates that the sections were originally enacted. The section most recently enacted supersedes any conflicting section or division.

(E) All references within a section of this code to any section of previously existing laws refer to the numbers in the original enactment.

(F) (1) The numerical designations and descriptive headings assigned to the various titles, chapters, subchapters or sections of this code, as originally enacted or as added by amendment, are not law, and may be altered by the compilers of this or any subsequent codification, in any official publication, to more clearly indicate its content. These descriptive headings are for organizational purposes only and do not affect the meaning, application or construction of the law they precede.

(2) Each note following a section of this code is for reference purposes only and is not a part of the section.

(G) All references to any section of this code refer to all subsequent amendments to that section, unless otherwise provided.

(I.C. 1-1-1-5)

§ 10.05 RULES OF INTERPRETATION; DEFINITIONS.

(A) *Rules of interpretation.* This code shall be construed by the following rules unless the construction is plainly repugnant to the legislative intent or context of the provision.

(1) Words and phrases shall be taken in their plain, ordinary and usual sense. Technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import.

(2) Words imputing joint authority to three or more persons shall be construed as imputing authority to a majority of the persons, unless otherwise declared in the section giving the authority.

(3) Where a section requires an act to be done which, by law, an agent or deputy may perform in addition to the principal, the performance of the act by an authorized deputy or agent is valid.

(4) Words denoting the masculine gender shall be deemed to include the feminine and neuter genders; words in the singular shall include the plural, and words in the plural shall include the singular; the use of a verb in the present tense shall include the future, if applicable.

(B) *Definitions.* For the purpose of this code of ordinances, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CLERK-TREASURER. The Clerk-Treasurer of the Town Council.

COUNCIL. The Town Council of Daleville, Indiana.

COUNTY. Delaware.

HIGHWAY. Includes bridges, roads and streets, unless otherwise expressly provided.

MONTH. One calendar month.

PERSON. Extends to and includes person, persons, firm, corporation, copartnership, trustee, lessee, receiver and bodies politic. Whenever used in any clause prescribing and imposing a penalty, the terms **PERSON** or **WHOEVER** as applied to any unincorporated entity shall mean the partners or members thereof, and as applied to corporations, the officers or agents thereof.

PRECEDING and **FOLLOWING.** When referring to sections or divisions in this code, refer to the sections or divisions next following or next preceding that in which the words occur, unless some other section is designated.

WRITTEN and **IN WRITING.** Include printing, lithographing, or other modes of representing words and letters. Where the written signature of a person is required, the terms mean the proper handwriting of the person, or the person's mark.

YEAR. One calendar year, unless otherwise expressly provided.

(I.C. 1-1-4-5)

§ 10.06 SEVERABILITY.

(A) If any section of this code now enacted or subsequently amended or its application to any person or circumstances is held invalid, the invalidity does not affect other sections that can be given effect without the invalid section or application.

(B) Except in the case of a section or amendment to this code containing a nonseverability provision, each division or part of every section is severable. If any portion or application of a section is held invalid, the invalidity does not affect the remainder of the section unless:

(1) The remainder is so essentially and inseparably connected with and so dependent upon the invalid provision or application that it cannot be presumed that the remainder would have been enacted without the invalid provision or application; or

(2) The remainder is incomplete and incapable of being executed in accordance with the legislative intent without the invalid provision or application.

(C) This section applies to every section of this code regardless of whether a section was enacted before or after the passage of this code.

(D) The repeal of a statute stating that the provisions of an act are severable as provided in division (B) of this section does not affect the operation of division (B) above with respect to that act.

(I.C. 1-1-1-8)

§ 10.07 REFERENCE TO OTHER SECTIONS.

Whenever in one section reference is made to another section hereof, the reference shall extend and apply to the section referred to as subsequently amended, revised, recodified or renumbered unless the subject matter is changed or materially altered by the amendment or revision.

§ 10.08 REFERENCE TO OFFICES; NAME DESIGNATIONS.

(A) *Reference to offices.* Reference to a public office or officer shall be deemed to apply to any office, officer or employee of this municipality exercising the powers, duties or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

(B) *Name designations.* Whenever any ordinance or resolution of the Council refers to any board, bureau, commission, division, department, officer, agency, authority or instrumentality of any government, and that name designation is incorrectly stated; on the effective date of that ordinance or following the effective date, the rights, powers, duties or liabilities placed with that entity are or were transferred to a different entity; then the named board, bureau, commission, department, division, officer, agency, authority or instrumentality, whether correctly named in the ordinance at its effective date or not, means that correctly named entity, or the entity to which the duties, liabilities, powers and rights were transferred.

(I.C. 1-1-6-1)

§ 10.09 ERRORS AND OMISSIONS.

If a manifest error is discovered, consisting of the misspelling of any words; the omission of any word or words necessary to express the intention of the provisions affected; the use of a word or words to which no meaning can be attached; or the use of a word or words when another word or words was clearly intended to express the intent, the spelling shall be corrected and the word or words supplied, omitted or substituted as will conform with the manifest intention, and the provisions shall have the same effect as though the correct words were contained in the text as originally published. No alteration shall be made or permitted if any question exists regarding the nature or extent of the error.

§ 10.10 REASONABLE TIME.

(A) In all cases where an ordinance requires an act to be done in a reasonable time or requires reasonable notice to be given, **REASONABLE TIME OR NOTICE** shall be deemed to mean the time which is necessary for a prompt performance of the act or the giving of the notice.

(B) The time within which an act is to be done, as herein provided, shall be computed by excluding the first day and including the last. If the last day be a Saturday, Sunday or a state holiday, it shall be excluded.

§ 10.11 REPEAL OR MODIFICATION OF CODE SECTION.

When a section of this code is repealed which repealed a former section or law adopted prior to the enactment of this code, the former section or law is not revived unless it so expressly provides. The repeal of any section shall not extinguish or release any penalty, forfeiture or liability incurred under the section, unless the repealing section so expressly provides. The section shall be treated as still remaining in force for the purposes of sustaining any proper action or prosecution for the enforcement of the penalty, forfeiture or liability.

(I.C. 1-1-5-1)

§ 10.12 LIMITATION PERIODS.

The running of any period of limitations or any requirement of notice contained in any law, whether applicable to civil causes or proceedings, or to the prosecution of offenses, or for the recovery of penalties and forfeitures, contained in a law repealed and reenacted by this code, shall not be affected by the repeal and reenactment, but all suits, proceedings and prosecutions for causes arising or acts committed prior to the effective date of this code may be commenced and prosecuted with the same effect as if this

code had not been enacted.

Statutory reference:

Periods of limitation, see I.C. 1-1-1-7

§ 10.13 ORDINANCES UNAFFECTED.

All ordinances of a temporary or special nature and all other ordinances pertaining to subjects not embraced in this code shall remain in full force and effect unless herein repealed expressly or by necessary implication.

§ 10.14 ORDINANCES WHICH AMEND OR SUPPLEMENT CODE.

(A) If the legislative body shall desire to amend any existing chapter or section of this code, the chapter or section shall be specifically repealed and a new chapter or section, containing the desired amendment, substituted in its place.

(B) Any ordinance which is proposed to add to the existing code a new chapter or section shall indicate, with reference to the arrangement of this code, the proper number of the chapter or section. In addition to an indication thereof as may appear in the text of the proposed ordinance, a caption or title shall be shown in concise form above the ordinance.

§ 10.15 SECTION HISTORIES; STATUTORY REFERENCES.

(A) As histories for the code sections, the specific number and passage date of the original ordinance, and amending ordinances, if any, are listed following the text of the code section. Example:

(Ord. 10, passed 5-13-1960; Ord. 15, passed 1-1-1970; Ord. 20, passed 1-1-1980; Ord. 25, passed 1-1-1985)

(B) (1) If a statutory cite is included in the history, this indicates that the text of the section reads substantially the same as the statute. Example:

(I.C. 36-5-2-2)

(2) If a statutory cite is set forth as a "statutory reference" following the text of the section, this indicates that the reader should refer to that statute for further information. Example:

§ 39.01 PUBLIC RECORDS AVAILABLE.

This municipality shall make available to any person for inspection or copying all public records, unless otherwise exempted by state law.

Statutory reference:

Inspection of public records, see I.C. 5-14-3-1 et seq.

§ 10.16 PRESERVATION OF PENALTIES, OFFENSES, RIGHTS AND LIABILITIES.

All offenses committed under laws in force prior to the effective date of this code shall be prosecuted and remain punishable as provided by those laws. This code does not affect any rights or liabilities accrued, penalties incurred or proceedings begun prior to the effective date of this code. The liabilities, proceedings and rights are continued; punishments, penalties or forfeitures shall be enforced and imposed as if this code had not been enacted. In particular, any agreement granting permission to utilize highway rights-of-way, contracts entered into or franchises granted, the acceptance, establishment or vacation of any highway, and the election of corporate officers shall remain valid in all respects, as if this code had not been enacted.

§ 10.99 GENERAL PENALTY.

(A) Any person, firm or corporation who violates any provision of this code for which another penalty is not specifically provided

shall, upon conviction, be subject to the following:

(1) A fine not exceeding \$2,500 for the first violation; and

(2) A fine not exceeding \$7,500 for second and subsequent violations, except for violations of ordinances regulating traffic and parking.

(B) A separate violation shall be deemed committed upon each day during which a violation occurs or continues.

Statutory reference:

Authority, see I.C. 36-1-3-8(a)(10)

TITLE III: ADMINISTRATION

Chapter

30. OFFICIALS AND EMPLOYEES

31. ORDINANCE VIOLATIONS BUREAU

32. ECONOMIC REVITALIZATION AREAS

33. POLICIES AND PROCEDURES

34. TAX, FEES, FINANCE

35. TOWN ORGANIZATIONS

CHAPTER 30: OFFICIALS AND EMPLOYEES

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GENERAL PROVISIONS

§ 30.01 PERSONNEL POLICY AND SALARIES; ADOPTION.

(A) The personnel policy provisions, and any amendments thereto, are hereby adopted by reference and incorporated into this code as fully as if set out at length herein.

(B) Employees and officials of the town will receive a salary as prescribed by the Town Council from time to time.

(Res. 89-8, passed - -; Ord. 98-6, passed 2-2-1998; Ord. 99-1, passed 4-5-1999; Ord. 99-2, passed 4-5-1999; Ord. 06-04, passed 7-10-2006; Ord. 08-01, passed 6-2-2008; Ord. 11-08, passed 6-6-2011; Ord. 2014-04, passed 10-20-2014; Ord. 2014-09, passed 11-18-2014; Ord. 2014-10, passed 11-18-2014; Ord. 2015-05, passed 4-13-2015; Ord. 2015-06, passed 4-13-2015)

§ 30.02 OFFICE OF BUILDING COMMISSIONER.

The office of Building Commissioner is hereby created, bestowing upon said office the duties heretofore exercised by the Building Commissioner within the corporate limits of the town.

(Ord. 88-25, passed 1-9-1989)

§ 30.03 CLERK-TREASURER.

(A) *Payment of claims.* It is deemed advisable by the Town Council to allow the Clerk-Treasurer to pay all utility bills upon receipt, and to pay for any maintenance or repair bills needed for all town vehicles or town building if such is to be done before Council is to reconvene. It is deemed advisable by the Town Council to include payment of insurance, payroll and payroll related claims.

(B) *Deposit and invest funds.*

(1) Pursuant to I.C. 5-13-6-1(d), the Town Council hereby authorizes the Clerk-Treasurer to deposit the funds of the town into one of the banks which is located in the county, and which has been approved by the State Board For Depositories.

(2) Therefore, the Clerk-Treasurer of the town is hereby authorized to deposit, invest and reinvest monies of the town in one or more of the depositories approved by the State Board for Depositories for the county.

(Res. 97-6, passed 10-7-1997; Res. 97-7, passed 11-3-1997; Ord. 12-03, passed 5-14-2012)

§ 30.04 DRUG-FREE WORKPLACE.

The town believes in its employees as well as its services. To protect against what the federal government has termed the "scourge of drug abuse" and to maintain our status as a "responsible source" for the award of federal contracts under the Drug-Free Workplace Act, the following is the policy of the town.

(A) *General provisions.*

(1) Effective immediately, any place our work is done, whether at this or other sites, is declared a drug-free workplace. These means employees cannot, for any reason, illegally manufacture, distribute, dispense, have with them, use or be under the influence of any controlled substance. Some controlled substances are narcotics (heroin, morphine and the like), cannabis (marijuana, hashish), stimulants (cocaine, diet pills and the like) and hallucinogens (PCP, LSD, "designer drugs" and the like). This is only a partial list. The Town Council can provide a complete list and explanation of controlled substances.

(2) If an employee violates the drug-free workplace policy, the Town Council has the right to terminate the employee for the first offense.

(3) Employees have the right to know about the dangers of drug abuse in the workplace, the town's policy about them, and what help is available to help combat drug problems. The Town Council may have or recommend an educational program regarding the dangers of drug abuse in the workplace. Most important to those with such problems, the Town Council wants to make employees aware of kinds of help that are available on a voluntary basis. These include: medical insurance benefits for substance abuse programs, information about community resources for assessment and treatment, information about counseling programs. This help is available as part of the Town Council's commitment to the health, safety and well being of our employees and their families. We encourage employees to use it as needed. In addition, the Town Council will provide supervisory training to assist in identifying and addressing

illegal drug use by employees.

(4) Should any employee be convicted of violating a criminal drug statute in the workplace, the law requires that the employee notify the Town Council or respective superintendent within five days of conviction (including pleas of guilty or nolo contendere). Failure to do so can subject the employee to disciplinary action, up to and including termination. By law, the town must then notify the federal contracting officer of the conviction within ten days.

(5) On notice of such conviction, the Town Council must then either discipline the employee or offer participation in an approved rehabilitation or drug abuse assistance program. If such help is offered and accepted, the employee must satisfactorily take part in the program to continue employment.

(6) In order to maintain a safe and healthful work environment and in the interest of public safety, the Town Council reserves the right to set standards for employment and may require employees to submit to physical examinations including blood or urine tests for illegal drugs or the misuse of legal drugs on a random basis or where there is reasonable suspicion of drug use.

(7) The Town Council believes that rehabilitation is the preferred solution to any such problem from all standpoints, as it both protects our investment in a trained employee and treats the individual concerned with dignity. The Town Council will therefore, as a matter of policy, extend the rehabilitation option whenever possible. Please note, however, that sale or other attempts to distribute illegal substances will not be tolerated.

(8) All employees are asked to acknowledge that they have been informed of the above policy and agree to abide by it in all respects. By law, this acknowledgment and agreement are required of employees as a condition of continued employment.

(B) Pre-employment drug testing policy.

(1) Safety, efficiency and quality work performance by all employees is essential for the town to be maintained in a positive position. The town is committed to providing a safe, efficient and productive work environment for all employees. The use of illegal drugs by employees adversely affects a safe, efficient and productive work environment.

(2) In pursuit of this commitment the town's employment application process will require pre-employment drug screening. This screening is designed to prevent hiring individuals who use illegal drugs which pose a potential for impaired or unsafe job performance.

(3) Applicants who test positive will not be accepted for employment with the town. Any applicant who refuses to fully participate in the drug screening process will likewise not be accepted for employment with the town. Any applicant who is rejected for employment under the above circumstances may reapply no sooner than 45 days after rejection.

(4) During the re-application process, the applicant will be required to show proof of successful participation in rehabilitation program accepted by the town. Rehabilitation will be required to submit to another pre-employment drug screening.

(5) Anyone who reapplies and is accepted for employment will be required to execute a conditional employment agreement and agree to participate in a 60-month unannounced drug testing program.

(C) Agreement. Copies of this agreement will be kept in the employee's personnel file in the office of the Clerk-Treasurer.

**DRUG-FREE WORKPLACE POLICY
ACKNOWLEDGMENT AND AGREEMENT**

Under the terms of the Drug-Free Workplace Act, the Daleville Town Council is required to give all employees a copy of the official policy statement concerning the establishment of a drug-free workplace. Please sign below that:

- . You have received this statement.
- . You have read it or been informed of its contents.
- . You agree to abide by this policy in all respects.

NOTE THAT THE LAW REQUIRES YOU TO ACKNOWLEDGE AND AGREE TO THE ABOVE AS A CONDITION OF CONTINUED EMPLOYMENT.

Acknowledged and Agreed:

Signature of Employee

Printed Name

Department

Date

(Ord. 89-2, passed 2-2-1989)

§ 30.05 PAY; REGULAR AND JURY DUTY.

Any employee called by the courts for jury duty and compensated by said court shall have their regular hourly pay reduced by the amount paid to said employee by said court.

(Ord. 89-15, passed 12-4-1989)

§ 30.06 LEAVE OF ABSENCE WITH HEALTH INSURANCE.

(A) Employees with full-time status prior to their request for a leave of absence shall retain their existing health insurance coverage provided by the town.

(B) The employee on leave of absence who elects to continue coverage of the health insurance provided by said town shall pay the premium for said insurance coverage as determined by the Town Council.

(C) The health insurance coverage shall be made available to those employees on approved voluntary leave of absence up to and including 30 days.

(D) The health insurance coverage shall be made available to those employees on leave of absence due to sickness up to and including 90 days.

(E) Employees on a leave of absence and covered by the aforementioned insurance shall be notified by mail ten days prior to termination of the insurance benefits.

(Ord. 90-2, passed 5-14-1990)

§ 30.07 PREVENTION OF WORKPLACE VIOLENCE.

(A) Definitions. For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

INTIMIDATION. Frightening or coercing by threat; or expressions of hatred, contempt, disgrace or ridicule.

RUDE OR OFFENSIVE TOUCHING. Physical aggression or contact, such as hitting, fighting, pushing, restraining or throwing objects.

THREAT. Words or actions, whether direct or implied, which create a reasonable fear of physical or mental harm or other violation of rights.

VIOLENCE. Unwarranted assaultive or coercive behaviors, including threats, rude or offensive touching, intimidation, harassment, property damage, sabotage, or any violation of a protective order. For purposes of this policy, the concept of violence includes behavior which is actual, attempted or threatened.

(B) The town hereby maintains a policy of zero tolerance for any acts of violence. Violations of this policy may lead to disciplinary actions up to and including dismissal. All town employees should notify the President of the Town Council of any violence which they have witnessed, been subject to or otherwise been made aware. The President of the Town Council shall notify all other members of

the Town Council and shall schedule an executive session to address this matter. Even if actual violence has not occurred, employees should also report any behavior they have witnessed which they regard as violent, when the behavior is work related, might be connected to a town controlled site or is connection to town employment. Employees are responsible for making this report regardless of the relationship between the individual who initiated the violence and the person or persons who were the victims of the violence.

(C) Employees are admonished that words spoken in jest or idle talk may be reasonably perceived by others as threatening.

(D) Employees who may be involved in relationships or situations which are violent or potentially violent and/or employees who are the recipients of threats, are strongly encouraged to report same.

(E) The town will take affirmative steps to foster a safe work environment and prevent workplace violence. Preventive efforts include, but are not limited to, informing the employees of this policy, instructing employees regarding the dangers of workplace violence and communicating the sanctions imposed for violating this policy.

(F) When an incident of violent behavior is reported to the town, the town will assess and investigate the incident and determine the appropriate action to be taken. In critical incidents in which a serious threat of injury occurs and emergency response is required, the police must be notified immediately.

(G) If an employee chooses to notify management of the existence of a protective order, the town shall make efforts to maintain and enforce the protective order in the workplace by notifying the town of the identity of the person against whom the protective order is issued and, where possible, providing the town with a photograph of such person.

(H) Employees are to be sensitive and, to the extent practicable, protect the privacy of victims of violence.

(I) The town will not in any way retaliate against an individual who, in good faith, files a complaint under this policy, nor permit any supervisor, officer or employee to do so. Retaliation is a serious violation of this policy and should be reported immediately. Any person found to have engaged in misconduct constituting retaliation against another person for the good faith reporting of violence in the workplace may be disciplined, up to and including dismissal.

(J) All Town Council members shall also refrain any actions of violence, threat of violence, rude or offensive touching and intimidate against any town employee. A report shall be made to the President of the Town Council for actions in violation of this policy on the part of any Town Council member other than the President. In the event that the President of the Town Council violates this policy, a report as to their violation of the policy shall be made to either the Vice President of the Town Council or to the Town Attorney. Actions will be taken to determine which actions to pursue against the Town Council member who violated this policy.

(Res. 2014-02, passed 11-10-2014)

POLICY PROHIBITING NEPOTISM

§ 30.20 DEFINITIONS.

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

DIRECT LINE OF SUPERVISION. An elected officer or employee who is in a position to affect the terms and conditions of another individual's employment, including making decisions about work assignments, compensation, grievances, advancement or performance evaluation. The term does not include the responsibilities of the Town Council to make decisions regarding salary ordinances, budgets or personnel policies of the town.

EMPLOYED. An individual who is employed by the town on a full-time, part-time, temporary, intermittent or hourly basis. The term does not include an individual who holds only an elected office. The term includes an individual who is a party to an employment contract with the town. The performance of the duties of a volunteer firefighter is not considered employment by the town.

RELATIVE.

(1) Any of the following:

(a) Spouse;

(b) Parent or step parent;

- (c) A child or step child;
- (d) Brother, sister, step brother or step sister;
- (e) A niece or nephew;
- (f) An aunt or uncle; or
- (g) A daughter-in-law or son-in-law.

(2) An adopted child of an individual is treated as a natural child of the individual. The terms "brother" and "sister" shall include a brother or sister by half blood (a common parent).

(Res. 2012-01, passed 6-11-2012)

§ 30.21 NEPOTISM PROHIBITED.

(A) Individuals who are relatives shall not be employed by the town in a position that results in one relative being in the direct line of supervision of the other relative.

(B) An individual shall not be promoted to a position if the new position would cause his or her relative to be in the direct line of supervision of that individual.

(Res. 2012-01, passed 6-11-2012)

§ 30.22 EXCEPTIONS TO PROHIBITION AGAINST NEPOTISM.

(A) This subchapter does not abrogate or affect an employment contract with the town that an individual is a party to and is in effect on the date the individual's relative begins service a term of an elected office of the town.

(B) If an individual is employed by the town on a date that the individual's relative begins serving a term of an elected office, then that individual employee's employment shall be immediately terminated.

(Res. 2012-01, passed 6-11-2012)

§ 30.23 IMPACT OF SUBCHAPTER ON THOSE INDIVIDUALS EMPLOYED BY TOWN ON JULY 1, 2012.

(A) An individual who is employed by the town on July 1, 2012, is not subject to this subchapter, unless the individual has a break in employment with the town after July 1, 2012.

(B) The following are not considered a break in employment with the town:

(1) The individual is absent from the workplace while on paid or unpaid leave, including vacation, sick or family medical leave, or worker's compensation; or

(2) The individual's employment with the unit is terminated following by immediate reemployment by the unit, without loss of payroll time.

(Res. 2012-01, passed 6-11-2012)

§ 30.24 CERTIFICATION BY ELECTED OFFICERS OF TOWN.

Each elected officer of the town shall annually certify in writing, subject to the penalties for perjury, that the officer has not violated this subchapter. An elected officer shall submit the certification to the Town Council President not later than December 31 of each year.

(Res. 2012-01, passed 6-11-2012)

Section

31.01 Creation

31.02 Acceptance of waivers and the like

§ 31.01 CREATION.

An Ordinance Violations Bureau is hereby created and, pursuant thereto, the Town Council hereby designates the Clerk-Treasurer of the town as Ordinance Violations Clerk.

(Ord. 89-13, passed 12-4-1989)

§ 31.02 ACCEPTANCE OF WAIVERS AND THE LIKE.

The Ordinance Violations Clerk may accept written appearances, waivers of trial, admissions of violations and payment of civil penalties of not more than \$50 in ordinance violation cases.

(Ord. 89-13, passed 12-4-1989)

CHAPTER 32: ECONOMIC REVITALIZATION AREAS

Section

32.01 Procedures for filing of real property tax abatement applications; designation for purposes of real property tax abatement; fees

32.02 Filing of tangible personal property tax abatement

32.03 Guidelines for designation of areas and for granting of tax abatement therein for uses other than industrial

§ 32.01 PROCEDURES FOR FILING OF REAL PROPERTY TAX ABATEMENT APPLICATIONS; DESIGNATION FOR PURPOSES OF REAL PROPERTY TAX ABATEMENT; FEES.

The following procedure is hereby established for the designation of economic revitalization areas for purposes of real property tax abatement or real property tax abatement in already designated areas.

(A) Applications shall be filed with the town prior to the project and be in writing and signed by the applicant and shall contain all applicable information required by the application form attached to the ordinance codified herein, made a part hereof, and marked Exhibit A.

(B) Upon receipt of an application, the Town Council shall review the information filed and the proposed rehabilitation or redevelopment project with regard to:

- (1) Compliance with statutory criteria;
- (2) Furtherance of city developmental objectives;
- (3) Creation of and the retention of employment opportunities;
- (4) Expansion of property tax base;
- (5) Efficient utilization and conservation of energy; and

(6) Stabilization of property values.

(C) Upon review by the town legal department to assure legality in form, and review and sponsorship by a Council member, the application shall be filed with the office of the Town Clerk in accordance with all deadlines, policies and procedures established by the Town Council to be placed on Council's agenda.

(D) The Town Council may consider a preliminary declaratory resolution designating the requested economic revitalization area for real property tax abatement, and fixing the duration of such designation for periods of three, six or ten years, at its regularly scheduled meeting following the filing of said application. It shall also receive the findings and recommendations of the tax abatement review committee to which said application shall have been referred. For purposes of determining the length of abatement, the Town Council will use the following criteria.

(1) For three-year abatements, the new or rehabilitated property must be within the major groups 20-39 or 42 of the Standard Industrial Classification Manual, published by the United States Office of Management and Budget.

(2) For six-year abatement:

(a) The new or rehabilitated property must be within the major groups 20-39 or 42 of the Standard Industrial Classification Manual, published by the United States Office of Management and Budget; and

(b) At least five new full-time, permanent jobs should be created by the project within one year or 15 in three years, and all existing jobs should be retained, as certified by the petitioner.

(3) For ten-year abatement:

(a) The new or rehabilitated property must be within the major groups 20-39 or 42 of the Standard Industrial Classification Manual, published by the United States Office of Management and Budget;

(b) At least ten new full-time, permanent jobs should be created by the project within one year or 30 in three years, and all existing jobs should be retained, as certified by the petitioner; and

(c) At least 20% of the new jobs to be created should be targeted to Job-Training Program-eligible individuals.

(E) Upon adoption of said resolution, the Town Council shall cause a notice of such adoption and the purpose thereof, and of the fact that maps and plats have been prepared and can be inspected at the office of the Economic Development Committee and the County Assessor's Office to be published in at least two daily newspapers published in and of general circulation in the town one time at least ten days prior to the public hearing which shall state the date, time and place at which the Town Council will receive and hear remonstrances or objections from persons interested in or affected by said proceedings pertaining to the requested real property tax abatement.

(F) On the date and at the time and place theretofore fixed and as stated in said notice, the Town Council shall receive and hear remonstrances and objections to said resolutions together with the additional evidence and arguments, if any, of the applicant, with respect to said application.

(1) In its deliberations, the Town Council shall give consideration to all those factors with respect to the findings and recommendations as presented. Said hearing may be adjourned from time to time. At the conclusion of said hearing, if the Town Council approves said application, it shall adopt a final declaratory resolution.

(2) If the Town Council disapproves said application, it shall rescind the preliminary declaratory resolution. Such action shall be duly recorded, and shall be binding and conclusive on all persons, except that any person who has filed a written remonstrance and is aggrieved by such decision may, within ten days, appeal to the Circuit or Superior Court or the county as hereinafter provided.

(G) Any applicant, and any other person who has filed a written remonstrance to such application, who is aggrieved by the final action taken by the Town Council, may, within ten days after such final action, file in the office of the Clerk of the Circuit or Superior Court of the county, a copy of said application, all written remonstrances thereto, the order of the Town Council, and his or her appeal therefrom, together with his or her bond conditions to pay the costs of said appeal should the appeal be determined within the limitations and restrictions imposed by I.C. 36-7-14-18; provided, however, that in all appeals, the burden of proof shall be upon the applicant.

(H) After the final approval(s) by the Town Council, the property owner may file a certified deduction application form with the County Auditor.

(I) Property owners receiving tax abatement are required to file an annual report with the City Clerk's office no later than March 1

of each year during which abatement is received. The Clerk's office will then see that this report is provided to the Town Council for its review.

(Ord. 91-11, passed 12-30-1991)

§ 32.02 FILING OF TANGIBLE PERSONAL PROPERTY TAX ABATEMENT.

The following procedure is hereby established for the designation of economic revitalization areas for the purpose of tangible personal property tax abatement and for personal property tax abatement in an already designated area.

(A) Applications may be initiated by the owner or owners of new manufacturing equipment which is purchased and installed during the period beginning March 1, 1983 and ending December 31, 1993.

(B) All applications shall be filed with the Economic Development Committee prior to the project and shall be in writing and signed by the applicant and shall contain all applicable information required by the application form attached to the ordinance codified herein, made a part hereof, and marked Exhibit A.

(C) Upon receipt of an application, the Town Economic Development Committee shall review the information filed and the proposed rehabilitation or redevelopment project with regard to:

- (1) Compliance with statutory criteria;
- (2) Furtherance of city developmental objectives;
- (3) Creation of an retention of employment opportunities;
- (4) Expansion of property tax base; and
- (5) Efficient utilization and conservation of energy.

(D) Upon review by the Town Legal Department to assure legality in form, and a review and sponsorship by a Council member, the application shall be filed with the Town Clerk's office in accordance with all deadlines, policies and procedures established by the Town Council to be placed on Council's agenda.

(E) The Town Council may consider a preliminary declaratory resolution designating the requested economic revitalization area for new manufacturing equipment tax abatement and fixing the duration of such designation for a term not to exceed five years, at its regularly scheduled meeting following the said application. It shall also receive the findings and recommendations of the Tax Abatement Review Committee to which said application shall have been referred.

(F) Upon adoption of said resolution, the Town Council, shall cause a notice of such adoption and the purpose thereof, and of the fact that maps and plats have been prepared and can be inspected at Town Hall and the County Assessor's office to be published in a least two daily newspapers published in and of general circulation in the town one time at least ten days prior to the public hearing which shall state the date of such publication, on which the Town Council will receive and hear remonstrances or objections from persons interested in or affected by said proceedings pertaining to the installation of new manufacturing equipment.

(G) On the date and at the time and place theretofore fixed and as stated in said notice, the Town Council shall receive and hear remonstrances and objections to said resolution together with the additional evidence and arguments of the applicant if any, with respect to said application.

(1) In its deliberations, the Town Council shall give consideration to all those factors with respect to the findings and recommendations as presented. Said hearing may be adjourned from time to time. At the conclusion of said hearing, if the Town Council approves said application, it shall adopt a final declaratory resolution confirming the preliminary declaratory resolution.

(2) If the Town Council disapproves said application it shall rescind the preliminary declaratory resolution. Such action shall be duly recorded, and shall be binding and conclusive on all persons, except that any person who has filed in written remonstrance and is aggrieved by such decision may, within ten days, appeal to the Circuit or Superior Court of the county as hereinafter provided.

(H) Any applicant, and any other person who has filed a written remonstrance to such application, who is aggrieved by the final action taken by the Town Council may within ten days after such final action, file in the office of the Clerk of the Circuit or Superior Court of the county, a copy of said application, all written remonstrances thereto, the order of the Common Council and his or her appeal therefrom, together with his or her bond conditioned to pay the costs of said appeal should the appeal be determined within the limitations and restrictions imposed by I.C. 36-7-14-18; provided, however, that in all appeals, the burden of proof shall be upon the

appellant.

(I) The following criteria must be met for five-year personal property tax abatement:

- (1) Use of new or rehabilitated machinery or equipment must be within major groups 20 through 39 and 42 of the Standard Industrial Classification Manual, published by the United States Office of Management and Budget;
- (2) All existing jobs will be retained as certified by the petitioner; and
- (3) At least 0% of the new jobs to be created should be targeted to Job-Training- Program-eligible individuals.

(J) After final approval(s) by the Town Council, the property owner may file a certified deduction application form with the County Auditor.

(K) Property owners receiving tax abatement are required to file an annual report with the Town Clerk's office no later than March 1 of each year during which abatement is received. The Clerk's office will then see that this report is provided to the Town Council for its review.

(Ord. 91-12, passed 12-30-1991)

§ 32.03 GUIDELINES FOR DESIGNATION OF AREAS AND FOR GRANTING OF TAX ABATEMENT THEREIN FOR USES OTHER THAN INDUSTRIAL.

The following additional guidelines be enacted in designating economic revitalization areas for the granting of real property tax abatement.

(A) Office projects: the purpose of granting real property tax abatement for office projects is to revitalize economically distressed areas. In order to take advantage of the tax abatement program for new or rehabilitated office projects, the Town Council must designate an area an "economic revitalization area". If an area is designated an economic revitalization area, the Town Council can consider either a three-, six- or ten-year partial tax abatement on increased tax assessments as a result of new construction or rehabilitative improvements made to real property. The following criteria will be followed to determine the number of years and the percentage of deduction allowed for abatement.

(1) For three-year abatements:

- (a) The new or rehabilitated property must be located in an economic revitalization area;
- (b) At least five new full-time, permanent jobs should be created by the project within three years, and all existing jobs should be retained as certified by the petitioner; and
- (c) Percentages of deduction allowed are as follows:

<i>Year of Deduction</i>	<i>Percentage</i>
1st	100%
2nd	66%
3rd	33%
4th and thereafter	0%

(2) For six-year abatements:

- (a) The new or rehabilitated property must be located in an economic revitalization area;
- (b) Minimum construction costs estimated to exceed \$250,000 for new construction or \$100,000 for rehabilitation;
- (c) At least five new full-time, permanent jobs should be created by the project within one year or 15 in three years, and all existing jobs should be retained, as certified by the petitioner; and

(d) Percentages of deduction allowed are as follows:

<i>Year of Deduction</i>	<i>Percentage</i>
1st	100%
2nd	85%
3rd	66%
4th	50%
5th	34%
6th	17%
7th and thereafter	0%

(3) For ten-year abatement:

(a) The new or rehabilitated property must be located in an economic revitalization area;

(b) Minimum construction costs estimated to exceed \$1,000,000 for new construction or \$500,000 for rehabilitation;

(c) At least ten new full-time, permanent jobs should be created by the project within one year or 30 in three years, and all existing jobs should be retained, as certified by the petitioner; and

(d) Percentages of deduction allowed are as follows:

<i>Year of Deduction</i>	<i>Percentage</i>
1st	100%
2nd	95%
3rd	80%
4th	65%
5th	50%
6th	40%
7th	30%
8th	20%
9th	10%
10th	5%
11th and thereafter	0%

(B) All applicants will be required to file with the town an equal employment opportunity statement which attests to a policy of non-discrimination in hiring and all other employment practices.

(C) Property owners receiving tax abatement are required to file an annual report with the Town Clerk's office and with the Economic Development Committee office no later than March 1 of each year during which abatement is received. The Clerk's office will then see that this report is provided to the Town Council for its review. Per Council's direction, the Economic Development Committee will send notice of what information is required in said report by February 1 of each year.

(D) The Town Council reserves the right to limit the time period for an economic revitalization area designation. An area designation will last for five years, after which time, the designation will automatically terminate. The property owner can, however, request an extension of this area designation time period at the conclusion of the five years. The decision to extend the time period for area designation will be up to Council and said decision will be based upon the determination that said area is still in need of revitalization, rehabilitation and improvements. This limitation on the area designation will in no event affect the normal period granted for real property abatements. It does not apply to the particular abatements granted, but rather, to the area in which the particular property owner conducts activity.

(E) The preceding guidelines shall be considered unless compelling circumstances support the designation and granting of an alternate tax abatement arrangement.

(Res. 91-13, passed 12-30-1991)

CHAPTER 33: POLICIES AND PROCEDURES

Section

- 33.01 Elections
- 33.02 District lines abolished; Council seats to be at large
- 33.03 Purchase of equipment and the like
- 33.04 Policy for use of credit cards
- 33.05 Accessibility

§ 33.01 ELECTIONS.

(A) Candidates for the legislative body be elected at large and not by district.

(B) The County Election Board is hereby directed to conduct elections in the town after January 1, 1989 setting forth the requirement that each office for the five members of the Town Council shall run at large and be required to reside within the corporate boundaries of the town.

(Ord. passed - -1988)

§ 33.02 DISTRICT LINES ABOLISHED; COUNCIL SEATS TO BE AT LARGE.

(A) The district lines for all Town Council seats are hereby abolished.

(B) All candidates for the office of Town Council may reside anywhere within the town boundaries.

(C) All Council seats after the passage of this section shall be at large as opposed to being divided into districts.

(Ord. 90-30, passed 12-3-1990)

§ 33.03 PURCHASE OF EQUIPMENT AND THE LIKE.

(A) As a general rule, the Clerk-Treasurer should be notified of any purchase.

(B) For equipment, supplies or other necessary items under \$100, employees should inform the Clerk-Treasurer or any Town Council member.

(C) Any purchase over \$500 must have a purchase order completed and signed prior to the purchase. Additionally, for purchases of equipment valued from \$500 to \$1,500, the following requirements must be satisfied:

- (1) Certification by the Clerk-Treasurer that money is appropriated in departmental budgets for said equipment;
 - (2) If the purchase requires a transfer of funds, the item cannot be purchased until the Town Council approves a resolution to transfer appropriate monies; and
 - (3) Recommendation and approval from Town Council.
- (D) Any purchase of equipment exceeding \$1,500 must satisfy the following requirements:
- (1) Certification by the Clerk-Treasurer that money is appropriated for such a request;
 - (2) If a transfer of funds is required, the item cannot be purchased until the Town Council approves a resolution to transfer appropriate monies;
 - (3) Recommendations of department head and approval of Town Council;
 - (4) Whenever possible, at least two price quotes should be on file;
 - (5) Approval of Town Council;
 - (6) Purchase order completed and signed; and
 - (7) Any purchase exceeding \$25,000 must follow competitive bidding procedures as set forth in I.C. 5-22.
- (E) In the event of an emergency (where equipment cost exceed \$1,500) an attempt should be made to contact at least three Town Council members. If it is impossible to contact Council members, equipment and/or supplies may be purchased on approval of a Town Council member or certification of Clerk-Treasurer.

(Res. 88-3, passed 1-18-1988; Ord. 95-17, passed 10-16-1995)

§ 33.04 POLICY FOR USE OF CREDIT CARDS.

- (A) The town's credit cards shall only be used for the payment of services rendered on behalf of the town or for products being purchased by the town.
- (B) The Clerk-Treasurer shall maintain possession of the town's credit cards.
- (C) The usage of the town's credit cards for the payment of services or products that exceed the sum of \$100 shall be authorized by the Town Council member that is assigned to the department that is seeking usage of the town's credit cards before the town's credit cards can be used for the payment.

(Ord. 12-04, passed 4-9-2012)

§ 33.05 ACCESSIBILITY.

- (A) *Employment.* The town does not discriminate on the basis of disability in its hiring or employment practices and complies with all regulations as outlined by the U.S. Equal Employment Opportunity Commission under Title I of the ADA.
- (B) *Effective communication.* The town will, upon request, provide appropriate aids and services leading to effective participation for people with disabilities to participate equally in town sponsored or supported programs, services and activities. Anyone who requires an auxiliary aid or service for effective participation or modification of policies or procedures to participate in a service, program or activity, should contact the office of the Clerk-Treasurer, as soon as possible, but no later than 48 hours before the scheduled event.
- (C) *Modification to policies and procedures.*

- (1) The town will make reasonable modifications to policies and programs to ensure that people with disabilities have an equal opportunity to enjoy all of its programs, services and activities. The ADA does not require the town to take any action that would fundamentally alter the nature of its services or programs or impose an undue financial or administrative burden to the town or the event sponsor(s). Grievances regarding a service, program or activity of the town or the event sponsor(s) that is not accessible to persons with disabilities should be directed to the Clerk-Treasurer of the town and use the appropriate grievance procedure form.

(2) The town will not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the cost of providing auxiliary aids/services or reasonable modifications of policy, such as retrieving items from locations that are open to the public, but are not accessible to persons who use wheelchairs.

(D) *Procedures.*

(1) The town has adopted an internal grievance procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the Americans with Disabilities Act ("ADA") Title II states, in part, that "no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in programs, services or activities sponsored by a public entity".

(a) *Step One: File the Grievance.* The person or entity shall complete the grievance form. The grievance form can be found in the office of the Clerk-Treasurer at the Town Hall building. A grievance shall be communicated in writing and sent by e-mail, fax or telephone and must follow the format of the town ADA grievance form. A grievance concerning the accessibility of the town services, programs or activities should be addressed to: Daleville Clerk-Treasurer P.O. Box 567 8019 S. Walnut St. Daleville, IN 47334.

(b) *Step Two: Acknowledgment.* A grievance should be filed within 90 days after the grievant party becomes aware of the alleged violation. The ADA Coordinator will send an acknowledgment of receipt of the grievance within ten working days.

(c) *Step Three: Informal Resolution.* Following the filing of a grievance, the ADA Coordinator shall determine whether, and to what extent, an investigation of the grievance is warranted. Any resulting investigation shall be conducted by the ADA Coordinator or his or her designee. The ADA Coordinator will complete the investigation within 60 calendar days of receipt of the grievance. If appropriate, the ADA Coordinator will arrange to meet with the grievant to discuss the matter and attempt to reach an informal resolution of the grievance. Any informal resolution of the grievance shall be documented in the ADA Coordinator file and the case will be closed. Any informal agreement shall be approved by the Town Council.

(d) *Step Four: Written Determination.* If an informal resolution of the grievance is not reached in Step 3, within 60 calendar days of receipt of the grievance, a written determination as to the validity of the complaint, and description of the resolution, if appropriate, shall be forwarded by the ADA Coordinator to the Town Council for approval.

(e) *Step Five: Final Determination and Resolution.* After the investigation and report by the ADA Coordinator, the entire matter shall be presented to the Town Council. The Town Council shall make a final determination of the matter. The ADA Coordinator shall communicate the determination and resolution to the grievant within 90 calendar days of receipt of the grievance, unless the additional time for further consideration of the grievance is determined by the ADA Coordinator. Any extension of time will be communicated to the grievant. Any request for reconsideration of the response to the grievance shall be at the discretion of the Town Council.

(2) If the grievant is not satisfied with the town's handling of the grievance at any stage of the process, or does not wish to file a grievance through ADA Title II Grievance Procedures, the grievant may file a complaint directly with the U.S. Department of Justice or other appropriate state or federal agency. Use of the town's grievance procedure is not a prerequisite to the pursuit of other remedies.

(3) The resolution of any specific grievance will require consideration of varying circumstances, such as the specific nature of the disability; the nature of the access to services, programs or facilities at issue, the essential eligibility requirements for participation; the health and safety of others; and the degree to which an accommodation would constitute a fundamental alteration to the service, program or facility, or cause an undue hardship to the town. Accordingly, the resolution by the town of any one grievance does not constitute a precedent upon which the town is bound or upon which other complaining parties may rely.

(E) *File maintenance.* The ADA Coordinator shall maintain ADA grievance files for three years.

(Ord. 2012-12, passed 12-10-2012)

CHAPTER 34: TAX, FEES, FINANCE

Section

Fees

34.01 Returned check fee

34.02 Fee for ordinances copied

34.03 Gun permit/accident report/motor vehicle inspection fees

Funds

34.15 Local Police Continuing Education Fund

34.16 Rainy Day Fund

34.17 Federal Operating Grant Police Fund

34.18 Economic Development Income Tax Fund

34.19 Cumulative Capital Development Fund

34.20 Budget and appropriate funds from funds

34.21 Temporary borrowing of operating funds

FEES

§ 34.01 RETURNED CHECK FEE.

The Town Council deems it necessary to place a fee of \$20 on all returned checks payable to the town.

(Ord. 97-1, passed 1-6-1997)

§ 34.02 FEE FOR ORDINANCES COPIED.

(A) All ordinances will be made available to be reviewed at no charge to the public at the Town Hall.

(B) Any persons or companies wanting copies will be charged accordingly.

(C) Anyone wanting copies will be charged \$.10 each.

(Ord. 96-1, passed 3-4-1996)

§ 34.03 GUN PERMIT/ACCIDENT REPORT/MOTOR VEHICLE INSPECTION FEES.

All fees shall be receipted into the LECE Fund and deposited by the Town Clerk-Treasurer.

(A) *Handgun licenses.*

(1) Handgun licenses are \$10 for four years and \$50 for lifetime. The Town Police Department is hereby authorized, pursuant to law, I.C. 35-47-2-3 et seq., to take applications for handgun licenses and to collect an application fee of \$10 for four years and \$50 for lifetime.

(2) The application fees collected shall be deposited by the Town Clerk-Treasurer into the LECE Fund and shall be used exclusively for that purpose and the training of law enforcement officers in the proper use of firearms or other law enforcement duties and for no other purpose.

(3) The application procedure and disbursement of funds shall be in accordance with I.C. 35-47-2, as amended, and are hereby adopted and incorporated by reference in this division.

(B) *Vehicle accident report.*

(1) The Police Department is hereby authorized, pursuant to law, I.C. 9-26-2-2 et seq. and 9-29-11-1, to furnish upon demand therefor to any person copies of any information or accident reports which it has in its files. If the prosecuting attorney of the county

wherein such accident occurred shall advise the department that such information should not be released to any person, then the Department shall withhold such information until its release is approved by the prosecuting attorney.

(2) Before copies of any information or accident reports are made, the Police Department shall collect a \$10 fee, which shall be deposited by the Town Clerk-Treasurer in the LECE Fund, to be expended at the discretion of the Police Chief for any Department purpose reasonably related to the keeping of accident reports and records or the prevention of street and highway accidents.

(3) The procedures and definitions contained in I.C. 9-13-2 and 9-26, as amended, are hereby adopted and incorporated by reference in this division (B).

(C) *Motor vehicle inspection prior to registration.*

(1) The Police Department is hereby authorized, pursuant to law, I.C. 9-17 and 9-29-4 to inspect motor vehicles, semi-trailers and recreational vehicles, the owner(s) of which have made application for certificate of title and registration.

(2) Before any inspection shall be made, the Police Department shall collect a \$5 fee, which shall be deposited by the Town Clerk-Treasurer into the LECE Fund, to be expended at the discretion of the Police Chief for any Department purpose reasonably related to the keeping of accident reports and records or the prevention of street and highway accidents.

(3) The procedures and definitions contained in I.C. 9-17 and 9-29-4, as amended, are hereby adopted and incorporated by reference in this division (C).

(D) *Background check.* There is also a need to collect a \$10 fee from any person requesting a background check.

(Ord. 84-5, passed 7-9-1984; Ord. 10-06, passed 9-13-2010)

FUNDS

§ 34.15 LOCAL POLICE CONTINUING EDUCATION FUND.

(A) The Town Clerk-Treasurer is hereby authorized to establish a Local Police Continuing Education Fund for fees collected under I.C. 5-2-8-2, the Local Law Enforcement Continuing Education Fund.

(B) Monies received from the fees collected under I.C. 5-2-8-2 shall be receipted into the Local Police Continuing Education Fund and shall be used for the continuing education and training of law enforcement officers by the town. Expenditures from this Fund must have a prior appropriation and can be made only after a claim has been processed in the usual manner. Expenditures may be made for any training-authorized by the Police Chief.

(Ord. 87-3, passed 5-4-1987)

§ 34.16 RAINY DAY FUND.

(A) It is hereby established the Town of Daleville Rainy Day Fund.

(B) All funds received from special income tax distributions from COIT shall be deposited in the Rainy Day Fund.

(C) The town may contribute up to 10% of its annual budget if monies are available to this Fund according to I.C. 6-1.1-17.

(D) The funds accumulated in the Rainy Day Fund will be used for special projects, capital improvements, purchase of equipment and other purposed consistent with the intent of this Fund.

(Ord. 04-01, passed 4-19-2004)

§ 34.17 FEDERAL OPERATING GRANT POLICE FUND.

Federal grant monies can only be expended for specific purposes and must be handled in the following method.

(A) The money paid to the town will be used for specific equipment identified within the federal grant application.

(B) Money will be paid to the town and deposited into the Federal Fund and paid out to the specific vendor within three days of receipt.

(C) The Clerk-Treasurer is the custodian of the Fund for the town.

(Ord. 11-03, passed 2-7-2011)

§ 34.18 ECONOMIC DEVELOPMENT INCOME TAX FUND.

(A) *Creation of an EDIT Fund.* There is hereby established an Economic Development Income Tax Fund to receive distribution income taxes from the county.

(B) *Purposes of the fund.* The funds on deposit in the EDIT Fund may be used for capital improvement within the town under I.C. 6-3.5-7-15.

(C) *Appropriations.* The Town Council may authorize the expenditure of funds from the EDIT Fund by appropriations made in the same manner as other funds that are appropriated upon making a finding that the proposed use of the funds is consistent with the intent of the Fund.

(Ord. 11-05, passed 4-4-2011)

§ 34.19 CUMULATIVE CAPITAL DEVELOPMENT FUND.

(A) *Cumulative Capital Development Fund re-establishment.* The Town Council hereby re-establishes the CCD Fund pursuant to I.C. 36-1.1-41, to be used for the purposes allowed and set forth in I.C. 36-9-15.5.

(B) *Increase in tax rate.* The Town Council hereby levies a property tax to provide funds to the CCD Fund. The property tax levy will not exceed \$0.05 per \$100 of assessed valuation. This tax rate will be levied beginning with taxes assessed for 2014 and payable in 2015.

(C) *DLGF approval.* The Town Council directs that proof of publication of the Notice to Affected Taxpayers and a certified copy of this section be timely submitted to the State Department of Local Government Finance as provided by I.C. 6-1.1-41-4 as the town's proposal for re-establishing the CCD Fund and imposing the tax levy by the town to be approved by the Department of Local Government Finance.

(Ord. 2012-09, passed 7-9-2012; Ord. 2015-04, passed 5-11-2015)

§ 34.20 BUDGET AND APPROPRIATE FUNDS FROM FUNDS.

(A) The Town Council is hereby authorized to budget and appropriate funds from the General Fund or from other funds to pay the expenses incurred in promoting the betterment of the municipality.

(B) These expenses may include, but are not necessarily limited to, the following:

(1) Membership dues in local, regional, state and national associations of a civic, educational or governmental nature, which have as their purpose the betterment and improvement of municipal operations;

(2) Direct expenses for travel, meals and lodging in conjunction with municipal business, meetings or organizations to which the municipality belongs;

(3) Expenses incurred in the promotion of tourism, residential development, economic or industrial development for the municipality, including meeting room rental, decorations, meals, travel and promotional booths;

(4) Commemorative plaques, certificates or objects such as commemorative keys;

(5) Annual employee dinner to promote the betterment and morale of town employees;

(6) Items to recognize employees such as a retirement gift, cake, dinner and the like and gifts such as flowers for an illness of an employee or death in family; and

(7) Other purposes which are deemed by the Town Council to directly relate to the promotion and betterment of the town.

(Ord. 2013-06, passed 5-13-2013)

§ 34.21 TEMPORARY BORROWING OF OPERATING FUNDS.

(A) The Town Council, by this section, hereby authorizes the Town Clerk-Treasurer to secure a line of credit or such other form of indebtedness as the Town Council deems reasonable, not to exceed the total sum of \$100,000, at such reasonable terms as he or she deem appropriate and commercially reasonable.

(B) Any such sums borrowed pursuant to this section shall be evidenced by warrants and the town has or shall appropriate sufficient revenues from all sources, present and future to meet said borrowing obligations, and does hereby pledge payment of said warrants by the town.

(C) The Town Clerk-Treasurer is hereby authorized to sign any and all documents on behalf of the town necessary to procure said loans and bind the town.

(D) The use of said funds shall be discretionary with the Town Council for use as needed to maintain governmental functionality and provided governmental services to its citizenry including, but not necessarily limited to its Water Department, Municipal Services Department and Police Department.

(Ord. 04-05, passed 8-13-2004)

CHAPTER 35: TOWN ORGANIZATIONS

Section

35.01 Planning and Zoning Commission

35.02 Economic Development Commission

35.03 Zoning Appeals Board

35.04 Park and Recreation Board

35.05 Municipal Services Department

§ 35.01 PLANNING AND ZONING COMMISSION.

(A) There is hereby created and established in the town a Town Planning and Zoning Commission, hereafter known as the "Daleville Planning and Zoning Commission", consisting of seven members, four of whom shall be citizens of the town, who shall be qualified by knowledge or experience to act in matters pertaining to the development of a master plan, and who shall not hold any other office in the town government, and who shall be appointed by the Town Council, and not more than two of whom shall be members of the same political party. The Town Council shall appoint three persons in the town government as members of such Commission.

(B) The first four citizen members of the Town Planning and Zoning Commission appointed by the Town Council shall hold office as follows: two members for a term of three years and two members for a term of four years, from and after January 1 of the year of their appointment. Thereafter, as the terms of the citizens members expires, each new appointment shall be for a term of four years. Should any vacancy occur in the Commission of a citizen member thereof, the President of the Town Council shall fill such vacancy by appointment of a Commissioner for the residue of his or her term. The terms of the members appointed by the Town Council to represent the town government shall expire with the termination of their respective terms of office to which they have been elected or appointed, and all vacancies occurring among such members shall be filled according to law. The members of the Planning and Zoning Commission shall serve without compensation or pay.

(C) At the first regular meeting in each year, the Planning and Zoning Commission shall elect from its members a President and Vice President. The Commission shall fix the time for holding regular meetings. A majority of the members shall constitute a quorum. No action of the Commission shall be official unless authorized by a majority of the Commission at a regular or properly called special

meeting.

(D) The Planning and Zoning Commission shall have full and exclusive power to make rules and regulations for the proper management, and may appoint and prescribe the duties and fix the compensation of a Secretary and such employees as the duties and responsibilities of the Commission.

(E) The Planning and Zoning Commission shall have the power and authority given such commissions by state law.

(Ord. 88-6, passed 5-2-1988)

§ 35.02 ECONOMIC DEVELOPMENT COMMISSION.

There is hereby created the Town Economic Development Commission, which shall have the powers, functions and duties and shall be constituted, all as defined in Title 36, Article 7, Chapter 12 of the Acts of the General Assembly of the state, 1981 (I.C. 36-7-12).

(Ord. 88-18, passed 11-7-1988)

§ 35.03 ZONING APPEALS BOARD.

(A) There is hereby created and established in the town a Town Zoning Appeals Board, hereafter known as the "Daleville Advisory Board of Zoning Appeals", consisting of five members, three of whom shall be citizens of the town, one of whom shall be a member of the Town Planning and Zoning Commission and two of whom shall not be members of the Town Planning and Zoning Commission, and who shall be appointed by the municipal executive, the Town Council. The fiscal body of the town, the Town Council, shall appoint one citizen member who shall not be a member of the Town Planning and Zoning Commission. The Town Planning and Zoning Commission shall appoint one member of that Commission to serve on said advisory board.

(B) The initial terms of office for the five members of the Town Advisory Board of Zoning Appeals shall be as follows: one member for a term of one year, one member for a term of two years, one member for a term of three years, and two members for a term of four years, from and after January 1 of the year of their appointment. Thereafter, as the terms of the citizen members expire, each new appointment shall be for a term of four years. Should any vacancy occur in the advisory board, the appointing authority having jurisdiction over that particular position shall appoint a new member to fill the unexpired portion of the term of office.

(C) At its first regular meeting in each year, the advisory board shall elect from its members a Chairperson and Vice Chairperson.

(D) The Planning and Zoning Commission shall be responsible for providing a location for the Board's hearings and for preserving all records, documents and accounts for the Board.

(Ord. 88-24, passed 12-5-1988)

§ 35.04 PARK AND RECREATION BOARD.

(A) A Department of Parks and Recreation shall hereby be established for the control and management of all the public parks in the town. The Department of Parks and Recreation shall consist of a Park and Recreation Board and other personnel that the Board determines.

(B) The Park and Recreation Board shall control and manage all public parks that are, as of this moment and hereafter, owned or controlled by the town. The Board shall have all powers, and upon which shall be imposed all the duties that are now or may hereafter be imposed by law upon the Board of Parks and Recreation by the town.

(C) The Park and Recreation Board shall consist of four members. The Park and Recreation Board membership shall be composed of:

(1) Four members appointed by the Town Council on the basis of their interest in and knowledge of parks and recreation. These members shall be residents of the town. No more than two members may be affiliated with the same political party. A member the Town Council shall not serve as a member of the Board. The Town Council shall have the right to vote to waive the requirement that no more than two members may be affiliated with the same political party only in the event that waiving this requirement is necessary due to the absence of persons who are willing to serve and who satisfy all of the requirements.

(2) One ex official member who is a member of Board of Trustees of Daleville Community School Corporation and selected by said Board or designated by said Board shall also be appointed to the Park and Recreation Board.

(D) (1) Upon establishment of the Park and Recreation Board, the terms of the members initially appointed by the Town Council shall be:

- (a) One member for a term of one year;
- (b) One member for term of two years;
- (c) One member for a term of three years; and
- (d) One member for a term of four years.

(2) As a term expires, each new appointment shall be made by the Town Council for a term of four years. All terms expire on the first Monday in January, but a member shall continue in office until his or her successor is appointed. If an appointment is not made by the Town Council by the first Monday in April, the incumbent shall serve another term. If a vacancy on the Board occurs, the appointing authority shall appoint a person to serve for the remainder of the unexpired term.

(E) A member of the Park and Recreation Board may be removed only for cause, upon specific charges filed against them. The charges shall be filed with and heard by the appointing authority, unless the appointing authority is bringing the charges. If the Town Council is bringing the charges, the Town Council shall appoint a hearing officer. The person to hear the charges shall fix a date for a public hearing and give public notice at least ten days in advance of the hearing. At the hearing, the member is entitled to present evidence and argument and to be represented by counsel.

(F) All meetings of the Parks and Recreation Board are open to the public. The Parks and Recreation Board shall keep a record thereof of all its transactions. The Parks and Recreation Board shall fix the time and place of its regular meetings, but shall meet at least quarterly. Special meetings of the Parks and Recreation Board may be called by the President or by any two members by written request to the Secretary. The Secretary shall send to each member, at least two days before a special meeting, a written notice of a special meeting fixing the time, place and purpose of the meeting. Written notice of a special meeting is not required if the time of the special meeting is fixed at a regular meeting or if all members are present at the special meeting.

(G) The Parks and Recreation Board, as soon as practical after the passage of this section and at its first regular meeting each year shall elect a President and a Vice President. The Vice President may act as President during the absence or disability of the President. The Parks and Recreation Board may select a Secretary either from within or outside of its membership.

(H) A majority of the members of the Parks and Recreation Board constitutes a quorum. Action of the Board is not official unless it is authorized by at least three members present and acting.

(I) The Parks and Recreation Board shall have the power to make rules and regulations, not inconsistent with this or other ordinances of said town, to govern the transactions of its business, and for the care, management, and control of the public parks entrusted to its management or control. In addition, the Board shall have all of the powers and duties listed in I.C. 36-10-3, including but not limited to:

- (1) Exercise general supervision of and make rules for the Department;
- (2) Establish rules governing the use of the park and recreation facilities by the public;
- (3) Provide police protection for its property and activities, either by requesting assistance from state, municipal, or county police authorities;
- (4) Appoint the necessary administrative officers of the department and fix their duties;
- (5) Establish standards and qualifications for the appointment of all personnel and approve their appointments without regard to politics; and
- (6) Make recommendations and an annual report to the Town Council concerning the operation of the Board and the status of park and recreations programs.

(J) There shall be established a Park Fund pursuant to I.C. 36-10-3. To provide for the Fund, the Town Council shall levy a tax at a rate of \$0.023 on each \$100 of taxable personal and real property within the town. These taxes, when collected, shall be held in the established Park Fund. The funds collected from the special levy that is held in the Park Funds shall be used solely for park and recreational purposes.

(K) The Parks and Recreation Board shall prepare and submit an annual budget in the same manner as other executive departments of the town as prescribed by the State Board of Accounts. The budget shall be subject to review and to change by the Town Council in the same manner as other department budgets of the town are now reviewed. Thereafter, the Town Council shall, in their regular budget ordinance, set out the fund known as "Park Fund" in an amount necessary to raise such money as the Town Council deems necessary for the ensuing year. All money expended from the Recreation Fund shall first be approved by the Parks and Recreation Board, who in turn shall certify the claim vouchers to the Clerk-Treasurer, who shall in turn submit the claim vouchers to the Town Council for their action thereon. If the approvals are forthcoming, the Clerk-Treasurer shall be authorized to write checks and pay out of the Recreation Fund the various claimants whose vouchers have been approved. The Recreation Fund shall be a continuing fund, and any balance remaining therein at the end of the calendar year shall not revert to the General Fund of the town, but shall continue to be subject to expenditure in like manner as set out above.

(L) The Parks and Recreation Board may accept gifts, donations and subsidies for park and recreation purposes. However, a gift or transfer of property to the Board may not be made without its approval. There is established a special nonreverting fund for the Parks and Recreation Board to be known as the "Park and Recreation Department Gift Nonreverting Fund". A gift or grant of money shall be deposited in the Parks and Recreation Department Gift Nonreverting Fund to be available for expenditure by the Parks and Recreation Board for purposes specified by the grantor. The Clerk-Treasurer may draw warrants against the fund only upon vouchers signed by the President and Secretary of the Board.

(Ord. 2014-02, passed 8-11-2014)

§ 35.05 MUNICIPAL SERVICES DEPARTMENT.

(A) The town hereby creates the Daleville Municipal Services Department (hereinafter "DMSD").

(B) The DMSD is created as a single department charged with the provision of municipal services as same may be defined and assigned by the Town Council from time to time.

(C) The Town Council shall appoint a department head to oversee the day to day operations of the DMSD which shall at least encompass the supervision of all personnel and their performance of its assigned departmental tasks and physical resources.

(D) The DMSD department head shall answer to the Town Council and so serve under their direction.

(E) The DMSD department head is an appointed position and the Town Council may, without cause, terminate the DMSD department head at any time without due process and upon two weeks notice.

(Ord. 03-01, passed 10-6-2003)

TITLE V: PUBLIC WORKS

Chapter

50. SOLID WASTE

51. WATER SYSTEM

52. STORM WATER

CHAPTER 50: SOLID WASTE

Section

50.01 Collection

50.02 Definitions

50.03 Charge for collection

§ 50.01 COLLECTION.

The town hereby provides for the collection of residential and municipal collection of solid waste (trash) and leaves within the corporate limits of the town.

(Ord. 95-40, passed 12-18-1995)

§ 50.02 DEFINITIONS.

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

BAGS. Plastic or biodegradable sacks designed to store refuse with sufficient wall strength to maintain physical integrity when wet or dry and when lifted by their top. The total weight of a **BAG** and its contents shall not exceed 35 pounds.

BULK WASTE. Stoves, refrigerators, water tanks, washing machines, furniture and other waste materials with weights or volumes greater than those allowed for containers.

CONSTRUCTION DEBRIS. Waste building materials resulting from construction, remodeling, repair or demolition operations that cannot be bagged, bundled nor placed within a container as herein described.

CONTAINER. A receptacle with a capacity of more than 20 gallons but less than 35 gallons constructed of plastic, metal or fiberglass, having handles of adequate strength for lifting and having a tight fitting lid capable of preventing entrance into the container by vermin and other animals. The mouth of a **CONTAINER** shall have a diameter greater than or equal to that of the base. The weight of a **CONTAINER** and its contents shall not exceed 75 pounds.

HAZARDOUS WASTE. Any chemical, compound, mixture, substance or article that is designated by the United States Environmental Protection Agency or appropriate agency of the state to be "hazardous" as that term is defined by or pursuant to federal or state law. For purposes of this contract, tires shall be considered **HAZARDOUS WASTE**.

RESIDENTIAL UNIT. A dwelling within the corporate limits of the town, served by or adjacent to publicly dedicated roadways, occupied by a person or group of persons. A **RESIDENTIAL UNIT** shall be deemed occupied when either water or domestic light and power services are being supplied thereto. Specifically excluded hereunder are trailer or mobile home parks, churches, apartment complexes (three units or more), lodges, businesses, schools and manufacturing or industrial users.

SOLID WASTE. The following matter generated by a producer at a residential unit: all kitchen waste, including cans, bottles, household food, accumulation of animal food and vegetable waste matter attendant to the preparation, use, cooking and serving of foods; general household trash and refuse, including bottles, tin cans, boxes, cartons and newspapers and magazines. Tires are expressly excluded. Currently, Christmas trees are expressly included herein, and need not be bagged, bundled or placed within a container.

WHITE GOODS. Any waste items containing Freon (i.e., refrigerators) or other hazardous waste as defined above.

YARD WASTE. The following matter generated by a producer at a residential unit: grass clippings, weeds, bushes and tree branches and other materials of waste commonly generated by yard and garden residential maintenance specifically excluded herein are leaves.

(Ord. 95-40, passed 12-18-1995)

§ 50.03 CHARGE FOR COLLECTION.

The town shall bill each residential unit and each residential unit (homeowner or tenant) shall pay the sum of \$14.75 per month for trash collection and that said charges shall be due the first day of each and every month per residential unit and same shall be billed by the town monthly. Trash collection bills are to be paid monthly on or before 30 days following billing. Failure to pay the trash billing on a monthly basis will result in a 12% penalty per month. In default and in collection, failure to make timely payments of trash bills will also result in the assessment of all legal costs of collection including, but not necessarily limited to, attorney's fees.

(Ord. 95-40, passed 12-18-1995; Ord. 12-02, passed 3-12-2012)

Section

- 51.01 Rates, rules and regulations
- 51.02 Definitions
- 51.03 Applications for water service
- 51.04 Special applications for water service
- 51.05 Private fire protection service
- 51.06 Installation and maintenance of service lines
- 51.07 Services installed in advance of paving
- 51.08 Meters
- 51.09 Multiple meter settings
- 51.10 Meter tests requested by customer
- 51.11 Commission supervised meter tests
- 51.12 Modification at customer's request
- 51.13 Use of existing wells
- 51.14 Adjustment of bills
- 51.15 Deposit to insure payment of bills
- 51.16 Terms and conditions of billing and payment
- 51.17 Disputed bills
- 51.18 Discontinuance of water service
- 51.19 Disconnection avoidance/reconnection of water service after involuntary service termination
- 51.20 Collection of delinquent accounts
- 51.21 Customers requiring uninterrupted supply
- 51.22 Intercepting tank required for large customers
- 51.23 Backflow-type preventers, relief valves, flush valves and vacuum breakers
- 51.24 Cross-connections
- 51.25 Extension of distribution mains
- 51.26 Public fire hydrants
- 51.27 Interruption in or curtailment of water supply
- 51.28 Ownership of property
- 51.29 Plumbing regulations and work
- 51.30 Responsibility of the town
- 51.31 Town Water Utility Board
- 51.32 General provisions

51.33 Rates and charges

51.34 Youth sports activities

51.35 Treatment of vacant lots with meter pits

§ 51.01 RATES, RULES AND REGULATIONS.

(A) The following includes by reference all applicable state rules and regulations where relevant and not contradicted by this chapter governing the operation of a municipal water utility in the state.

(B) More specifically:

(1) A copy of all rates, rules, regulations and conditions of water service under which water service will be supplied, is on file with the Public Service Commission of the state and may be inspected by the public in the office of the Clerk-Treasurer of the town. Said classification of rates are attached to the ordinance codified herein, here included by reference and marked Exhibits A, B and C;

(2) All water service furnished by the town shall be subject to said rates, rules, regulations and conditions of water service, which are by reference made a part of all applications or contracts (both oral and written) for service (except when modified by special contract provisions approved by the Public Service Commission of the state), and are at all times subject to revision, change, modification or cancellation by the town, subject to the approval of the Public Service Commission of the state, or by the Commission through utility industry orders. The failure of the town to enforce any of the terms of these rates, rules, regulations and conditions of water service shall not be deemed a waiver of its right to do so; and

(3) The town shall supply, free of charge a copy of the rate schedules applicable to the types of service available to new applicants for, and existing customers of, residential service, upon request by the applicant or customer.

(Ord. 2010-2, passed 6-7-2010)

§ 51.02 DEFINITIONS.

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

APPLICANT. The owner of the real estate to be served with the provision of water service.

BATTERY SETTING OF METERS. A system of pipe, valves and fittings designed to accommodate two or more meters.

COMBINATION SERVICE. A service pipe which is used to provide both general water service and private fire protection service.

COMMISSION. A Public Service Commission of Indiana, and **COMMISSION RULE** means the Rules, Regulations and Standards of Service of Water Utilities in the state promulgated by the Commission in Cause No. 34805, 170 I.A.C. 6-1-1-1 et seq., as supplemented and amended from time to time.

CUSTOMER. Any person, firm, corporation or governmental unit taking water service from the town. **CUSTOMER** shall also be deemed the owner of the real estate receiving the benefit of the water service provided directly or indirectly. **CUSTOMER** is a synonymous term with **APPLICANT** and **RESPONSIBLE CUSTOMER**.

CUSTOMER'S SERVICE PLAN. The portion of the general water service pipe from the end of the town's service pipe to the customer's place of consumption, installed at the cost and expense of the customer.

DEPOSITOR. Any person, firm, corporation or governmental unit making a deposit with the town under an agreement providing for the construction of a main extension and related facilities in accordance with the extension of distribution mains rule herein.

DISCONTINUANCE OF SERVICE. A cessation of water service not voluntarily requested by a customer.

DISTRIBUTION MAIN. Water pipe owned, operated or maintained by the town which is used for the purpose of distribution of water, and to which service lines are connected.

GENERAL WATER SERVICE. The provision or use of water service for any purpose other than for the extinguishment, or potential extinguishment, of fire.

GOVERNMENTAL UNIT. Any municipality or other political subdivision or agency of the state or the federal government.

GOVERNMENTAL UNIT SERVICE PIPE. The portion of the general water service pipe, extending from the distribution main to and including the curb cock, or the outlet connection of the meter setting when installed at or near the curb or property line, installed at the cost and expense of the town.

PREMISES.

(1) A single building or structure owned or leased by a customer and occupied or used as one residence or place of business;

(2) A combination of buildings or structures owned or leased by a customer, which is located on a single site, and within which such customer constructs, operates and maintains its own secondary distribution system. Such site may be composed of one or more contiguous parcels of land, not separated by public streets or highways. Private roadways through the site shall not be considered as dividing or separating the same into more than one **PREMISES**;

(3) Each unit of a double or multiple unit building wherein each unit is under separate ownership;

(4) Each unit of a double or multiple unit building wherein the customer's service pipe for each unit is connected to a separate the town service pipe;

(5) A building owned or leased by a customer, having two or more apartments, residences, offices or suites of office; or

(6) A trailer park, area or site in which space is rented or leased for the parking and occupancy of trailers or mobile homes.

PRIVATE FIRE PROTECTION SERVICE. One to which fixtures are attached from which water may be taken only for the extinguishment of fire or for the testing of such fixtures.

RESIDENTIAL CUSTOMER. A person taking water service exclusively for residential purposes.

RESPONSIBLE CUSTOMER. The owner of the real estate and improvements to which water service is supplied. As a **RESPONSIBLE CUSTOMER**, same is liable to the town for payment of all costs of service regardless of who the billing is sent to each month or in whose name same is established.

SERVICE PIPE or **SERVICE LINE.** The pipe that runs between the distribution main and the customer's place of consumption, and includes all of the necessary pipe, fittings, valves and appurtenances.

TEMPORARY SERVICE CONNECTION. One which is installed for the temporary use of water, provided that the customer's place of consumption is located on a site abutting a distribution main, unless otherwise agreed to by the town.

TERMINATION OF SERVICE. A cessation of water service voluntarily requested by a customer or involuntarily by the town.

THE TOWN. The incorporated Town of Daleville, Indiana, the water provider.

WATER SERVICE. Includes the use or accommodation afforded consumers or patrons, and any water product, commodity or service furnished by the town, and the plant, equipment, apparatus, appliances, property and facilities employed by, or in connection with, the town in performing any service or in furnishing any product or commodity and devoted to the purposes in which the town is engaged and to the use and accommodation of the public.

(Ord. 2010-2, passed 6-7-2010)

§ 51.03 APPLICATIONS FOR WATER SERVICE.

(A) Requests by governmental units for public fire protection service will be governed by Rules 23 and 24 hereof.

(B) Applicant shall only be the owner of the real estate to be served regardless of who the monthly statement shall be sent to and all applications for service must be signed by the responsible customer (owner) on a form prescribed by the town. An applicant may be a person, business entity, corporation or governmental unit. If the applicant shall not be the property owner, the applicant shall be deemed to be the agent of the owner by the town and the owner of the serviced real estate still bound to pay all charges for service.

(C) Applications for water service, when accepted by the town, shall cover only the premises and uses applied for, and customers are prohibited from selling or giving away water or granting privileges to anyone to use water not specifically included in the accepted application.

(D) A customer who has an accepted application for water service to a premises shall be held liable for all water service furnished to such premises until such time as the customer notifies the town to terminate the service for said account or until the town has accepted a new water service application for the premises.

(E) Any change in the identity of a customer at a premises will require a new application, and the town may, after notice provided by these Rules, discontinue water service until such new application has been made and accepted.

(F) The town reserves the right, based upon the credit worthiness of all applicants to reject water service where appropriate and provided by law, 170 I.A.C. 6-1-1 et seq.

(Ord. 2010-2, passed 6-7-2010)

§ 51.04 SPECIAL APPLICATIONS FOR WATER SERVICE.

(A) Water service for the following purposes must be specifically applied for, and will not be accepted by the town until the special terms and conditions applicable thereto are met, if any, have been agreed to in writing by the applicant:

(1) Building and construction purposes;

(2) Condominiums, cooperative apartments and house developments;

(3) Water service to multiple premises under common ownership located on a single site undivided by public streets, and requiring service to each individual premises through a secondary distribution system not owned or operated by the town;

(4) Public and private fire protection service;

(5) Transient or temporary service;

(6) Shopping centers and other commercial and industrial users;

(7) Trailers and trailer courts; and

(8) Water for resale.

(B) Whenever a town service pipe installation must be made for transient or temporary service, the applicant shall reimburse the town for the cost of such installation.

(Ord. 2010-2, passed 6-7-2010)

§ 51.05 PRIVATE FIRE PROTECTION SERVICE.

(A) Private fire protection service for the purpose of supplying water to be taken for the extinguishment of fire shall be installed only after the approval in writing by the town of, and subject to the terms and conditions contained in, the application for private fire protection service, a copy of which is on file in the town's office. All applications for private fire protection service shall also be submitted for the written approval of the Chief of the Fire Department having jurisdiction, who, by such approval, shall affirm that, in his or her opinion, the public fire protection will not be endangered by the proposed connection to be made for the applicant.

(B) Application for private fire protection service will not be approved unless there is suitable water volume and pressure, subject to the terms and conditions in the application, available in the distribution main abutting the premises to be supplied by such service.

(C) The applicant shall furnish, attach and make a part of his or her application, three complete sets of drawings approved by insurance services' office or another comparable agency approved by the town showing the pipes, valves, hydrants, tanks, openings and appurtenances contemplated in the application. Such sketch must also show any other water supply system and pipe lines and appurtenances which may exist on the premises.

(D) The town shall determine the size and location of any new connections made to its distribution mains for private fire protection service, and will, at the cost and expense of the customer, install and maintain the connection to its distribution main. The customer

shall install and maintain the service pipe from the distribution main to the property line.

(E) After the commencement of private fire protection service, the customer must obtain in advance the approval of the town for any change, alteration or addition in the fixtures, openings and uses specified in the application.

(F) The extent of the rights of the private fire protection service customer is to receive, but only at times of fire on his or her premises, such supply of water as shall then be available from the town's distribution main and no other or greater supply. The town shall not be considered in any manner an insurer of property or persons, or to have undertaken to extinguish fire or to protect any customer, persons or property against loss or damage by fire or otherwise, and it shall be free and exempt from any and all liability on account of any injury to property or persons by reason of fire, water, failure to supply water or pressure, or for any other cause whatsoever.

(G) No pipe or fixtures connected with a private fire protection service served by the town shall be connected with pipes or fixtures supplied with water from any other source.

(H) Unless otherwise provided in written agreement between the application and the town, service lines for private fire protection serve shall be distinct and separate from the general water service line. A private fire protection service connection is furnished for the sole purpose of supplying water for the extinguishment of fires, and the use of water from such a connection for any other purpose is absolutely forbidden.

(I) Where one service pipe is used for both general water service and private fire protection service, separate charges will be made for each type of use, in accordance with the applicable tariff, the charge for private fire protection service being based on the size of the service pipe supplying the premises, and that for general water service being based on the consumption through and the size of the meter or meters installed. The responsibility for installation and maintenance of such a combination service pipe shall be the same as that provided for private fire protection service.

(J) Private fire protection service shall be furnished through a line guarded by an approved fire line meter or detector device which shall be furnished and installed by the customer at his or her cost and expense. The fire line meter or the detector device will be maintained at the cost and expense of the customer, subject to the inspection and approval of the town. The by-pass meter only, used with the detector device shall be furnished, installed and maintained by the town at its cost and expense.

(K) The rates for private fire protection service include only the water used for the extinguishment of fires and necessary for the testing of fire protection facilities on the premises. Unauthorized use of water for purposes other than those specified will subject the customer, after notice provided in this chapter, to discontinuance of private fire protection service.

(L) Under no circumstances shall anti-freeze or any other foreign substances be permitted in sprinkling systems or any other part of applicant's fire protection service system.

(M) The customer's private fire service system shall be subject to the inspection, test and approval of the town before the service is made effective, and at such times thereafter as may be deemed necessary or appropriate by the town. Notwithstanding the approval of the town, the customer shall be solely responsible for the design, adequacy, function and maintenance of its private fire protection service system.

(N) Hydrants and other fixtures connected with a private fire protection service system may be sealed by the town, and such seals may be broken only in case of fire or as specially permitted by the town for testing or other approved purposes, and the customer shall immediately notify the town of the breaking of any such seal.

(O) Whenever a private fire protection service system is proposed to be tested, the customer shall notify the town at least two business days in advance of such proposed test, requesting approval of the day and hour when same is to be made, so that the town's system will be adversely affected, and further so that, if desired, the town may have an inspector present during the test.

(P) Private fire hydrants shall be painted any color other than that adopted by the town for public fire hydrants.

(Q) A gate valve with post indicator controlling the entire supply shall be placed at the curb or property line of the street in which the main is located or at such other point as may be approved by the town, and shall be furnished, installed and maintained by and at the expense of the customer, and unless otherwise approved by the town, said valve shall be installed in a valve pit or vault which shall also be furnished, installed and maintained by and at the expense of the customer.

(Ord. 2010-2, passed 6-7-2010)

§ 51.06 INSTALLATION AND MAINTENANCE OF SERVICE LINES.

(A) Where the town distribution mains are now or may hereafter be installed, the town will, at its expense, install the town service pipe provided that the service pipe is required for the immediate and continuous supply of water for general water service to premises abutting such mains on a street, highway or right-of-way in which such distribution mains are located. Service pipes for temporary or transient service shall be at the customer's expense.

(B) Service pipes supplying a premises shall not pass through or across any premises or property other than that to be supplied, and no water pipes or plumbing in any premises shall be extended therefrom to adjacent or other premises.

(C) The town will make all connections to its distribution mains and will specify the size, kind, quality and location of all materials used in the service line.

(D) The town service pipe shall be furnished, installed and maintained only by the town and shall remain under its sole control and jurisdiction.

(E) Service pipes for private fire protection service connections from the distribution main to the curb or property line shall be installed and maintained in accordance with Commission Rule 5 herein.

(F) The customer's service pipe shall be installed and maintained by the customer, free from leaks and other defects, at his or her own expense and risk and, for failure to do so, water service may be discontinued. The customer's service pipe shall be installed in accordance with applicable governmental regulations and the town specifications below the frost line on firm and continuous earth so as to give unyielding and permanent support.

(G) The customer's service pipe and all connections and fixtures attached thereto shall be subject to the inspection of the town before water will be turned on, and all premises receiving a supply of water and all service pipes, meters and fixtures, including any and all fixtures within the said premises, shall at all reasonable hours be subject to inspection by any duly authorized employees of the town.

(H) For new service lines, the customer shall install his or her service pipe to the curb or property line at a point approved by an authorized employee of the town, after which the town will install its service line from the distribution main to the customer's service line. On new customers, where no tap is present, there will be a tap fee charged to the customer at a fixed fee or a time and material fee as established by the town. The price determined by the town shall be non-negotiable.

(I) Where the town's service pipe is already installed to the curb of property line, the customer shall connect with the town service pipe as installed.

(J) The customer shall make all changes in the customer's service pipe required on account of changes of grade, relocation of mains, sewer or highway construction, and other causes.

(K) No fixture shall be attached to, or any branch made in, the service pipe between the meter and the distribution main, other than by authorized employees of the town.

(L) There shall be no more than one service pipe supplying a single premises, unless otherwise approved by the town.

(M) If a customer, occupant, owner or any of his or her agents, in making an attachment or in shutting off or turning on water, should not properly replace the curb box cap, or should damage the curb cock, curb box, coppersetter or other property of the town, such repairs shall be made only by the town, but at the customer's cost and expense.

(N) The customer shall install and properly maintain a stop and waste valve of a type approved by the town on the customer's service pipe immediately inside the foundation wall in a readily accessible location, protected from the possibility of freezing, that it will shut off and drain all plumbing within any and all buildings in the premises.

(Ord. 2010-2, passed 6-7-2010)

§ 51.07 SERVICES INSTALLED IN ADVANCE OF PAVING.

If any governmental unit should require owners of lots to install service pipes from the distribution main to the curb or property line in advance of street or highway paving and, if such owners will pay the town the cost of installing such service pipes, the town will install such pipes at a fixed fee or a time and material fee as established by the town. Said charges shall non-negotiable.

(Ord. 2010-2, passed 6-7-2010)

§ 51.08 METERS.

- (A) Water shall be supplied to all customers by meter measurement only, excepting sales of water to tank trucks or known capacity and to those customers having special connections and receiving service under an application for private fire protection service, and the town shall have the right to place a meter on any service pipe and charge for water service by meter measurement.
- (B) All meters, except fire service line meters, or except as otherwise elsewhere provided in these rules and regulations, shall be furnished, installed, maintained, tested, repaired, removed and replaced only by and at the expense of the town and shall remain its property; but in case of damage to any such meter by reason of any act, neglect or omission on the part of the customer (such as damages occasioned by fire, frost, hot water, accident or misuse), the customer shall reimburse the town for the cost of repairing the meter on presentation of a bill therefor.
- (C) The town reserved the right to determine the kind, size and type of meter that shall be placed on any service pipe.
- (D) Meters may be located either in an outdoor meter box or vault, or inside the customer's building or structure, at the option of the town.
- (E) If the meter or battery setting of meters is to be installed inside of the building or structure, it shall be located in a clean, dry, safe place and protected from freezing and hot water, and not subject to wide temperature variations, which location must be acceptable to the town, so that the meter may easily be examined, read or removed. The customer shall, at his or her expense, provide suitable pipe connections and shut-off valves, one each at the inlet and outlet sides of the meter or battery setting of meters, and such other fittings as may be designated by the town.
- (F) If the meter or battery setting of meters is to be installed in a meter box or vault located outside the foundation walls of the building or structure supplied, the meter box or vault shall be located in a convenient and readily accessible location. Meter boxes or vaults for settings for single meters up to one inch in diameter will be furnished, installed and maintained by and at the cost and expense of the town. Meter boxes or vaults for settings of single meters larger than one inch in diameter and for battery setting of meters shall be furnished, installed and maintained by and at the cost of the customer. The customer shall, at his or her expense, provide suitable pipe connections and shut-off valves, one each at the inlet and outlet sides of the meter or battery setting of meters, and such other fittings as may be designated by the town. Upon a request by the customer before the original installation is made, the meter box or vault will be located at the point requested, if feasible under proper utility standards. The meter box or vault must be constructed to protect the meter from freezing and damage by vehicular traffic, and its location and design shall prevent, as far as possible, the inflow of surface water.
- (G) Separate premises shall be separately metered and billed, and only one premises shall be supplied through one meter or meter setting.
- (H) The town reserves the right to put seals on all meters or meter couplings.
- (I) No customer shall remove or cause or permit the removal of a meter by his or her agents once it has been installed by the town, and any change in location of the meter desired by the customer shall first be approved by the town in writing, but shall be made by the customer at his or her own cost and expense. The actual moving of any meter shall be performed only by employees of the town water utility or by licensed plumbers approved by said utility through its Utility Board or as delegated to town water utility employees.
- (J) The town may at any reasonable time remove any meter for routine tests, repair or replacement and may, at its option and expense, test any meter when the town has reason to believe that it is registering inaccurately.
- (K) If a customer requests and the town approves, or if the town determines that it is desirable in order to facilitate meter reading, a remote reading register device may be installed outside of the building or structure at an accessible location, in accordance with the terms, conditions and charges therefore as set forth from time to time in the town's tariff applicable thereto.
- (L) Meters may register in either U.S. gallons or cubic feet. Meter readings in units of hundred cubic feet may be converted to units of thousand gallons for billing purposes if the existing schedule of charges is stated in gallon units. The factor used for making a conversion from hundred cubic feet to thousand gallons shall be based on the use of one cubic foot as being equivalent to seven and one-half U.S. gallons.
- (M) Customer/owners will not damage the town meters and all repair /replacement meter costs shall be charged to the customer/owner.

(Ord. 2010-2, passed 6-7-2010)

§ 51.09 MULTIPLE METER SETTINGS.

(A) When more than one meter setting is installed on a customer's premises at the request of the customer or due to conditions existing upon the premises of the customer, each meter setting shall be treated separately as if it belonged to a separate customer, and the registrations of such meters will not be combined.

(B) In all other instances where more than one meter setting is installed on a customer's premises, then the registration of all such meters shall be combined, and the minimum charge shall be the sum of the individual minimum charges for all such meters.

(Ord. 2010-2, passed 6-7-2010)

§ 51.10 METER TESTS REQUESTED BY CUSTOMER.

(A) The town will make a test of the accuracy of registration of a meter upon written request by a customer. A second test of the customer's meter may be requested after 12 months.

(B) The customer may be required to bear the full cost of any subsequent test of his or her meter if requested at less than 36 months after the preceding test, if error of the meter is found to be in compliance with Commission Rule 9.

(C) A written report giving the results of such tests will be made to the customer within ten days after the test is complete.

(D) A customer may appeal the results of such a meter test to the Commission under Commission Rule 11 within five days of the town's report.

(Ord. 2010-2, passed 6-7-2010)

§ 51.11 COMMISSION SUPERVISED METER TESTS.

Upon written application and the payment of the required fee to the utility by any customer, a test will be made of the customer's meter under the supervision of a representative of the Commission in accordance with Commission Rule 12 of the Utility.

(Ord. 2010-2, passed 6-7-2010)

§ 51.12 MODIFICATION AT CUSTOMER'S REQUEST.

If a customer requests for his or her convenience, or by his or her actions required, that the town's facilities be relocated or modified, compatible with water utility construction practices, the town will require the customer to reimburse it for the full cost of performing such service.

(Ord. 2010-2, passed 6-7-2010)

§ 51.13 USE OF EXISTING WELLS.

(A) Use of existing wells will be permitted in three cases:

- (1) When connections require piping through existing septic fields;
- (2) When service to service locations within 300 feet outside the town limits are practically impossible; or
- (3) to provide water to yard hydration systems and swimming pools.

(B) Wells created to service yard hydration systems and pools shall not service other structural property improvements, be they residential or business.

(C) No new construction of residences or business locations shall be permitted wells except for yard hydration systems and to service swimming pools as provided in division (B) above.

(Ord. 2010-2, passed 6-7-2010)

§ 51.14 ADJUSTMENT OF BILLS.

(A) The quantity of water recorded by the meter shall be conclusive upon both the customer and the town, except as provided herein.

(B) Whenever it is discovered that a meter is not registering correctly, adjustments covering such inaccuracy shall be made in accordance with Commission Rule 14.

(C) In the event a minimum bill meter water service is interrupted for a reason other than the act of the customer or the condition of customer controlled equipment, and water service remains interrupted for more than two days after being reported or found to be out of order, an appropriate minimum bill adjustment or refund shall be made. Any such customer adjustment or refund shall be computed by adjusting the applicable minimum bill charge on the basis of either a 30-day month or a 90-day quarter, as applicable.

(D) Any other determinable billing error, including incorrect rate application, shall be adjusted to the known date of error or one year, whichever is shorter.

(Ord. 2010-2, passed 6-7-2010)

§ 51.15 DEPOSIT TO INSURE PAYMENT OF BILLS.

(A) A new applicant shall be required to make a cash deposit of \$70 upon application of service and prior to activation of service to the designated service location.

(B) The deposit required shall be returned to the customer following six continuous timely payments of the water bill following activation of service. If water service is involuntarily disconnected within the first six months of service or the customer fails to pay the billing in a timely manner, the deposit shall be forfeit and applied to the customer's outstanding balance.

(Ord. 2010-2, passed 6-7-2010)

§ 51.16 TERMS AND CONDITIONS OF BILLING AND PAYMENT.

(A) Private fire protection service charges shall be payable monthly in arrears.

(B) Public fire protection service charges shall be payable monthly in arrears.

(C) Metered water service shall be billed monthly in arrears. All residential customer meters shall be read monthly and commercial or industrial customer meters shall, at the option of the town be read monthly. Estimated bills shall be not less than a minimum bill. The third month bill in the quarter period will reflect the difference between the actual quarter consumption and the estimated consumption for the two prior estimated bills or two minimum bills consumption allowance, whichever is greater.

(D) Special charges shall be payable on demand. The water utility shall be empowered to levy assessments from time to time to provide improvements in the town system, to enlarge it and to rehabilitate it.

(E) All bills for water service are due and payable by the fifteenth day of each month and shall be delinquent if not paid on or before said date. A service charge may be charged to the customers if bills are not paid in a timely manner which charge may be established by the Water Board from time to time.

(F) All bills will be sent to the address entered in the application for water service unless the town is notified in writing by the customer or a change of address. Regardless of billing address, the responsible customer shall be liable for all unpaid charges for water service as elsewhere defined.

(G) Customers are responsible for furnishing the town with their correct addresses. Failure to receive bills will not be considered an excuse for nonpayment nor permit an extension of the date when the account shall be delinquent.

(H) The use of water by the same customer at different premises or localities will not be combined for billing purposes, and the service to each premises will be billed separately.

(I) The town may estimate the bill of any customer pursuant to a billing procedure approved by the Commission or for other good cause, including, but not limited to, request of customer; inclement weather; labor or union disputes; inaccessibility of a customer's meter if the town has made a reasonable attempt to read it; and other circumstances beyond the control of the town or its agents and

employees.

(Ord. 2010-2, passed 6-7-2010)

§ 51.17 DISPUTED BILLS.

(A) When a customer disputes a particular bill, the town will not terminate service for nonpayment so long as the customer: pays the undisputed portion of the bill (or an average bill for the customer for the period involved); and pays all future periodic bills by the due date; and enters into a bona fide discussion with the town to settle the dispute in accordance with this division (A). Should it be determined that the dispute is valid, the utility shall reimburse the customer for all over payments as soon as same shall be reasonably possible.

(B) If agreement cannot be reached on settlement of the dispute, the customer may register his or her dispute with the utility in accordance with division (A) above in writing.

(C) A customer shall have the opportunity to appear before the Water Board prior to the disconnection of the water service.

(1) A customer may also contact the Water Board President to make payment arrangements, if the customer is unable to attend the Water Board meeting.

(2) The town shall notify the customer of his or her opportunity to bring forth a formal request to be heard by the Water Board prior to disconnection of service.

(3) The Water Board shall determine at the meeting whether the water service shall be disconnected.

(4) If the customer fails to appear at the scheduled Water Board meeting, or fails to contact the Water Board President, then the order for disconnection shall be final. Customers shall not be granted a continuance of their appearance before the Water Board prior to disconnection of water service.

(D) After any water service is discontinued to any property serviced by the water utility for any reason, whether at the request of the customer or because of failure to pay water bills, there shall be imposed a reinstatement fee of \$70 for turning on the water service.

(Ord. 2010-2, passed 6-7-2010; Ord. 2013-18, passed 1-13-2014)

§ 51.18 DISCONTINUANCE OF WATER SERVICE.

(A) *Upon customer's request.*

(1) The customer shall notify the town at least three days in advance of the day disconnection is desired. The customer shall remain responsible for all service used and the billings therefore until service is disconnected pursuant to such notice.

(2) Upon request by a customer to disconnect service, the town shall endeavor to disconnect the service within three working days of the requested disconnection date. The customer shall be liable for any service rendered to such address or location until such time as the service is actually disconnected.

(3) The town may not disconnect service to the customer:

(a) If the customer shows cause for his or her inability to pay the full amount due (financial hardship shall constitute cause), and said customer:

1. Pays a reasonable portion (not to exceed \$10 or one-tenth of the bill, whichever is greater) of the current bill;
2. Agrees to pay the remainder of the outstanding bill within three months;
3. Agrees to pay all undisputed future bills for service as they become due; and
4. Has not breached any similar agreement with the town made pursuant to this rule within the past 12 months.

(b) Provided, however, that the above terms of the agreement shall be put in writing by the town and signed by the customer and by a representative of the town.

(B) *Without customer's request.*

(1) The town may disconnect service without request by the customer and without prior notice only:

(a) If a condition dangerous and/or hazardous to life, physical safety or property exists;

(b) Upon order by any court, the Commission or other duly authorized public authority;

(c) If fraudulent or unauthorized use of water is suspected and the town has reasonable ground to believe the affected customer is responsible for such use; or

(d) If the town's regulating or measuring equipment has been tampered with and the town has reasonable grounds to believe that the affected customer is responsible for such tampering.

(2) In all other instances the town, upon providing the customer three days' prior written notice, may disconnect service subject to the other provisions of these rules.

(C) *Prohibited disconnection.*

(1) (a) Except as otherwise provided in divisions (A) and (B) above, the town shall postpone the disconnection of service for ten days if, prior to the disconnect date specified in the disconnect notice, the customer provides the town with a medical statement from a licensed physician or public health official which states that disconnection would be a serious and immediate threat to the health or safety of a designated person in the household of the customer. The postponement of disconnection shall be continued for one additional ten-day period upon the provision of an additional such medical statement.

(2) If a customer is unable to pay a bill, which is unusually large due to prior incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection or functioning of the meter, prior estimates where no actual reading was taken for over two months, stopped or slow meter, or any human or mechanical error of the utility, and the customer:

1. Pays a reasonable portion of the bill, not to exceed an amount equal to the customer's average bill for the 12 bills immediately preceding the bill in question;

2. Agrees to pay the remainder of the bill within three months; and

3. Agrees to pay all undisputed future bills for service as they become due;

(b) Provided, however, that the above terms of agreement shall be put in writing by the town and signed by the customer and a representative of the town.

(3) If a customer proceeds with a review pursuant to Commission Rule 16.1 the town may disconnect only as provided in Commission Rule 16.1.

(D) *Notice and procedure for involuntary disconnection.* A customer shall have the opportunity to appear before the Water Board prior to the disconnection of the water service. A customer may also contact the Water Board President to make payment arrangements, if the customer is unable to attend the Water Board meeting. The town shall notify the customer of his or her opportunity to bring forth a formal request to be heard by the Water Board prior to disconnection of service. The Water Board shall determine at the meeting whether the water service shall be disconnected. If the customer fails to appear at the scheduled Water Board meeting, or fails to contact the Water Board President, then the order for disconnection shall be final. Customers shall not be granted a continuance of their appearance before the Water Board prior to disconnection of water service.

(E) *Failure to pay or bad check.*

(1) All bills for water service are due and payable on the fifteenth day of each month. If any bill is not paid by or before that date, a second bill will be mailed containing a cutoff notice that if the bill for delinquent fees and current monthly fees due and owing is not paid in full by the business day following the monthly Water Board meeting, service shall be discontinued for nonpayment.

(2) Presentation of a non-sufficient funds (NSF) check or other defective negotiable instrument shall, upon seven days' written notice, result in involuntary termination of service until proper payment is made on the account. The returned check fee of \$33 shall be charged to any customer who submits a check for the payment of a water bill that is return or insufficient funds.

(3) The filing of bankruptcy by any water service customer shall, upon three days' written notice, result in involuntary disconnection in the event that the water service customer does not complete a new application for water service and pay the required deposit within 20 days of filing his or her petition for bankruptcy.

(F) *Manner of payment.* Water bills may be paid in cash, by check, by money order or by online banking only.

(Ord. 2010-2, passed 6-7-2010; Ord. 2013-18, passed 1-13-2014)

§ 51.19 DISCONNECTION AVOIDANCE/RECONNECTION OF WATER SERVICE AFTER INVOLUNTARY SERVICE TERMINATION.

(A) Upon receipt of a disconnection notice and termination, the customer may avoid disconnection of services by paying in cash to the Clerk-Treasurer all sums, consisting of delinquent fees and current monthly fees due and owing, prior to disconnection and termination of service.

(B) When it has been necessary to discontinue water service to any premises because of violation of the rules, regulations and conditions of water service or on account of nonpayment of any bill for water service, reconnection shall require a new original application for service as if the account and customer was new to the system and a \$70 deposit required all as provided in the applicable provisions of this chapter on new accounts.

(C) The town shall undertake to reconnect the service to the customer as soon as reasonably possible but at least within three working days after it is requested to do so and the new application for service complete; provided however, that the town shall not be required to reconnect the service until:

(1) The conditions, circumstances or practices which caused the disconnection have been corrected;

(2) Payment of all delinquent charges owned the town by the customer and any deposit authorized by these rules has been made and paid in cash; and

(3) A responsible person is present in the premises to see that all water outlets are closed to prevent damage from escaping water.

(D) No customer whose metered service has been disconnected by the town shall turn same on, or have same done by anyone other than the town.

(E) No involuntary disconnection may occur without a "Three Day Notice of Disconnection" served on the owner of the service location. Both mail and posted notice on the serviced location shall constitute notice.

(Ord. 2010-2, passed 6-7-2010; Ord. 2013-18, passed 1-13-2014)

§ 51.20 COLLECTION OF DELINQUENT ACCOUNTS.

(A) The town water utility, acting through the Town Clerk-Treasurer, shall have the authority to collect all delinquent accounts whether the service is disconnected or active.

(B) In cases where the security deposit is deemed forfeit, the security deposit shall be applied to the then balance of the account and the net balance shall be collectible.

(C) The collection of delinquent accounts shall include all costs of collection including reasonable attorney fees, prejudgment interest and any applicable filing fees.

(D) Collection of delinquent accounts paid by NSF check or other defective negotiable instruments shall not only include the amount of the delinquent account including the NSF check plus a \$20 service charge. Should it be necessary to instigate collection procedures through litigation, the maker shall be liable for all collection charges including the town's attorneys fees in collection along with prejudgment interest. At the town's discretion, the town may elect to treat the presentation of an NSF instrument as a misdemeanor and turn the matter over to the County Prosecutor's Office to pursue.

(E) The Clerk-Treasurer is hereby empowered, in the name of the town water utility and the town to do all acts reasonably necessary to collect all delinquent accounts due the town water utility and/or the town for the provision of water service. Said collection of delinquent accounts may include assignment of said accounts for collects, purposes or the employment of legal counsel to pursue collection in the name of the town and generally to do all acts to collect said accounts.

(Ord. 2010-2, passed 6-7-2010)

§ 51.21 CUSTOMERS REQUIRING UNINTERRUPTED SUPPLY.

(A) The town will endeavor to give reasonable water service, but does not guarantee a sufficient or uniform pressure or an uninterrupted supply of water, and customers are cautioned to provide sufficient storage of water where an absolutely uninterrupted supply at a uniform pressure must be assured, such as for steam boilers, hot water systems, gas engines, fire service and the like.

(B) Fixtures or devices taking a supply of water directly from the service pipe, depending upon the hydraulic pressure of the distribution system of the town for supplying same under working pressure, will do so at the risk of the customers making such attachments, as the town will not be responsible for any accidents or damages to which such fixtures or devices are subject.

(Ord. 2010-2, passed 6-7-2010)

§ 51.22 INTERCEPTING TANK REQUIRED FOR LARGE CUSTOMERS.

(A) Customer service pipes or private fire protection service connections shall not be connected to the suction side of pumps, unless approved by the town in writing, and customer uses of a character requiring a large quantity of water within a short period of time will not be permitted except through intercepting or intermediate storage tanks, unless approved by the town in writing.

(B) The inlet connection for tanks attached directly or indirectly to the customer's service pipes or private fire protection service connections shall discharge at a point no less than three times the diameter of the inlet pipe above the overflow of such tanks and must be approved by the town in writing.

(Ord. 2010-2, passed 6-7-2010)

§ 51.23 BACKFLOW-TYPE PREVENTERS, RELIEF VALVES, FLUSH VALVES AND VACUUM BREAKERS.

(A) Customers having boilers, hot water heating systems or hot water heaters (heating systems) connected directly or indirectly with the distribution mains of the town must have a backflow-type preventer in the supply pipe to any heating system and a relief valve at some point between the backflow-type preventer and heating system.

(B) All customers are hereby cautioned against danger of collapse of boilers, since it is sometimes necessary to shut off the supply of water without notice and, for this reason, a vacuum valve should be installed in the steam line to prevent collapse in case the water supply is interrupted.

(C) The town will not be responsible for accidents or damages resulting from the imperfect action or failure of check, relief or vacuum valve.

(D) Backflow-type preventers, relief valves, flush valves and vacuum breakers required or recommended by this rule must be installed and maintained by, and at the cost and expense of the customer.

(Ord. 2010-2, passed 6-7-2010)

§ 51.24 CROSS-CONNECTIONS.

(A) A cross-connection is any connection or arrangement between the pipelines of the town (or any pipes, fixtures or other facilities directly or indirectly connected therewith) and any private source or system of water supply or non-potable source of system (including soil, waste, drainage and other piping and fixtures or hoses or other devices connected thereto on customer's premises) through which backflow can occur.

(B) By-pass arrangement, jumper connections, removable sections, swivel or change-over devices, and other temporary or permanent devices through which, or because of which, backflow can occur, are considered to be cross-connections.

(C) No cross-connection will be permitted unless an acceptable form of protection against contamination by backflow into the water distribution system is provided. An acceptable form of protection is one which meets the approval of the State Board of Health, or any successor agency or organization, and the local regulating health agency. The required protective device or system shall be provided and installed by the customer and maintained by the customer in good working condition, all at customer's cost and expense and shall be subject to the inspection, test and approval of the town before being placed in service, and at such time thereafter as may be deemed necessary by the town.

(D) Any cross-connection made or permitted to exist which is in violation of the provisions of this rule shall be removed forthwith or corrected in a manner acceptable to the State Board of Health, or any successor agency or organization, and the local regulating health authority, and the town. Failure to do so may result in immediate discontinuance of water service.

(Ord. 2010-2, passed 6-7-2010)

§ 51.25 EXTENSION OF DISTRIBUTION MAINS.

(A) Unless other terms and conditions are formally approved by the Commission, the town will extend its distribution mains and related facilities from the end of existing mains on the terms and conditions of this rule.

(B) The town, upon written request for service by a prospective customer, or a group of prospective customers located in the same neighborhood, shall extend a main and connect the customer, or customers, as necessary to provide the service requested. The cost of such installation will be paid by the customer.

(Ord. 2010-2, passed 6-7-2010)

§ 51.26 PUBLIC FIRE HYDRANTS.

(A) Any governmental unit or fire protection company with which the town has a franchise or agreement covering public fire protection service shall have the right, unless otherwise provided in such franchise or agreement, upon the passage of a proper ordinance or resolution by the legally constituted authority of such governmental unit or fire protection company, to order the installation of additional public fire hydrants on existing the town-owned mains six inches or larger in internal diameter at the town's cost and expense, provided that the flows from such mains, as determined by the town, are adequate to provide the required fire flows, and provided further that such governmental unit or fire protection company is responsible for payment of the applicable public fire protection service charges.

(B) Any governmental unit or fire protection company shall have the right to order the installation of fire hydrants on distribution contrary to Commission Rule 23 and 24 above.

(C) All public fire hydrants shall be furnished, installed and maintained by the town.

(D) The use of fire hydrants shall be restricted to the taking of water for the extinguishing of fires, and water shall not be taken from any fire hydrant for construction purposes, sprinkling streets, flushing trenches, sewers, or gutters or for any other use, unless specifically authorized in writing by the town as to the time, location and use.

(E) No person, except for the legitimate purpose of extinguishing fires, shall open any fire hydrant without the consent of the town in writing.

(F) No hydrants shall be opened while a fire is burning or being extinguished except those actually used on the fire.

(G) Any person opening a hydrant shall remain in the immediate vicinity and in control of the hydrant during the time the hydrant is open, and shall close the hydrant immediately after its use is no longer required.

(H) Any governmental unit, and others who may be specifically authorized by the town to operate fire hydrants, shall notify the town after any hydrant has been opened.

(I) Any expense for repairs or damage caused by persons operating fire hydrants, shall be paid for by such persons.

(Ord. 2010-2, passed 6-7-2010) Penalty, see § 10.99

§ 51.27 INTERRUPTION IN OR CURTAILMENT OF WATER SUPPLY.

(A) *Interruptions in water supply.* The town reserves the right at any time to shut off the water in the distribution mains in case of accident or emergency, or for the purpose of making connections, extensions, improvements, alterations, repairs, change or for other proper business or utility reasons, and may restrict the use of water to reserve a sufficient supply in its reservoirs for public for service or other emergencies whenever the public welfare may so require in accordance with Commission Rule 25.2.

(B) *Curtailed of service and/or usage.*

(1) Notwithstanding any other provision in these rules and regulations, the town's rate schedules, or any contract or agreement between the town and any customer, when, in the judgment of the town, sufficient supplies of water are not available to the town, for any reason, to meet all existing and reasonably anticipated demands for service or to preserve and replenish its storage in amounts sufficient to provide fire protection on its system, the town shall have the right to restrict, limit, curtail or interrupt water service to or water usage by any customer or customers in accordance with the provisions of this Commission Rule 25.2.

(2) During any period in which the town is restricting or curtailing water service pursuant to division (B)(1) above, the town shall not supply new service or additional service to any customer, except for residential premises occupied for which application for service has previously been made.

(3) Whenever feasible, prior to the application of this Commission Rule 25.2, the town shall use its best efforts to inform the public in general of the emergency nature of its water supply situation and request voluntary curtailment of water usage by all customers. If, in the judgment of the town, the voluntary curtailment of usage is not sufficient to protect the health and safety of its customers or to preserve and replenish its reservoir storage for fire protection, it shall proceed under the provisions of division (B)(4) below.

(4) In the application of this Rule, the town shall endeavor to maintain a supply of water to provide for the sanitary and health requirements of its residential and human needs customers (hospitals, medical centers, nursing homes and apartments) and its fire protection service.

(a) The town shall first order curtailment of usage by all customers for sprinkling, decorative fountains, swimming pools and other similar nonessential usage.

(b) Thereafter, the town shall curtail or limit on a pro-rata basis water usage to all customers whose average daily volume of water purchased during the preceding calendar year exceeded 100,000 gallons for any billing month during such period; provided, the town reserves the right to order temporary, limitation or interruption of water usage for any customer without regard to any priority of service when its judgment such temporary, limitation or interruption is necessary to forestall injury to life or property.

(c) If any customer fails to comply with any mandatory restriction, limitation or interruption of service imposed under this division (B)(4), the town may shut off service to such customer.

(5) Notice by the town to customers may be given by letter, statement or postcard deposited in the United States mail with postage prepaid or such notice may be given orally by any authorized agent of the town, either by person or by telephone. The notice shall be considered given when actually communicated in the case of oral notice and when deposited in the United States mail when notice is given by letter, statement or postcard.

(Ord. 2010-2, passed 6-7-2010)

§ 51.28 OWNERSHIP OF PROPERTY.

All pipe, fittings, equipment, meters or other appurtenances when installed at the expense of the town, whether located outside of or within the customer's premises, shall at all times be and remain the property of the town and may at any time during reasonable hours be inspected by the town and/or removed by it for repairs or replacements, or upon the discontinuance of service.

(Ord. 2010-2, passed 6-7-2010)

§ 51.29 PLUMBING REGULATIONS AND WORK.

(A) All plumbing work shall be done in accordance with the plumbing code of the governmental unit or units applicable in the town's service area and/or regulations adopted by any duly constituted board or commission having jurisdiction with respect to such matters.

(B) All plumbing work done in connection with pipe and fixtures connected with the town's distribution mains shall be submitted for the inspection by the town before such work is covered. This work must be done by a licensed and registered plumber.

(C) Where plumbing work, upon inspection, is found to be in violation of any plumbing ordinance code or of any rules and regulations adopted by the town or by any governmental unit, board or commission having jurisdiction over such matters, water service will be discontinued by the town upon written notice thereof from said duly constituted authority.

(D) Whenever the town determines that plumbing work is defective, although not necessarily in direct violation of these rules and regulations, the town may insist upon its being corrected before the water will be turned on.

(E) No plumber shall part with the possession of a key for turning on or off the water, except to an employee of the town.

(F) After testing any work, the plumber shall turn off the water from such premises, except where the work is a simple extension or additional fixture on a service then in use. Where water was found turned off previous to making alterations or repairs, plumbers shall not leave water turned on when work is completed.

(G) No plumber or other person shall turn on water to any premises, whether supplied by old or new service, or allow any person in his employ to do so without written permission from the town.

(H) In case of emergencies, plumbers are permitted to turn off the supply of services, but notice thereof shall be given the town within 24 hours after so doing.

(I) No plumber, customer, occupant, owner or any of his or her agents shall connect to the town's distribution main or to any service pipe, or extend pipes therefrom to any premises for the purpose of securing a supply of water, until application has been made therefore to the town as provided in these rules, regulations and conditions of service, and permission for doing so has been granted by the town in writing.

(Ord. 2010-2, passed 6-7-2010) Penalty, see § 10.99

§ 51.30 RESPONSIBILITY OF THE TOWN.

(A) The town will undertake to use reasonable care and diligence in order to prevent and avoid interruptions and fluctuations in water service and to maintain a pressure on the distribution system that is required for reasonable service, but it cannot and does not guarantee to furnish at all times any give quantity for fire or for general purposes or that interruptions and fluctuations in service will not occur. In the event there occurs any excess or deficiency in the pressure, volume or supply of water for any cause whatsoever, other than intentional default or neglect on the part of the town, the town shall not in any way or under any circumstances be held liable or responsible to any person, firm, corporation or governmental unit for any loss or damage resulting therefrom.

(B) Unless due to intentional default or neglect on the part of the town, the town shall not be liable for any damages resulting from the breaking of any mains or service pipes, from any interruption of the supply of water caused by the malfunction of machinery or facilities or by the stoppage thereof for necessary repairs or maintenance, or from any other act, omission or event.

(C) The town shall not be considered in any manner an insurer of property or persons, or to have undertaken to extinguish fire or to protect any persons or property against loss or damages by fire, or otherwise. The town agrees to furnish and provide such supply of water as shall then be available.

(Ord. 2010-2, passed 6-7-2010)

§ 51.31 TOWN WATER UTILITY BOARD.

(A) The business of the water utility shall be vested in the Town Water Utility Board separate and apart from the Town Council.

(B) The Town Water Utility Board shall be composed of all members of the Town Council.

(C) The Water Utility Board shall conduct water utility business at each regularly scheduled Town Council meeting and other times as the Board deems necessary.

(D) The President of the Town Council shall serve as President of the Water Utility Board. The President shall conduct all meetings and, by virtue of his or her position, conduct the regular business of the water utility. Further, the President shall be empowered to sign all reasonably necessary documents to bind the water utility in the water utility's everyday business; however, the President may not borrow money, acquire real estate, enlarge the infrastructure of the utility or make capital expenditures without the consent of the Town Council. The Clerk-Treasurer shall serve as Secretary of the Water Utility Board. The Secretary shall keep the minutes of all the Board meetings.

(E) All action taken by the Utility Board shall be by consensus with a quorum present. All meetings of the Board shall be public meetings, as defined under state law, and subject to I.C. 5-14-1.5, the state public information and Open Door Acts.

(F) In addition to running the day to day business of the utility, the Board also has the power to determine policies not contrary to this chapter by resolution.

(G) The Board is hereby, by resolution and/or practice, empowered to delegate its authority to the employees of the utility or the Town Clerk-Treasurer in the performance of the everyday business of the utility.

(H) The Board has the power to employ such employees as it shall deem necessary to conduct the business of the utility at such rates of compensation as it shall deem reasonable as well as provide such welfare benefits consistent with all other full-time town employees. All employee compensation and welfare benefits must be approved by the Town Council.

(I) The Town Water Utility Board is specifically, among other things, authorized to delegate to the Town Clerk-Treasurer the power to hold and manage all utility bank accounts, manage customer accounts, handle applications for service, and collect delinquent accounts, as well as such other acts as the Board may deem reasonable and permissible under state law. Delegation may be by practice or resolution. It shall be the duty of the Town Clerk-Treasurer to pay all regular and normal bills of the water utility, including, but not limited to, payroll and furtherance thereto he or she shall have check-writing power and control over water utility accounts both checking and savings.

(J) The Board may do all acts reasonably necessary to run the water utility, except as provided herein.

(Ord. 2010-2, passed 6-7-2010; Ord. 2015-03, passed 4-13-2015)

§ 51.32 GENERAL PROVISIONS.

(A) No person shall turn the water on or off at any street valve, corporation cock, curb cock, coppersetter or other connection, or disconnect or remove any meter without the consent of the town. Penalties provided by law for any such action will be rigidly enforced.

(B) Any complaint against the service or employees of the town should be made at the office of the town, and in writing.

(C) No electric wires shall be grounded on the mains of the town or on any service pipe or pipes or fixtures of any kind which have a metallic connection with the mains of the town.

(D) By application for water service or service to a property, the owner of the service location hereby grants to the town and the town water utility an easement on or across the service location reasonably necessary to provide and maintain said service.

(E) By application for water service or the provision of water service to any service location, the owner of said service location hereby grants to the town the right of inspection of said service infrastructure at any reasonable time without notice.

(F) The Water Utility Board, utility employees and all subcontractors shall have the right to access all water utility infrastructure wherever found within the town limits to perform inspection, repair, rehabilitation, installation, testing and such other functions as may be appropriate water utility business. That the access grant herein provided may include passage over private property when necessary and should same occur the town water utility shall be liable for restoration of any disturbed private property to the state originally found should damage occur.

(Ord. 2010-2, passed 6-7-2010) Penalty, see § 10.99

§ 51.33 RATES AND CHARGES.

There shall be and there are hereby established for the use of and the service rendered by the water utility of the town the following rates and charges, based upon the use of water supplied by said waterworks system.

(A) *Metered consumption.*

(1)

<i>Rates Per Hundred Cubic Feet</i>	
<i>Hundred Cubic Feet Per</i>	<i>Effective 5-</i>

<i>Month</i>	<i>15-2015</i>
For the first 20	\$1.92
For the next 580	\$1.30
For the next 4,400	\$1.30
For the next 14,000	\$.99
For all over 20,000	\$.99

(2)

<i>Rates Per Thousand Gallons</i>				
<i>Rate Per Thousand Gallons</i>	<i>Effective 5-15-2015</i>	<i>Effective 3-1-2016</i>	<i>Effective 3-1-2017</i>	<i>Effective 3-1-2018</i>
For the first 14,961	\$2.55	\$2.75	\$2.97	\$3.21
For the next 433,870	\$1.73	\$1.87	\$2.02	\$2.18
For the next 3,219,429	\$1.73	\$1.87	\$2.02	\$2.18
For the next 10,472,728	\$1.32	\$1.43	\$1.56	\$1.66
For all over 14,961,040	\$1.32	\$1.43	\$1.56	\$1.66

(3) Subsection (A)(1) shall be repealed as of the date that all of the town's new water meters are installed and all meter readings for water consumption are measured in gallons.

(B) *Customer charge.*

(1) All metered general water service customers shall pay a customer charge based on the size of meter installed (or multiple meters installed, in which case, the charge is based on the total of all meters installed).

(2) The customer charge rates are listed below and do not include any allowance for water usage.

<i>Rate Per Month</i>					
<i>Size of Meter</i>	<i>Effective 3-1-2014</i>	<i>Effective 3-1-2015</i>	<i>Effective 3-1-2016</i>	<i>Effective 3-1-2017</i>	<i>Effective 3-1-2018</i>
5/8-inch meter	\$9.75	\$10.53	\$11.37	\$12.29	\$13.27
3/4-inch meter	\$16.25	\$17.55	\$18.95	\$20.47	\$22.11
1-inch meter	\$24.38	\$26.33	\$28.43	\$30.71	\$33.17
1-1/2-inch meter	\$54.15	\$58.48	\$61.16	\$68.21	\$73.67

2-inch meter	\$86.63	\$93.56	\$101.04	\$109.13	\$117.86
4-inch meter	\$270.29	\$291.91	\$315.27	\$340.49	\$367.73
6-inch meter	\$541.48	\$584.80	\$631.58	\$682.11	\$736.68
8-inch meter	\$866.36	\$935.93	\$1,010.80	\$1,091.67	\$1,179
10-inch meter	\$1,407.83	\$1,520.46	\$1,642.09	\$1,773.46	\$1,915.34
12-inch meter	\$2,328.35	\$2,514.62	\$2,715.79	\$2,933.05	\$3,167.69

(C) *Private fire service.*

<i>Rate Per Month</i>					
<i>Size of Meter</i>	<i>Effective 3-1-2013</i>	<i>Effective 3-1-2015</i>	<i>Effective 3-1-2016</i>	<i>Effective 3-1-2017</i>	<i>Effective 3-1-2018</i>
2-inch diameter	\$7.10	\$7.67	\$8.28	\$8.94	\$9.66
2-1/2-inch diameter	\$11.08	\$11.97	\$12.92	\$13.96	\$15.07
3-inch diameter	\$15.96	\$17.23	\$18.62	\$20.11	\$21.71
4-inch diameter	\$28.36	\$30.63	\$33.08	\$35.73	\$38.58
6-inch diameter	\$63.84	\$39.78	\$42.97	\$46.41	\$50.12
8-inch diameter	\$113.48	\$122.56	\$132.36	\$142.95	\$154.39
10-inch diameter	\$177.33	\$191.52	\$206.84	\$223.38	\$241.26
11-inch diameter	\$255.33	\$275.76	\$297.82	\$321.64	\$347.37

(Ord. 2010-2, passed 6-7-2010; Ord. 2013-03, passed 2-11-2013; Ord. 2014-01, passed 2-10-2014; Ord. 2015-07, passed - - 2015)

§ 51.34 YOUTH SPORTS ACTIVITIES.

(A) A water rate shall be established for not for profit youth sports activities in the amount of \$10 for entire sports season provided that the following conditions are met.

- (1) The youth sports governing body is a not for profit corporation that only performs activities related to the youth sports functions.
- (2) Activities conducted shall be for the benefit of youth.
- (3) The youth activities shall be conducted between March and October 31 of each year.
- (4) None of the activities shall be conducted on any property owned or controlled by a school corporation.

(B) The water rate as established is reasonable because there exists a water meter at the facility used for youth sports and that the use of the water is substantially less than minimal on an annual basis. A "minimum" rate would therefore be unreasonable.

(Ord. 2012-06, passed 6-11-2012)

§ 51.35 TREATMENT OF VACANT LOTS WITH METER PITS.

No customer charge shall be charged to property owners of vacant lots located in the town boundaries that have meter pits located on the vacant lot.

(Ord. 2014-06, passed 10-20-2014)

CHAPTER 52: STORM WATER

Section

Construction Site and Post Construction Site Storm Water

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- 52.02 Definitions
- 52.03 Applicability
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CONSTRUCTION SITE AND POST CONSTRUCTION SITE STORM WATER

§ 52.01 PURPOSE/INTENT.

(A) *Construction.* The purpose of this subchapter is to establish requirements for storm water discharges from construction activities of one acre or more so that the public health, existing water uses and aquatic biota are protected.

(1) This subchapter establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the national pollutant discharge elimination system (NPDES) permit process.

(2) The objectives of this subchapter are:

(a) To regulate construction activities disturbing more than one acre of land as governed by 327 I.A.C. 15-5; and

(b) To require construction site operators to develop and implement a construction plan, including a storm water pollution prevention plan (SWPPP) in order to receive a drainage permit from the town.

(B) *Post construction.* The purpose of this subchapter relative to post construction control is to implement planning procedures that promote and improve water quality. The planning procedures will include, at a minimum, the post construction requirements of 327 I.A.C. 15-5-6.5(a)(8). The town may require the use of any storage, infiltration, filtering and/or vegetative practices to reduce the impact of pollutants on storm water run-off. Where appropriate, and to the extent of the Municipal Services Department's authority, the planning procedures may also include the following:

- (1) Buffer strip and riparian zone preservation;
- (2) Filter strip creation;
- (3) Minimization of land disturbance and surface imperviousness;

(4) Minimization of directly connected impervious areas;

(5) Maximization of open space; and

(6) Directing the community's growth away from sensitive areas and towards areas that can support growth without compromising water quality.

(Ord. 08-01, passed 4-7-2008)

§ 52.02 DEFINITIONS.

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

AUTHORIZED ENFORCEMENT AGENCY. Employees or designees of the Municipal Services Department of the town.

BEST MANAGEMENT PRACTICES (BMP). Schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters or storm water conveyance systems. **BMP** also include treatment practices, operating procedures and practices to control site run-off, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

CLEAN WATER ACT (CWA). The federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), and any subsequent amendments thereto.

CONSTRUCTION ACTIVITY. Activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of one acre or more, as defined in 327 I.A.C. 15-5. Such activities include but are not limited to clearing and grubbing, grading, excavating and demolition.

CONSTRUCTION PLAN. Representation of a project site and all activities associated with the project. The plan includes the location of the project site, buildings and other infrastructure, grading activities, schedules for implementation and other pertinent information related to the project site. A SWPPP is a part of the **CONSTRUCTION PLAN**.

HAZARDOUS MATERIALS. Any material, including any substance, waste or combination thereof, which because of its quantity, concentration or physical, chemical or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

ILLEGAL DISCHARGE. Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in §§ 52.30 through 52.49.

ILLICIT CONNECTIONS. An illicit connection is defined as either of the following:

(1) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4 including, but not limited to, any conveyances which allow any non-storm water discharge including sewage, process wastewater and wash water to enter the MS4 and any connections to the MS4 from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted or approved by the Municipal Services Department; or

(2) Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps or equivalent records and approved by the Municipal Services Department.

INDIANA STORM WATER QUALITY MANUAL. A reference manual developed by the state that provides guidance on planning principals, as well as criteria for specific structural and non-structural storm water management practices.

INDUSTRIAL ACTIVITY. Activities subject to NPDES industrial permits as defined in 327 I.A.C. 15-6.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4). Publicly-owned facilities by which storm water is collected and/or conveyed, including, but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs and other drainage structures.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT.

A permit issued by EPA (or by a state under authority delegated pursuant to 33 U.S.C. § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group or general area-wide basis.

NON-STORM WATER DISCHARGE. Any discharge to the MS4 that is not composed entirely of storm water.

PERSON. Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

POLLUTANT. Anything which causes or contributes to pollution. ***POLLUTANTS*** may include, but are not limited to, paints, varnishes and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter or other discarded or abandoned objects, ordinances and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

PREMISES. Any building, lot, parcel of land or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

STORM WATER. Any surface flow, run-off and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

STORM WATER POLLUTION PREVENTION PLAN (SWPPP). A document which describes the best management practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to storm water, storm water conveyance systems and/or receiving waters to the maximum extent practicable.

WASTEWATER. Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

(Ord. 08-01, passed 4-7-2008)

§ 52.03 APPLICABILITY.

(A) This subchapter covers any new development or re-development construction site resulting in the disturbance of one acre or more of total land area. Persons must meet the general permit rule applicability requirements under 327 I.A.C. 15-2-6. This subchapter also applies to disturbances of less than one acre of land that are part of a larger common plan of development or sale if the larger common plan will ultimately disturb one or more acres of land within the corporate limits of the town.

(B) All terms, conditions, definitions and other measures defined in 327 I.A.C. 15-5 shall apply except for state permitting process references and submittal deadlines of the construction plan.

(C) This subchapter does not apply to persons who obtain an individual NPDES permit under 327 I.A.C. 15-2-6.

(D) This subchapter does not apply to the State Department of Transportation when it conducts its business within the town corporate limit under its NPDES permit under 327 I.A.C. 15.

(E) This subchapter does not apply to the following types of activities:

- (1) Agricultural land disturbing activities; and
- (2) Forest harvesting activities.

(F) This subchapter does not apply to the following activities, provided other applicable permits contain provisions requiring immediate implementation of soil erosion control measures:

- (1) Landfills that have been issued a certification of closure under 329 I.A.C. 10;
- (2) Coal mining activities permitted under I.C. 14-34; and
- (3) Municipal solid waste landfills that are accepting waste pursuant to a permit issued by the State Department of Environmental Management under 329 I.A.C. 10 that contains equivalent storm water requirements, including the expansion of landfill boundaries and construction of new cells either within or outside the original solid waste permit boundary.

(Ord. 08-01, passed 4-7-2008)

§ 52.04 RESPONSIBILITY FOR ADMINISTRATION.

The town shall administer, implement and enforce the provisions of this subchapter by and through its Municipal Services Department. Any powers granted or duties imposed upon the Municipal Services Department may be delegated in writing by the Department Head of the Municipal Services Department to persons or entities acting in the beneficial interest of or in the employ of the agency.

(Ord. 08-01, passed 4-7-2008)

§ 52.05 ULTIMATE RESPONSIBILITY.

The standards set forth herein and promulgated pursuant to this subchapter are minimum standards; therefore this subchapter does not intend nor imply that compliance by any person will ensure that there will not be violations of NPDES permits.

(Ord. 08-01, passed 4-7-2008)

§ 52.06 RESPONSIBILITY OF CONSTRUCTION SITE OWNER.

(A) The project site owner has the following responsibilities:

- (1) Ensure that a sufficient construction plan is completed and submitted in accordance with procedures established by the town;
- (2) After the town approves the construction plan, complete a sufficient notice of intent letter submitted to the town with a copy sent to the State Department of Environmental Management;
- (3) Make application for a drainage permit in accordance with procedures established by the town;
- (4) Ensure compliance with this subchapter during:
 - (a) The construction activity; and
 - (b) Implementation of the construction plan.
- (5) Ensure that all persons engaging in construction activities on a permitted project site comply with the applicable requirements of this rule and the approved construction plan; and
- (6) Notify the town with a sufficient notice of termination letter with a copy sent to the State Department of Environmental Management.

(B) For off-site construction activities that provide services (for example, road extensions, sewer, water and other utilities) to a permitted project site, these off-site activity areas must be considered a part of the permitted project site when the activity is under the control of the project site owner.

(C) For an individual lot where land disturbance is expected to be one acre or more and the lot lies within a project site permitted under this rule, the individual lot owner shall:

- (1) Ensure that a sufficient construction plan is completed and submitted in accordance with procedures established by the town;
- (2) Complete his or her own notice of intent letter and submit it to the town with a copy sent to the State Department of Environmental Management; and
- (3) Apply for a building permit in accordance with the procedures established by the town.

(D) For an individual lot where the land disturbance is less than one acre and the lot lies within a project site permitted under this rule, the individual lot operator shall:

- (1) Comply with the provisions and requirements of the plan developed by the project site owner in accordance with the procedures established by the town;

- (2) Comply with the provisions set forth in § 52.10;
- (3) Not need to submit a notice of intent letter; and
- (4) Apply for a building permit in accordance with the procedures established by the town.

(Ord. 08-01, passed 4-7-2008)

§ 52.07 GENERAL REQUIREMENTS FOR STORM WATER QUALITY CONTROL.

(A) All storm water quality measures and erosion and sediment controls necessary to comply with this subchapter must be implemented in accordance with the construction plan and sufficient to satisfy the following conditions.

(B) A construction plan, including a SWPPP, shall be required for all developments required to obtain a drainage permit from the town. The construction plan shall be in compliance with all requirements in 327 I.A.C. 15-5. All erosion control practices shall be in accordance with the latest edition of the *IDNR Indiana Handbook for Erosion Control in Developing Areas* and the *NRCS Field Office Technical Guide*.

(C) A project site owner shall, at least, meet the following requirements.

(1) Sediment-laden water which otherwise would flow from the project site shall be treated by erosion and sediment control measures appropriate to minimize sedimentation.

(2) Appropriate measures shall be implemented to minimize or eliminate wastes or unused building materials, including garbage, debris, cleaning wastes, wastewater, concrete truck washout and other substances from being carried from a project site by run-off or wind. Identification of areas where concrete truck washout is permissible must be clearly posted at appropriate areas of the site. Wastes and unused building materials shall be managed and disposed of in accordance with all applicable statutes and regulations.

(3) A stable construction site access shall be provided at all points of construction traffic ingress and egress to the project site.

(4) Public or private roadways shall be kept cleared of accumulated sediment that is a result of run-off or tracking. Bulk clearing of sediment shall not include flushing the area with water. Cleared sediment shall be redistributed or disposed of in a manner that is in accordance with all applicable statutes and regulations.

(5) Storm water run-off leaving a project site must be discharged in a manner that is consistent with applicable state or federal law.

(6) The project site owner shall post a notice near the main entrance of the project site. For linear project sites, such as a pipeline or highway, the notice must be placed in a publicly accessible location near the project field office. The notice must be maintained in a legible condition and contain the following information:

(a) Copy of the completed NOI letter and the NPDES permit number, where applicable;

(b) Name, company name, telephone number, e-mail address (if available) and address of the project site owner or a local contact person; and

(c) Location of the construction plan if the project site does not have an on-site location to store the plan.

(7) This permit and posting of the notice under division (C)(6) above does not provide the public with any right to trespass on a project site for any reason, nor does it require that the project site owner allow members of the public access to the project site.

(8) The SWPPP shall serve as a guideline for storm water quality, but should not be interpreted to be the only basis for implementation of storm water quality measures for a project site. The project site owner is responsible for implementing, in accordance with this rule, all measures necessary to adequately prevent polluted storm water run-off.

(9) The project site owner shall inform all general contractors, construction management firms, grading or excavating contractors, utility contractors and the contractors that have primary oversight on individual building lots of the terms and conditions of this rule and the conditions and standards of the SWPPP and the schedule for proposed implementation.

(10) Phasing of construction activities shall be used, where possible, to minimize disturbance of large areas.

(11) Appropriate measures shall be planned and installed as part of an erosion and sediment control system.

(12) All storm water quality measures must be designed and installed under the guidance of a trained individual.

(13) Collected run-off leaving a project site must be either discharged directly into a well-defined, stable receiving channel or diffused and released to adjacent property without causing an erosion or pollutant problem to the adjacent property owner.

(14) Drainage channels and swales must be designed and adequately protected so that their final gradients and resultant velocities will not cause erosion in the receiving channel or at the outlet.

(15) Natural features, including wetlands and sinkholes, shall be protected from pollutants associated with storm water run-off.

(16) Unvegetated areas that are scheduled or likely to be left inactive for 15 days or more must be temporarily or permanently stabilized with measures appropriate for the season to minimize erosion potential. Alternative measures to site stabilization are acceptable if the project site owner or his or her representative can demonstrate they have implemented erosion and sediment control measures adequate to prevent sediment discharge. Vegetated areas with a density of less than 70% shall be restabilized using appropriate methods to minimize the erosion potential.

(17) During the period of construction activities, all storm water quality measures necessary to meet the requirements of this rule shall be maintained in working order.

(18) A self-monitoring program that includes the following must be implemented:

(a) A trained individual shall perform a written evaluation of the project site:

1. By the end of the next business day following each one half inch of rain; and
2. At a minimum of one time per week.

(b) The evaluation must:

1. Address the maintenance of existing storm water quality measures to ensure they are functioning properly; and
2. Identify additional measures necessary to remain in compliance with all applicable laws and ordinances.

(c) Written evaluation reports must include:

1. The name of the individual performing the evaluation;
2. The date of the evaluation;
3. Problems identified at the project site; and
4. Details of corrective actions recommended and completed.

(d) All evaluation reports for the project site must be made available to the inspecting authority within 48 hours of a request.

(19) Proper storage and handling of materials, such as fuels or hazardous wastes, and spill prevention and clean-up measures shall be implemented to minimize the potential for pollutants to contaminate surface or ground water or degrade soil quality.

(20) Final stabilization of a project site is achieved when:

(a) All land disturbing activities have been completed and a uniform (for example, evenly distributed, without large bare areas) perennial vegetative cover with a density of 70% has been established on all unpaved areas and areas not covered by permanent structures, or equivalent permanent stabilization measures have been employed; and

(b) Construction projects on land used for agricultural purposes are returned to its preconstruction agricultural use or disturbed areas, not previously used for agricultural production, such as filter strips and areas that are not being returned to their preconstruction agricultural use, meet the final stabilization requirements in division (A) above.

(Ord. 08-01, passed 4-7-2008)

§ 52.08 GENERAL REQUIREMENTS FOR INDIVIDUAL BUILDING LOTS WITHIN A PERMITTED PROJECT.

(A) All storm water quality measures, including erosion and sediment control, necessary to comply with this subchapter must be implemented in accordance with the plan and sufficient to satisfy the following conditions.

(B) Provisions for erosion and sediment control on individual building lots regulated under the original permit of a project site owner must include the following requirements:

(1) The individual lot operator, whether owning the property or acting as the agent of the property owner, shall be responsible for erosion and sediment control requirements associated with activities on individual lots;

(2) Installation and maintenance of a stable construction site access;

(3) Installation and maintenance of appropriate perimeter erosion and sediment control measures prior to land disturbance;

(4) Sediment discharge and tracking from each lot must be minimized throughout the land disturbing activities on the lot until permanent stabilization has been achieved;

(5) Clean-up of sediment that is either tracked or washed onto roads. Bulk clearing of sediment shall not include flushing the area with water. Cleared sediment must be redistributed or disposed of in a manner that is in compliance with all applicable laws and ordinances;

(6) Adjacent lots disturbed by an individual lot operator must be repaired and stabilized with temporary or permanent surface stabilization; and

(7) For individual residential lots, final stabilization meeting the criteria in § 52.07(C)(20) will be achieved when the individual lot operator:

(a) Completes final stabilization; or

(b) Has installed appropriate erosion and sediment control measures for an individual lot prior to occupation of the home by the homeowner and has informed the homeowner of the requirement for, and benefits of, final stabilization.

(Ord. 08-01, passed 4-7-2008)

§ 52.09 MONITORING OF DISCHARGES.

The town shall have the authority to monitor discharges from construction sites covered under this subchapter as described in §§ 52.30 through 52.49.

(Ord. 08-01, passed 4-7-2008)

§ 52.10 REQUIREMENT TO PREVENT, CONTROL AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

The town incorporates the *Indiana Storm Water Quality Manual*, current revision, identifying best management practices for any activity, operation or facility which may cause or contribute to pollution or contamination of storm water, the MS4, or waters of the United States. The owner or operator of a construction site shall provide, at the owner's expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a SWPPP as necessary for compliance with requirements of the NPDES permit.

(Ord. 08-01, passed 4-7-2008)

§ 52.11 POST CONSTRUCTION CONTROLS FOR NEW DEVELOPMENT OR REDEVELOPMENT.

(A) On areas that undergo new development or redevelopment, site construction resulting in disturbance of one acre or more total land area, post construction control measures in the form of structural and/or non-structural best management practices are required.

(B) Specifically, post construction storm water pollutant loading cannot exceed pre-construction pollutant loading. Post construction storm water best management practices (BMPs) shall follow the *Indiana Storm Water Quality Manual*, current revision, as a

guidance document.

(C) The town shall have full technical and administrative approval authority on the application and design of all post construction BMPs, conditions, definitions and submittal requirements of the construction plan and specifications and related documents as defined in 327 I.A.C. 15-5-6.5(a)(8).

(Ord. 08-01, passed 4-7-2008)

§ 52.12 ENFORCEMENT.

(A) Enforcement of this subchapter shall be subject to the severity of the infraction and the construction site operator's efforts to comply. The town shall reserve the right to interpret enforcement on a case by case basis.

(B) Tiered enforcement will be practiced at the department head's discretion. The tiered enforcement may include:

(1) Verbal warning to the construction site operator to make corrections;

(2) Written warning to the construction site operator to make corrections within a specified period of time. The period of time shall take into account issues such as the severity of the problem, pending weather, seasonal conditions and the level of effort necessary to correct the problem;

(3) Warning of noncompliance with directions to the construction site operator that site conditions require immediate action; and

(4) Stop work order.

(C) If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

(Ord. 08-01, passed 4-7-2008)

§ 52.13 INJUNCTIVE RELIEF.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this subchapter, if a person has violated or continues to violate the provisions of this subchapter, the Municipal Services Department may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

(Ord. 08-01, passed 4-7-2008) Penalty, see § 52.99

§ 52.14 COMPENSATORY ACTION.

In lieu of enforcement proceedings, penalties and remedies authorized by this subchapter, the Municipal Services Department may impose upon a violator alternative compensatory action, such as storm drain stenciling, attendance at compliance workshops, creek cleanup and the like.

(Ord. 08-01, passed 4-7-2008)

§ 52.15 VIOLATIONS DEEMED A PUBLIC NUISANCE.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this subchapter is a threat to public health, safety and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin or otherwise compel the cessation of such nuisance may be taken.

(Ord. 08-01, passed 4-7-2008)

§ 52.16 REMEDIES NOT EXCLUSIVE.

The remedies listed in this subchapter are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Municipal Services Department to seek cumulative remedies.

(Ord. 08-01, passed 4-7-2008)

ILLICIT DISCHARGE AND CONNECTION STORM WATER

§ 52.30 PURPOSE/INTENT.

(A) The purpose of this subchapter is to provide for the health, safety and general welfare of the citizens of the town through the regulation of non-storm water discharges to the MS4 to the maximum extent practicable as required by federal and state law.

(B) This subchapter establishes the mods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the national pollutant discharge elimination system (NPDES) permit process.

(C) The objectives of this subchapter are:

(1) To regulate the contribution of pollutants to the MS4 by storm water discharges by any user;

(2) To prohibit illicit connections and discharges to the MS4; and

(3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this subchapter.

(Ord. 05-03, passed 7-11-2005)

§ 52.31 DEFINITIONS.

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

AUTHORIZED ENFORCEMENT AGENCY. Employees or designees of the Municipal Services Department of the town.

BEST MANAGEMENT PRACTICES (BMP). Schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters or storm water conveyance systems. **BMP** also include treatment practices, operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

CLEAN WATER ACT. The federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), and any subsequent amendments thereto.

CONSTRUCTION ACTIVITY. Activities subject to NPDES construction permits. These include construction projects resulting in land disturbance of one acre or more, as defined in 327 I.A.C. 15-5. Such activities include but are not limited to clearing and grubbing, grading, excavating and demolition.

HAZARDOUS MATERIALS. Any material, including any substance, waste or combination thereof, which because of its quantity, concentration or physical, chemical or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

ILLEGAL DISCHARGE. Any direct or indirect non-storm water discharge to the MS4, except as exempted in § 52.35.

ILLICIT CONNECTIONS. Either of the following:

(1) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4, including, but not limited to, any conveyances which allow any non-storm water discharge including sewage, process wastewater, and

wash water to enter the MS4 and any connections to the MS4 from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted or approved by the Municipal Services Department; or

(2) Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps or equivalent records and approved by the Municipal Services Department.

INDUSTRIAL ACTIVITY. Activities subject to NPDES industrial permits as defined in 327 I.A.C. 15-6.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4). Publicly-owned facilities by which storm water is collected and/or conveyed, including, but not limited to, any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs and other drainage structures.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORM WATER DISCHARGE PERMIT. A permit issued by EPA (or by a state under authority delegated pursuant to 33 U.S.C. § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group or general area-wide basis.

NON-STORM WATER DISCHARGE. Any discharge to the MS4 that is not composed entirely of storm water.

PERSON. Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

POLLUTANT. Anything which causes or contributes to pollution. **POLLUTANTS** may include, but are not limited to, paints, varnishes and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter or other discarded or abandoned objects, ordinances and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

PREMISES. Any building, lot, parcel of land or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

STORM WATER. Any surface flow, runoff and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

STORM WATER POLLUTION PREVENTION PLAN (SWPPP). A document which describes the best management practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to storm water, storm water conveyance systems and/or receiving waters to the maximum extent practicable.

WASTEWATER. Any water or other liquid, other than uncontaminated storm water, discharged from a facility.

(Ord. 05-03, passed 7-11-2005)

§ 52.32 APPLICABILITY.

This subchapter shall apply to all water entering the MS4 generated on any developed and undeveloped lands, unless explicitly exempted by the Municipal Services Department.

(Ord. 05-03, passed 7-11-2005)

§ 52.33 RESPONSIBILITY FOR ADMINISTRATION.

The town shall administer, implement and enforce the provisions of this subchapter by and through its Municipal Services Department. Any powers granted or duties imposed upon the Municipal Services Department may be delegated in writing by the department head of the authorized enforcement agency to persons or entities acting in the beneficial interest of or in the employ of the agency.

(Ord. 05-03, passed 7-11-2005)

§ 52.34 ULTIMATE RESPONSIBILITY.

The standards set forth herein and promulgated pursuant to this subchapter are minimum standards; therefore this subchapter does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

(Ord. 05-03, passed 7-11-2005)

§ 52.35 DISCHARGE PROHIBITIONS.

(A) Prohibition of illegal discharges.

(1) No person shall discharge or cause to be discharged into the MS4 or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.

(2) The commencement, conduct or continuance of any illegal discharge to the MS4 is prohibited except as described as follows.

(a) The following discharges are exempt from discharge prohibitions established by this subchapter: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wet-land flows, swimming pools (if dechlorinated, typically less than one PPM chlorine), firefighting activities, irrigation water, street wash water and any other water source not containing pollutants.

(b) Discharges specified in writing by the Municipal Services Department as being necessary to protect public health and safety.

(c) Dye testing is an allowable discharge, but requires a verbal notification to the Municipal Services Department prior to the time of the test.

(d) The prohibition shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the MS4.

(B) Prohibition of illicit connections.

(1) The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.

(2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(3) A person is considered to be in violation of this subchapter if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(Ord. 05-03, passed 7-11-2005)

§ 52.36 SUSPENSION OF MS4 ACCESS.

(A) *Suspension due to illicit discharges in emergency situations.* The town may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge, which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the Municipal Services Department may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

(B) Suspension due to the detection of illicit discharge.

(1) Any person discharging to the MS4 in violation of this subchapter may have his or her MS4 access terminated if such

termination would abate or reduce an illicit discharge. The Municipal Services Department will notify a violator of the proposed termination of its MS4 access. The violator may petition the Municipal Services Department for a reconsideration and hearing.

(2) A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section, without the prior approval of the Municipal Services Department.

(Ord. 05-03, passed 7-11-2005)

§ 52.37 INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the town prior to the allowing of discharges to the MS4.

(Ord. 05-03, passed 7-11-2005)

§ 52.38 MONITORING OF DISCHARGES.

(A) *Applicability.* This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.

(B) *Access to facilities.*

(1) The town shall be permitted to enter and inspect facilities subject to regulation under this subchapter as often as may be necessary to determine compliance with this subchapter. If a discharger has security measures in force, which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the Municipal Services Department.

(2) Facility operators shall allow the town ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water, and the performance of any additional duties as defined by state and federal law.

(3) The town shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Municipal Services Department to conduct monitoring and/or sampling of the facility's storm water discharge.

(4) The town has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure storm water flow and quality shall be calibrated to ensure their accuracy.

(5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the town and shall not be replaced. The costs of clearing such access shall be borne by the operator.

(6) Unreasonable delays in allowing the town access to a permitted facility is a violation of a storm water discharge permit and of this subchapter. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the Municipal Services Department reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this subchapter.

(7) If the town has been refused access to any part of the premises from which storm water is discharged, and he or she is able to demonstrate probable cause to believe that there may be a violation of this subchapter, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this subchapter or any order issued hereunder, or to protect the overall public health, safety and welfare of the community, then the Municipal Services Department may seek issuance of a search warrant from any court of competent jurisdiction.

(Ord. 05-03, passed 7-11-2005)

§ 52.39 REQUIREMENT TO PREVENT, CONTROL AND REDUCE STORM WATER POLLUTANTS BY THE USE OF BEST MANAGEMENT PRACTICES.

The town will establish requirements identifying best management practices for any activity, operation or facility which may cause or contribute to pollution or contamination of storm water, the MS4, or waters of the United States. The owner or operator of a commercial or industrial establishment shall provide, at his or her own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a SWPPP as necessary for compliance with requirements of the NPDES permit.

(Ord. 05-03, passed 7-11-2005)

§ 52.40 WATERCOURSE PROTECTION.

(A) Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse.

(B) In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

(Ord. 05-03, passed 7-11-2005)

§ 52.41 NOTIFICATION OF SPILLS.

(A) Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the MS4 or water of the United States said person shall take all necessary steps to ensure the discovery, containment and cleanup of such release.

(B) In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services.

(C) In the event of a release of non-hazardous materials, said person shall notify the Municipal Services Department in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the town within three business days of the phone notice.

(D) If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

(Ord. 05-03, passed 7-11-2005)

§ 52.42 ENFORCEMENT.

(A) Whenever the town finds that a person has violated a prohibition or failed to meet a requirement of this subchapter, the Municipal Services Department may order compliance by written notice of violation to the responsible person.

(B) Emergency notifications may be made by an authorized town employee.

(C) Such notice may require, without limitation:

(1) The performance of monitoring, analyses and reporting;

(2) The determination of illicit connections or discharges;

(3) That violating discharges, practices or operations shall cease and desist;

(4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;

(5) Payment of a fine to cover administrative and remediation costs; and

(6) The implementation of source control or treatment BMPs.

(D) If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

(Ord. 05-03, passed 7-11-2005)

§ 52.43 APPEAL OF NOTICE OF VIOLATION.

(A) Any person receiving a notice of violation may appeal the determination of the Municipal Services Department.

(B) The notice of appeal must be received within 30 days from the date of the notice of violation. Hearing on the appeal before the appropriate authority or his or her designee shall take place within 30 days from the date of receipt of the notice of appeal.

(C) The decision of the municipal authority or his or her designee shall be final.

(Ord. 05-03, passed 7-11-2005)

§ 52.44 ENFORCEMENT MEASURES AFTER APPEAL.

(A) If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within 30 days of the decision of the municipal authority upholding the decision of the Municipal Services Department, then representatives of the Municipal Services Department shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property.

(B) It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

(Ord. 05-03, passed 7-11-2005) Penalty, see § 52.99

§ 52.45 COST OF ABATEMENT OF THE VIOLATION.

Within 30 days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

(Ord. 05-03, passed 7-11-2005)

§ 52.46 INJUNCTIVE RELIEF.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this subchapter. If a person has violated or continues to violate the provisions of this subchapter, the Municipal Services Department may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

(Ord. 05-03, passed 7-11-2005) Penalty, see § 52.99

§ 52.47 COMPENSATORY ACTION.

In lieu of enforcement proceedings, penalties and remedies authorized by this subchapter, the Municipal Services Department may

impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup and the like.

(Ord. 05-03, passed 7-11-2005)

§ 52.48 VIOLATIONS DEEMED A PUBLIC NUISANCE.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this subchapter is a threat to public health, safety and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin or otherwise compel the cessation of such nuisance may be taken.

(Ord. 05-03, passed 7-11-2005)

§ 52.49 REMEDIES NOT EXCLUSIVE.

The remedies listed in this subchapter are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Municipal Services Department to seek cumulative remedies.

(Ord. 05-03, passed 7-11-2005)

RATES AND CHARGES

§ 52.60 GENERAL PROVISIONS.

(A) The adoption of this subchapter is necessary for the protection of the public health and welfare of the inhabitants of the District and the safeguarding of the property within the District and the passage of this subchapter is of public utility and benefit.

(B) The monthly storm water utility and user fee will be \$1.50 per month for each town residential and business water user.

(C) The Town Clerk-Treasurer is hereby empowered to collect the storm water utility fees and segregate the money so collected into a separate and segregated account. The storm water utility fees collected shall be used to fund the state mandated compliance with Commission Rule 13 costs to the town, all costs necessary for reasonable and proper operation and maintenance of the utility and any others uses as set forth under I.C. 8-1.5-1 et seq.

(D) The sections, paragraphs, sentences, clauses, phrases and words of this subchapter are separate and severable, and if any word, phrase, clause, sentence, paragraph of section of this subchapter shall be declared unconstitutional, invalid or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionally, invalidity, or unenforceability shall not affect any of the remaining words, phrases, clauses, sentences, paragraphs and sections of this subchapter.

(E) The rates and charges approved in this resolution are effective upon passage of this subchapter by the Town Council and the rates and charges authorized herein in accordance with I.C. 36-9-23-1 et seq. The rates and charges shall be billed on the first billing cycle of the town's water and sewage utilities after approval of such ordinance by the Town Council.

(Ord. 05-04, passed 7-11-2005; Ord. 2013-02, passed 1-14-2013)

§ 52.61 FEE.

The monthly storm water user fee will be charged to all residential, non-residential and combined residential/business water users as same fairly represents all property within the town limits.

(Ord. 05-04, passed 7-11-2005)

§ 52.62 LATE CHARGE.

If the monthly storm water utility fee is not paid by the due date on the bill, a late charge of 10%, together with costs of collection, if any, including attorney's fees.

(Ord. 05-04, passed 7-11-2005)

§ 52.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99.

(B) (1) Any person that has violated or continues to violate §§ 52.01 through 52.16 shall be liable to civil penalties to the fullest extent of the law, and shall be subject to a fine of up to \$100 per violation per day.

(2) The Municipal Services Department may recover all attorney's fees court costs and other expenses associated with enforcement of §§ 52.01 through 52.16, including sampling and monitoring expenses.

(Ord. 05-03, passed 7-11-2005)

TITLE VII: TRAFFIC CODE

Chapter

- 70. TRAFFIC REGULATIONS**
- 71. PARKING REGULATIONS**
- 72. RECREATIONAL VEHICLES**
- 73. TRAFFIC SCHEDULES**
- 74. PARKING SCHEDULES**

CHAPTER 70: TRAFFIC REGULATIONS

Section

General Provisions

70.01 Enforcement of traffic regulations

Traffic Code

70.15 Definitions

70.16 Traffic-control devices

70.17 Trucks prohibited on certain streets

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Low Speed Vehicles, Personal Assist Mobility Devices

- 70.35 Definitions
- 70.36 Exceptions
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- 70.38 Enforcement

- 70.99 Penalty

GENERAL PROVISIONS

§ 70.01 ENFORCEMENT OF TRAFFIC REGULATIONS.

(A) The Town Council has determined that it is in the best interest of the town to enforce traffic regulations by issuing tickets for violations of the town's traffic ordinances as opposed to issuing tickets for violations of the state code.

(B) The Town Police Department shall issue tickets for the violation of said traffic regulations by issuing a ticket showing that the individual is in violation of a town traffic ordinance as opposed to being in violation of an state statute.

(C) The individual who has violated said traffic ordinance shall pay the fine in the amount of \$35.50 to the Town Clerk within 30 days from the date in which the ticket was issued. A late fee in the amount of \$25 per month will be assessed to the individual failing to pay the fine.

(D) The town shall cause the traffic ordinance violation matter to be submitted to the Town Attorney for filing with the county court system in the event that the individual does not pay the fine within 30 days from the date of the issuance of the ticket. Any and all attorney fees incurred in the filing to the county court system will be paid by the individual in violation of the traffic ordinance.

(Ord. 2013-13, passed 8-12-2013)

TRAFFIC CODE

§ 70.15 DEFINITIONS.

For the purpose of this traffic code, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AUTHORIZED EMERGENCY VEHICLE. The following vehicles are authorized emergency vehicles:

- (1) Fire Department vehicles;
- (2) Police Department vehicles;
- (3) Ambulances;
- (4) Emergency vehicles operated by or for hospitals or health and hospital corporations under I.C. 16-22-8;
- (5) Vehicles designated as emergency vehicles by the State Department of Transportation under I.C. 9-21-20-1;
- (6) Motor vehicles that, subject to I.C. 9-21-90-2, are approved by the State Emergency Medical Services Commission that are:
 - (a) Ambulances that are owned by persons, firms, limited liability companies or corporations other than hospitals; or
 - (b) Not ambulances and that provided emergency medical services, including extrication and rescue services (as defined in I.C. 16-18-2-110).
- (7) Vehicles of the Department of Correction that, subject to I.C. 9-21-20-3, are:

(a) Designated by the Department of Correction as emergency vehicles; and

(b) Responding to an emergency as under I.C. 9-13-2-6.

DRIVER. A person who drives or is in actual physical control of a vehicle.

(I.C. 9-13-2-47)

HIGHWAY or **STREET.** The entire width between the boundary lines of every publicly maintained way when any part of the way is open to the use of the public for purposes of vehicular travel. The term includes an alley.

(I.C. 9-13-2-73)

INTERSECTION.

(1) The area embraced within:

(a) The prolongation or connection of the lateral curb lines, or if none, then the lateral boundary lines of the roadways of two highways that join at, or approximately at, right angles; or

(b) The area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(2) Where a highway includes two roadways at least 30 feet apart, every crossing of each roadway of the divided highway by an intersecting highway is regarded as a separate intersection. If the intersecting highway also includes two roadways at least 30 feet apart, every crossing of two roadways of the intersecting highway is regarded as a separate **INTERSECTION**.

(I.C. 9-13-2-84)

MOTOR VEHICLE.

(1) A vehicle that is self-propelled. The term does not include a farm tractor or implement of agriculture designed to be operated primarily in a farm field or on farm premises, or an electric personal assistive mobility device.

(2) It also means:

(a) A vehicle except a motorized bicycle that is self-propelled; or

(b) A vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

(I.C. 9-13-2-105)

MOTORCYCLE. A motor vehicle with motive power having a seat or saddle for the use of the rider and designated to travel on not more than three wheels in contact with the ground. The term does not include a farm tractor or a motorized bicycle.

OPERATOR. A person, other than a chauffeur or public passenger chauffeur, who:

(1) Drives or is in actual physical control of a motor vehicle upon a highway; or

(2) Is exercising control over or steering a motor vehicle being towed by a motor vehicle.

(I.C. 9-13-2-118)

OWNER.

(1) A person who holds the legal title of a motor vehicle;

(2) A person renting or leasing a motor vehicle and having exclusive use of the motor vehicle for more than 30 days; or

(3) If a motor vehicle is the subject of an agreement for the conditional sale or lease vested in the conditional vendee or lessee, or in the event the mortgagor, with the right of purchase upon the performance of the conditions stated in the agreement and with an immediate right of possession of a vehicle is entitled to possession, the conditional vendee or lessee or mortgagor.

(I.C. 9-13-2-121(a))

RIGHT-OF-WAY. The privilege of the immediate use of a highway.

(I.C. 9-13-2-155)

ROADWAY. The part of a highway improved, designed or ordinarily used for vehicular travel.

(I.C. 9-13-2-157)

STREET. See definition of **HIGHWAY**.

THROUGH HIGHWAY. A highway or portion of a highway at the entrance to which vehicular traffic from intersecting highways is required by law to yield right-of-way vehicles on the through highway in obedience to either a stop sign or a yield sign.

(I.C. 9-13-2-178)

VEHICLE. A device in, upon or by which is a person or property is, or may be, transported or drawn upon a highway.

(I.C. 9-13-2-196(a))

§ 70.16 TRAFFIC-CONTROL DEVICES.

(A) *Establishment and maintenance of traffic-control devices.* The town may establish and maintain official traffic-control devices necessary within the town. All traffic-control devices, including signs, shall be employed to indicate one particular warning or regulation, shall be uniform, and as far as possible shall be placed uniformly. All traffic-control devices and signs shall conform to required state specifications.

(B) *Obedience to signals.*

(1) It shall be unlawful for the driver of any vehicle to disobey the signal of any official traffic-control device placed in accordance with the provisions of this traffic code or of a traffic barrier or sign erected by any of the public departments or public utilities of the town, or any electric signal, or watchman at railroad crossings, unless otherwise directed by a police officer; however, the type and the right to or necessity for such barrier or sign must be approved by the town.

(2) The sign, signal, marking or barrier shall have the same authority as the personal direction of a police officer.

(C) *Interference with signals.* It shall be unlawful for any person without authority to attempt to or in fact alter, deface, injure, knock down or remove any official control device or any railroad sign or signal, or any inscription, shield or insignia thereon, or an part thereof.

(D) *Unauthorized signals or markings.*

(1) It shall be unlawful for any person to place, maintain or display on or in view of any street any unauthorized sign, signal or marking or device which purports to be, is an imitation of, or resembles an official traffic device or railroad sign or signal which attempts or purports to direct the movement of traffic or which conceals or hides from view or interferes with the effectiveness of any official control device or any railroad sign or signal. No person shall place or maintain, nor shall any public authority permit on any street, any traffic sign or signal containing any commercial advertising. Nothing in this section shall be construed as restricting any public department or public utility of the town in any emergency or temporarily from marking or erecting any traffic barrier or sign whose placing has been approved by the town.

(2) Every such prohibited sign, signal or marking is declared to be a public nuisance and the town is empowered forthwith to remove it or cause it to be removed.

(Ord. 2013-19, passed 11-18-2013) Penalty, see § 70.99

§ 70.17 TRUCKS PROHIBITED ON CERTAIN STREETS.

(A) Semi-tractor trailers are prohibited from entering Walnut Street from State Road 32 and State Road 67.

(B) No delivery trucks in excess of eight feet in height shall be allowed on 4th Street.

(Ord. 89-14, passed - -; Ord. 90-32, passed - -; Ord. 2013-19, passed 11-18-2013)

§ 70.18 VEHICLE STOP INTERSECTIONS AND AUTOMATIC SIGNAL INTERSECTIONS.

(A) The town may designate intersections as a vehicle stop intersection and require all vehicles to stop at one or more entrances to such intersections.

(B) The town shall post signs at such designated intersections, giving notice of the designation as a stop intersection.

(C) It shall be unlawful for any person to fail to obey the markings or signs posted under this section.

(D) The town shall erect and maintain at such designated intersections, giving notice of the designation as an automatic signal intersection.

(E) The town hereby designates the location of stop signs and automatic signals pursuant to the sign schedule attached and incorporated.

(Ord. 2013-19, passed 11-18-2013) Penalty, see § 70.99

§ 70.19 ONE-WAY STREETS.

(A) The town may designate streets or highways as one-way streets or highways and require that all vehicles operate on the street or highway be moved in one specific direction.

(B) The town shall post signs at the entrance to the street or part of the street that is affected, giving notice of the designation as a one-way street.

(C) It shall be unlawful for any person to fail to obey the markings or signs posted under this section.

(D) The town hereby designates certain roadways as "one-way streets" pursuant to the schedule attached and incorporated.

(Ord. 2013-19, passed 11-18-2013)

§ 70.20 OFF-ROAD VEHICLES.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

LICENSED PERSON. Any person holding a valid Indiana or other state's motor vehicle operator's license.

LOW SPEED VEHICLE. Any two-, three- or four-wheeled motor powered vehicle:

- (a) With a maximum design speed of not more than 35 mph;
- (b) With a maximum weight not to exceed 2,200 pounds; and
- (c) With the capacity to transport one or more persons from one place to another for recreational use.

PERSONAL ASSIST MOBILITY DEVICES. Any three- or four-wheeled motorized vehicle whose purpose is to assist medically handicapped persons to travel from one place to another for recreational use.

UNREGISTERED/ UNLICENSABLE VEHICLES. Any two-, three- or four-wheeled motorized vehicle currently found to exist which the state does not require registration and plating to utilize in going from one place to another either for transportation or recreation.

(B) *Exceptions.*

(1) Any low speed vehicle equipped with headlamps, tail lights, mirror and horn operated by a licensed driver shall be allowed to be utilized as a vehicle for the purposes of transportation or recreational activities in and on the streets of the town (includes SR 32 and 37).

(2) Any person, who by medical prescription, operates a personal assist mobility device in and on the streets of the town (includes SR 32 and 67) shall be allowed as to the benefit only of the prescribed person.

(3) Licensed persons or unlicensed person 15 years or older may operate an unregistered/unlicensed vehicle if said vehicle is equipped with headlamps, tail lights, mirror and horn in and on the streets of the town (SR 32 and 67).

(4) An excepted use shall still be subject to regulation and operation by all state statutes and relevant and applicable to the operation of motor vehicles.

(5) The Police Chief, or a representative of the office of the Town Police Department, shall issue a three-digit identification number to the operator of the low speed vehicle, personal assist mobility device or unregistered/unlicensable vehicle. The identification number shall be placed on the rear of the low speed vehicle, personal assist mobility device and unregistered/unlicensable vehicle.

(6) Each low speed vehicle, personal assist mobility device or unregistered/unlicensable vehicle shall be registered annually.

(7) There shall be a \$10 annual processing fee for obtaining the registration.

(8) The owner shall provide proof of insurance that coverage is in effect when said low speed vehicle, personal assist mobility device or unregistered/unlicensable vehicle is registered.

(C) *Prohibition.* Except as specifically provided in division (B) above, the utilization of low speed vehicles, personal assist mobility devices and unregistered/unlicensed vehicles in and on street of the town (SR 32 and 67 included) is prohibited, and the same shall be a violation of this traffic code.

(Ord. 04-05, passed - -; Ord. 04-06, passed - -; Ord. 2013-09, passed - -; Ord. 2013-14, passed - -; Ord. 2013-19, passed 11-18-2013)

§ 70.21 PARKING REGULATIONS.

(A) *Restrictions on parking on any town street.*

(1) No person shall stop, stand or park a vehicle on any street in the town for a period of more than two hours per 24-hour time frame. A separate offense shall be deemed committed upon each 24- hour time period which a violation occurs or continues.

(2) The owner and/or operator of said vehicles prohibited from parking or partially parking upon the public streets, alleys and highways of the town shall not remove the vehicle from said parking place and immediately return the same to its original location and/or within a short distance of its original location. The vehicle shall not be in the same general location as it was prior to moving the same in order to be in compliance with this traffic code.

(3) Any police officer who observes the violation of this traffic code shall attach to the offending vehicle a notice to the driver of the vehicle that such vehicle has been parked in violation of the same. If any vehicle is parked unlawfully in violation of any of the provisions of this traffic code, and the identity of the driver cannot be determined, the owner or person in whose name the vehicle is registered shall be held, prima facie, responsible for the violation.

(4) No person shall stand or park a motor vehicle in a roadway, other than parallel with the edge of the roadway, headed in the direction of lawful traffic movement, and with the right hand wheels of the vehicle within 12 inches of the curb or edge of the roadway.

(5) No person shall stop, stand or park a motor vehicle, except when necessary to avoid conflict with other traffic, or in compliance with the law, or in direction of a police officer, in any of the following places:

(a) On a sidewalk;

(b) In front of a public or private driveway;

(c) Within an intersection;

(d) Within 15 feet of a fire hydrant;

(e) On a crosswalk;

(f) Within 20 feet of the driveway entrance of any fire station on the sides of the street opposite the entrance to any fire station within 75 feet of such entrance, when property signposted; or

(g) On the roadway side of any vehicle stopped or parted at the edge or curb of the street.

(B) *No parking where posted.*

(1) No person shall stop, stand or park a vehicle upon the public streets of the town at any place where official signs or where appropriate devices, marks or painting, either upon the surface of the street or the curb immediately adjacent thereto, prohibit such

acts.

- (2) There shall be no parking on the west side of Walnut Street from the railroad track south to Third Street.
- (3) There shall be no parking on the south side of Fourth Street between Walnut Street and Bronco Drive.
- (4) There shall be no parking on the west side of Bronco Drive.

(C) *Limited parking.*

(1) No person shall stop, stand or park a vehicle upon the public streets of the town where official signs are erected limiting the parking time thereon for a period of time in excess of the time as designated by the official signs.

(2) There will be a 30-minute loading and unloading zone on the west side of Walnut Street described as follows: 212 feet from the railroad tracks to State Road 32.

(3) There will be a 30-minute loading and unloading zone on the east side of Walnut Street described as follows: 172 feet from the railroad tracks to State Road 32.

(4) There shall be 30-minute parking on the west side of Walnut Street in front of the library.

(5) No person shall stop or park any vehicle on Bronco Drive from the exit of the Daleville Elementary School parking lot between the hours of 7:00 a.m. to 5:00 p.m.

(Ord. 89-7, passed - -; Ord. 89-14, passed - -; Ord. 92-4, passed - -; Ord. 2013-5, passed - -; Ord. 2013-19, passed 11-18-2013)
Penalty, see § 70.99

§ 70.22 SPEED LIMITS.

(A) No motor vehicle shall be driven or operated on the streets within the town at a speed in excess of 30 mph, except upon State Highways No. 32 and 67, wherein the speed limit shall be posted at the time by the State Department of Transportation and except as follows:

<i>Speed Limit</i>	<i>Street/Location</i>
25 mph	West Heather Lane, Katriene Drive, Katriene Circuit and West Hill Tip Circle
25 mph	3rd, 4th, 5th and 6th streets
25 mph	Daleville Road

(B) The provisions of division (A) above shall not apply to the operation of any authorized emergency vehicle while the same is being driven and operated upon an emergency mission and the driver is sounding a siren, bell or exhaust whistle, as may be reasonably necessary, and the vehicle displays a lighted red lamp visible from the front, as warning to others.

(Ord. 90-28, passed - -; Ord. 2013-10, passed - -; Ord. 2013-19, passed 11-18-2013) Penalty, see § 70.99

§ 70.23 GENERAL TRAFFIC REGULATIONS.

(A) The driver of a motor vehicle emerging from an alley, driveway or building shall stop such vehicle prior to entering onto a sidewalk area extending across an alleyway yielding the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the roadway, shall yield the right-of-way to all vehicles approaching on such roadways.

(B) No motor vehicle shall be driven over any unprotected hose of a fire department, when laid down on any street or private driveway for use at any fire or alarm of the fire without the consent of the Fire Department official in command.

(Ord. 2013-19, passed 11-18-2013) Penalty, see § 70.99

LOW SPEED VEHICLES; PERSONAL ASSIST MOBILITY DEVICES

§ 70.35 DEFINITIONS.

For the purpose of this traffic code, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

LICENSED PERSON. Any person holding a valid Indiana or other state's motor vehicle operator's license.

LOW SPEED VEHICLE. Any two-, three- or four-wheeled motor powered vehicle:

- (1) With a maximum design speed of not more than 35 mph;
- (2) With a maximum weight not to exceed 2,200 pounds; and
- (3) With the capacity to transport one or more persons from one place to another or for recreational use.

PERSONAL ASSIST MOBILITY DEVICES. Any three- or four-wheeled motorized vehicle whose purpose is to assist medically handicapped persons travel from one place to another or for recreational use.

UNREGISTERED/UNLICENSABLE. Vehicles means any two, three- or four-wheeled motorized vehicle currently found to exist which the state does not require registration and plating to utilize in going from one place to another either for transportation or recreation.

(Ord. 04-06, passed 9-13-2004)

§ 70.36 EXCEPTIONS.

(A) Any low speed vehicle equipped with headlamps, tail lights, mirror and horn operated by a licensed driver shall be allowed to be utilized as a vehicle for the purposes of transportation or recreational activities in and on the streets of the town (includes SR 32 and 67).

(B) Any person who, by medical prescription, operates a personal assist mobility device in and on the streets of the town (includes SR 32 and 67) shall be allowed as to the benefit only of the prescribed person.

(C) Licensed persons or unlicensed person 15 years or older may operate an unregistered/unlicensed vehicle if said vehicle is equipped with headlamps, tail lights, mirror and horn may operate an unregistered/unlicensable vehicle in and on the streets of the town (SR 32 and 67).

(D) Excepted use shall still be subject to regulation and operation by all state statutes and relevant and applicable to the operation of motor vehicles.

(E) The Police Chief, or a representative of the office of the Town Police Department, shall issue a three-digit identification number to the operator of the low speed vehicle, personal assist mobility device or unregistered/unlicensable vehicle. The identification number shall be placed on the rear of the low speed vehicle, personal assist mobility device and unregistered/unlicensable vehicle.

(F) Each low speed vehicle, personal assist mobility device or unregistered/unlicensable vehicle shall be registered annually.

(G) There shall be a \$10 annual processing fee for obtaining the registration.

(H) The owner shall provide proof of insurance that coverage is in effect when said low speed vehicle, personal assist mobility device or unregistered/unlicensable vehicle is registered.

(I) The town is not required to register its vehicles.

(Ord. 04-06, passed 9-13-2004; Ord. 2013-09, passed 7-8-2013; Ord. 2013-14, passed 8-12-2014)

§ 70.37 PROHIBITION.

Except as specifically provided in § 70.36, the utilization of low speed vehicles, personal assist mobility devices and

unregistered/unlicensed vehicles in and on the streets of the town (SR 32 and 67 included) is prohibited and same shall be a violation of this traffic code.

(Ord. 04-06, passed 9-13-2004)

§ 70.38 ENFORCEMENT.

The Town Police Chief and/or the town deputies shall enforce the provisions of this traffic code.

(Ord. 04-06, passed 9-13-2004)

§ 70.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99.

(B) A fine shall be imposed for each violation of the following sections:

<i>Code Section</i>	<i>Name of Section</i>	<i>Fine</i>
70.16	Traffic-control devices	\$35.50
70.17	Trucks prohibited on certain streets	\$35.50
70.18	Stop intersections	\$35.50
70.19	One-way streets	\$35.50
70.20	Off-road vehicles:	
<p>First offense: upon the first violation by a vehicle user, the low speed vehicle, personal assist mobility device or unregistered/unlicensable vehicle shall be seized, towed and impounded at the direction of the Town Police Chief and/or deputies for a period of five days. Upon payment of seizure costs, towing and storage fees and the passage of five days, the impounded low speed vehicle, personal assist mobility device and unregistered/unlicensed vehicle shall be released to the owner of the vehicle/device.</p>		
<p>Second offense: upon the second violation by a vehicle user, the low speed vehicle, personal assist mobility device or unregistered/unlicensable vehicle shall be seized, towed and impounded at the direction of the Town Police Chief and/or deputies for a period of five days. Further, the owners of the vehicle shall be fined \$25. After the payment of the \$25 fine by the owners and the passage of five days impoundment along with the payment of seizure costs, towing and storage fees, the impounded low speed vehicle, personal assist mobility device and unregistered/unlicensed vehicle shall be released to the owner of the vehicle/device.</p>		
<p>Third offense: upon the second violation by a vehicle user, the low speed vehicle, personal assist mobility device or unregistered/unlicensable vehicle shall be seized, towed and impounded at the direction of the Town Police Chief and/or deputies for a period of five days. Further, the owners of the vehicle shall</p>		

be fined \$50. After the payment of the \$50 fine by the owners and the passage of five days impoundment along with the payment of seizure costs, towing and storage fees, the impounded low speed vehicle, personal assist mobility device and unregistered/unlicensed vehicle shall be released to the owner of the

vehicle/device.
 Subsequent offenses: upon the subsequent violations of §§ 70.35 through 70.38 by a vehicle user, the low speed vehicle, personal assist mobility device or unregistered/unlicensable vehicle shall be seized, towed and impounded at the direction of the Town Police Chief and/or deputies for a period of ten days. Further, the owners of the vehicle shall be fined \$50. After the payment of the \$50 fine by the owners and the passage of five days impoundment along with the payment of seizure costs, towing and storage fees, the impounded low speed vehicle, personal assist mobility device and unregistered/unlicensed vehicle shall be released to the owner of the vehicle/device.

70.21	Parking regulations	\$25
70.22	Speed limits	\$35.50
70.23	General traffic regulations	\$35.50

(C) Violations of §§ 70.35 through 70.38 shall be subject to a maximum fine of \$50, impoundment of the vehicle and costs of seizure, towing and storage of the vehicle.

(1) First offense: upon the first violation of §§ 70.35 through 70.38 by a vehicle user; the low speed vehicle, personal assist mobility device or unregistered/unlicensable vehicle shall be seized, towed and impounded at the direction of the Town Police Chief and/or deputies for a period of five days. Upon the payment of seizure costs, towing and storage fees and the passage of five days; the impounded low speed vehicle, personal assist mobility device and unregistered/unlicensed vehicle shall be released to the owner of the vehicle/device.

(2) Second offense: upon the second violation of §§ 70.35 through 70.38 by a vehicle user; the low speed vehicle, personal assist mobility device and unregistered/unlicensed vehicle shall be seized, towed and impounded at the direction of the Town Police Chief and/or deputies for a period of five days. Further, the owners of the vehicle shall be fined \$25. After the payment of the \$25 fine by the owner and the passage of five days impoundment along with the payment of the seizure costs, towing and storage impound fees; the Police Chief and/or his or her deputies shall release the vehicle/device to its owner.

(3) Third offense: upon the third violation of §§ 70.35 through 70.38 by a vehicle user; the low speed vehicle, personal assist mobility device and unregistered/unlicensed vehicle shall be seized, towed and impounded at the direction of the Town Police Chief and/or Deputies for a period of five days. Further, the owners of the vehicle shall be fined \$50. After the payment of the \$50 fine by the owner and the passage of five days impoundment along with the payment of the seizure costs, towing and storage impound fees; the Police Chief and/or his or her deputies shall release the vehicle/device to its owner.

(4) Subsequent offenses: upon the subsequent violations of §§ 70.35 through 70.38 by a vehicle user; the low speed vehicle, personal assist mobility device and unregistered/unlicensed vehicle shall be seized, towed and impounded at the direction of the Daleville Police Chief and/or Deputies for a period often days. Further, the owners of the vehicle shall be fined \$50. After the payment of the \$50 fine by the owner and the passage of ten days impoundment along with the payment of the seizure costs, towing and storage impound fees; the Police Chief and/or his or her deputies shall release the vehicle/device to its owner.

(5) Fines assessed: the fines assessed shall be paid to the Clerk-Treasurer of the town to be added to the town's General Fund.

(Ord. 04-06, passed 9-13-2004; Ord. 2013-19, passed 11-18-2013)

CHAPTER 71: PARKING REGULATIONS

71.01	Definition
71.02	Prohibitions
71.03	Enforcement
71.04	Towing/impoundment
71.05	Two-hour parking permission
71.06	Exempt
71.99	Penalty

§ 71.01 DEFINITION.

For the purpose of this chapter, the following definition shall apply unless the context of the ordinance clearly indicates or requires a different meaning.

VEHICLE. Any form of conveyance that is self propelled including, but not limited to, automobiles, trucks of all VD ratings, motorcycles, motorized bicycles or all-terrain vehicles.

(Ord. 2013-5, passed 6-10-2013)

§ 71.02 PROHIBITIONS.

(A) No person shall stop, stand or park a vehicle on any street in the town for a period of more than two hours per 24-hour time frame. A separate offense shall be deemed committed upon each 24-hour time period which a violation occurs or continues.

(B) The owner and/or operator of said vehicles prohibited from parking or partially parking upon the public streets, alleys and highways of the town shall not remove the vehicle from said parking place and immediately return the same to its original location and/or within a short distance of its original location. The vehicle shall not be in the same general location as it was prior to moving the same in order to be in compliance with this chapter.

(Ord. 2013-5, passed 6-10-2013) Penalty, see § 71.99

§ 71.03 ENFORCEMENT.

(A) Any police officer who observes the violation of this chapter shall attach to the offending vehicle a notice to the driver of the vehicle that such vehicle has been parked in violation of same.

(B) If any vehicle is parked unlawfully in violation of any of the provisions of this chapter, and the identity of the driver cannot be determined, the owner or person in whose name the vehicle is registered shall be held, prima facie, responsible for the violation.

(Ord. 2013-5, passed 6-10-2013) Penalty, see § 71.99

§ 71.04 TOWING/IMPOUNDMENT.

(A) In addition to the fine assessed pursuant § 71.03, a vehicle violating any provision of this chapter may be towed and impounded at the owner's expense, such towing and impoundment costs to be paid in full prior to the release of said vehicle.

(B) The police officer observing a vehicle in violation of this chapter has discretion to determine whether said vehicle it is to be towed and impounded if the officer deems that the vehicle is impeding the flow of traffic.

(Ord. 2013-5, passed 6-10-2013)

§ 71.05 TWO-HOUR PARKING PERMISSION.

Individuals may obtain permission from the Town Police Department and/or the Town Council to be able to park said vehicles or partially park said vehicles upon the public streets of the town for a period of time exceeding two hours.

(Ord. 2013-5, passed 6-10-2013)

§ 71.06 EXEMPT.

The following vehicles are exempt from the parking restrictions set forth in this chapter:

- (A) Emergency vehicles when responding to an emergency call or in pursuit of an alleged law violator;
- (B) Highway construction vehicles when engaged in construction work; and
- (C) Other vehicles that are exempt from municipal parking ordinances under applicable law.

(Ord. 2013-5, passed 6-10-2013)

§ 71.99 PENALTY.

A fine of \$25 shall be imposed for each violation of this chapter.

(Ord. 2013-5, passed 6-10-2013)

CHAPTER 72: RECREATIONAL VEHICLES

Section

Snowmobiles; Off-Road Vehicles

- 72.01 Title
- 72.02 Purpose
- 72.03 Authority
- 72.04 Scope
- 72.05 Violations

Skateboards and Similar Devices

- 72.20 Definitions
- 72.21 Application
- 72.22 Compliance required
- 72.23 Prohibitions on ramps and incline devices

- 72.99 Penalty

SNOWMOBILES; OFF-ROAD VEHICLES

§ 72.01 TITLE.

This subchapter shall be known as the "Snowmobile Ordinance of the Town of Daleville, Indiana", may be cited as such, and will be so referred to herein.

(Ord. 89-3, passed 3-6-1989)

§ 72.02 PURPOSE.

The purpose of this subchapter is to provide for the protection, life, health, environment, public safety and general welfare.

(Ord. 89-3, passed 3-6-1989)

§ 72.03 AUTHORITY.

Pursuant to I.C. 14-6-1, as amended, the operation of off-road recreational vehicles within the town is prohibited.

(Ord. 89-3, passed 3-6-1989) Penalty, see § 72.99

§ 72.04 SCOPE.

This prohibition applies particularly to snowmobiles but also to other small recreational vehicles especially designed for off-road use.

(Ord. 89-3, passed 3-6-1989)

§ 72.05 VIOLATIONS.

It shall be unlawful for any person to operate any off-road recreational vehicle, i.e. snowmobiles, mini-bikes, three- and four-wheeled motorcycles and the like within the town.

(Ord. 89-3, passed 3-6-1989) Penalty, see § 72.99

SKATEBOARDS AND SIMILAR DEVICES

§ 72.20 DEFINITIONS.

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

BICYCLE. A two wheeled vehicle powered by peddling used to traverse hard surfaces such as a floor, yard, sidewalk or street.

SCOOTER. An item of transportation consisting of handle bars and a narrow platform with a wheel at each end, mechanized or not mechanized, not exclusive to wood, and ridden on a hard surface such as a floor, sidewalk or street

SKATEBOARD. An item of transportation consisting of a short, oblong board, not exclusive to wood, with a pair of small wheels at each end, and ridden on a hard surface such as a floor, sidewalk or street.

SKATES. Items of transportation consisting of rollerized shoes, inline or otherwise configured, and used to traverse hard surfaces such as a floor, sidewalk or street.

(Ord. 06-05, passed 10-2-2006)

§ 72.21 APPLICATION.

This subchapter will apply to all streets, sidewalks, parking lots, alleys, driveways and parks found or located within the town limits.

(Ord. 06-05, passed 10-2-2006)

§ 72.22 COMPLIANCE REQUIRED.

No person shall ride or operate a skateboard, scooter or use roller skates within the town without complying with this section and any other applicable ordinances or statutes as follows.

(A) *Yielding to pedestrians.* Whenever any person is riding a skateboard or scooter or using roller skates within town limits on a hard surface as above described where pedestrians may be found or encountered; such person shall yield the right-of-way to any pedestrian and shall not approach, overtake or pass such pedestrian in a reckless or careless manner nor pass such pedestrian except in a single file if such person is riding or skating with others. It shall be the duty of the oncoming person to verbally warn the pedestrian being overtaken of the person's intention to pass the pedestrian and upon which side the overtaking shall occur.

(B) *Riding on certain structures or devices.* No person shall skateboard, scooter or skate on any public bench, table, planter wall, playground equipment (except the skateboard facility in the town's main park next to Town Hall), picnic tables, curbs or other structures which are not intended for either pedestrian or vehicular use, or jump, or step on or off such devices or structures. No person shall skateboard, scooter or skate on any steps, curbs or on handicap ramps.

(C) *Reckless or dangerous riding.* No person shall skateboard, scooter or roller skate in a reckless or careless manner nor in a manner that is likely to result in injury to any person or property.

(D) *Riding on private property without permission.* No person shall skateboard, scooter or skate on private property without first obtaining permission of the owner of said property.

(E) *Riding while attached to vehicle.* No person shall skateboard, scooter or skate while aided by a motorized vehicle.

(F) *State Roads 32, 67 and Walnut Street.* No person shall operate a skateboard, scooter or skate on State Roads 32 or 67 or upon Walnut Street within the town limits.

(G) *Safety equipment.* No person shall skateboard, scooter or skate within the town limits without a helmet designed to protect the user and fitted to reasonably protect the person.

(Ord. 06-05, passed 10-2-2006) Penalty, see § 72.99

§ 72.23 PROHIBITIONS ON RAMPS AND INCLINE DEVICES.

No person shall construct, establish, maintain, use or place a ramp or other incline device to be used for skateboarding, scootering or skating upon any public sidewalk, roadway, park or parking lot to be used for skateboarding, scootering or skating within the town limits.

(Ord. 06-05, passed 10-2-2006) Penalty, see § 72.99

§ 72.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99.

(B) Violation of § 72.05 will result in the imposition against the offender of the sum of \$25.

(C) (1) Any person found in violation of §§ 72.20 through 72.23 may be fined \$25 for a first offense, and \$50 for a second offense. Any person committing a third or subsequent violation of §§ 72.20 through 72.23 may be liable for a fine of up to \$500.

(2) Furthermore, whoever shall violate any provision of §§ 72.20 through 72.23 may have the skateboard confiscated immediately by any law enforcement officer acting in his or her official capacity. The device confiscated shall be held for a maximum of 60 days or the fine herein provided paid, after which time said skateboard, scooter or roller skates, may be sold at auction or destroyed. The individual who owns any such confiscated device shall have the right to repossess the device upon proof of payment of any fine and other costs for which the individual is responsible as a result of the violation.

(3) Furthermore, anyone caught using a bicycle or scooter, on the skateboard devices located in the Walnut Street Park in violation of § 72.23, shall immediately have his or her bicycle seized and confiscated by the Police Department and same shall be held by the Police Department for a period of at least 30 days, but no more than 60 days; upon the payment of the fine imposed by division (C)(1) above, the Police Department shall, upon proof of fine payment, release the bicycle to its owner. Should said bicycle not be so redeemed, it shall be sold or destroyed.

(4) Unredeemed items of personal (skateboards, skates, scooters or bicycles) may be donated to charity instead of destroyed as herein provided.

(5) A violation of §§ 72.20 through 72.23 may be subject to a fine as set forth in §§ 72.20 through 72.23 and subject to prosecution in a county court of law.

(Ord. 89-3, passed 3-6-1989; Ord. 06-05, passed 10-2-2006)

CHAPTER 73: TRAFFIC SCHEDULES

Schedule

- I. Speed limits
- II. Semi-tractor trailers
- III. Stop intersections

SCHEDULE I. SPEED LIMITS.

(A) (1) The following speed limit shall be in effect:

<i>Speed Limit</i>	<i>Location</i>
20 mph	Daleville Road

(2) There be installed signs along said road establishing said area as a school zone and informing the vehicular traffic of such.

(B) (1) The following maximum speed limits shall apply:

<i>Speed Limit</i>	<i>Location</i>
25 mph	3rd Street
25 mph	4th Street
25 mph	5th Street
25 mph	6th Street

(2) The town is authorized to have its employees post traffic-control signs notifying the traveling public of the maximum speed limit established for 3rd Street, 4th Street, 5th Street and 6th Street.

(3) An officer of the Police Department may issue an ordinance violation citation to a person who violates this division (B).

(4) Any person who violates this division (B) shall be fined not less than \$50 and not more than \$500.

(C) (1) The maximum speed limit on West Heather Lane, Katriene Drive, Katriene Circle and West Hilltop Circle shall be

reduced from 30 mph to 25 mph.

(2) The town is authorized to have its employees post traffic-control signs notifying the traveling public of the maximum speed limit established West Heather Lane, Katriene Drive, Katriene Circle and West Hilltop Circle.

(3) An officer of the Police Department may issue an ordinance violation citation to a person who violates this division (C).

(4) Any person who violates this division (C) shall be fined not less than \$50, and not more than \$500.

(Ord. 90-28, passed 12-3-1990; Ord. 2012-10, passed 8-16-2012; Ord. 2013-10, passed 7-8-2013)

SCHEDULE II. SEMI-TRACTOR TRAILERS.

(A) (1) Semi-tractor trailers be prohibited from entering Walnut Street from State Road 32 and State Road 67, with the exception of local truck traffic.

(2) Any person violating any provision of this division (A) shall be fined \$50, payable to the Clerk-Treasurer of the town immediately upon receipt of said citation for violation.

(3) If said violation is received after regular hours of the Town Clerk, the \$50 fine shall be placed in a sealed envelope and paid to the officer issuing the citation.

(4) If said \$50 fine is not paid within ten days, the violator is responsible for the fine, plus court costs and attorney's fees in enforcing this division (A).

(B) Prohibiting semi-tractor/trailer, bulk hauling, commercial trucks from Walnut, River Road, Edwards and Daleville Road.

(1) It shall be unlawful and a violation of this division (B) for any person to operate a semi- tractor/ trailer (also including straight trucks), bulk hauling or commercial trucks on the following streets of Daleville: Walnut Street between SR 32 and 67, River Road, Edwards Street, Washington Street and Daleville Road within the town limits.

(2) The town will post signs warning persons operating the trucks so prohibited at the Intersections of SR 32, 67 and Walnut Street, the intersection of Indiana State Road 67 and Edwards Street. Further, the town will post prohibition signs at the town limits of River Road and Daleville Road.

(3) Application of this division (B) shall except semi-tractor/trailer (also including straight trucks), bulk hauling or commercial trucks from making local deliveries to addresses within the town limits. Further, persons operating said semi-tractor/trailer (also including straight trucks), bulk hauling or commercial trucks who actually reside within the town limits, may use the streets of the town coming and going to their place of residence in said trucks if same shall be unloaded.

(4) Violation of division (B) shall be a Class C infraction subject to imposition of a fine of up to \$500, plus costs of enforcement and court costs as provided by law.

(5) The enforcement of division (B) shall be by the Police Department.

(Ord. 94-13, passed 8-1-1994; Ord. 2010-01, passed 7-12-2010)

SCHEDULE III. STOP INTERSECTIONS.

(A) *Stop streets, generally.*

(1) 4th Street at Reserve Street, same lying within the town limits, shall henceforth be a stop street.

(2) The entrance to said intersection shall be duly marked by signage as stop and as said sign is regulated by statute and the current State Department of Transportation regulations and guidelines.

(3) Upon the placing of the stop sign so regulating the intersection, all persons operating a motor vehicle with the town limits shall stop at said intersection and thereafter proceed cautiously, yielding to vehicles that are not required to stop at Reserve Street.

(4) Violation of this division (A) shall be a Class C infraction and same will be enforced as a Class C infraction as provided by law.

(B) *Three-way stops.*

(1) (a) The Town Council is duly authorized by the laws of the state to undertake to enact whatever traffic laws, regulations or signals that may be required by the town in order to protect the safety of the persons and property of the town.

(b) The Town Council is empowered by statute to erect traffic controls at locations deemed necessary by the Town Council for the protection and safety of the persons and property of the town.

(c) The town has erected stop signs designating a three-way stop at the "T" road at Second and Bronco Drive, and that said signs are erected within the authority of the Town Council for the purpose of protecting the persons and property of the town.

(d) The town empowers its law enforcement authorities to enforce the traffic laws of the town and to specifically enforce the three-way stop sign regulation at the corner of Second and Bronco Drive in the town.

(2) An ordinance establishing a three-way stop at the intersection of Heather Lane and River Road.

(a) The intersection of Heather Lane and River Road, same lying within the town limits, shall henceforth be a three-way stop intersection.

(b) The entrances to said intersection shall be duly marked by signage as stops and as said signage is regulated by statute and the current State Department of Transportation regulations and guidelines.

(c) Upon the placing of stop signs so regulating the intersection, all persons operating a motor vehicle within the town limits shall stop at all three entrances of said intersection and thereafter proceed cautiously, yielding to vehicles that are not required to stop or in sequence to such other vehicles who are also required to stop before proceeding through the intersection of Heather Lane and River Road.

(d) Violation of this division (B)(2) shall be a Class C infraction and same will be enforced as a Class C infraction as provided by law.

(C) *Four-way stops.*

(1) (a) The intersection of Daleville Road and Hickory Lane, same lying within the town limits, shall henceforth be a four-way stop intersection.

(b) The entrances to said intersection shall be duly marked by signage as stops and as said signage is regulated by statute and the current State Department of Transportation regulations and guidelines.

(c) Upon the placing of stop signs so regulating the intersection, all persons operating a motor vehicle within the town limits shall stop at all four entrances of said intersection and thereafter proceed cautiously, yielding to vehicles that are not required to stop or in sequence to such other vehicles who are also required to stop before proceeding through the intersection of Daleville Road and Hickory Lane.

(d) Violation of this division (C)(1) shall be a Class C infraction and same will be enforced as a Class C infraction as provided by law.

(2) *Establishing a four-way stop at the intersection of 4th Street and Edwards Street.*

(a) The intersection of 4th Street and Edwards Street, same lying within the town limits, shall henceforth be a four-way stop intersection.

(b) The entrances to said intersection shall be duly marked by signage as stops and as said signage is regulated by statute and the current State Department of Transportation regulations and guidelines.

(c) Upon the placing of stop signs so regulating the intersection, all persons operating a motor vehicle within the town limits shall stop at all four entrances of said intersection and thereafter proceed cautiously, yielding to vehicles that are not required to stop or in sequence to such other vehicles who are also required to stop before proceeding through the intersection of Fourth Street and Edwards Street.

(d) Violation of this division (C)(2) shall be a Class C infraction and same will be enforced as a Class C infraction as provided by law.

(3) *Establishing a four-way stop at the intersection of 6th Street and Edwards Street.*

(a) The intersection of 6th Street and Edwards Street, same lying within the town limits, shall henceforth be a four-way stop

intersection.

(b) The entrances to said intersection shall be duly marked by signage as stops and as said signage is regulated by statute and the current State Department of Transportation regulations and guidelines.

(c) Upon the placing of stop signs so regulating the intersection, all persons operating a motor vehicle within the town limits shall stop at all four entrances of said intersection and thereafter proceed cautiously, yielding to vehicles that are not required to stop or in sequence to such other vehicles who are also required to stop before proceeding through the intersection of 6th Street and Edwards Street.

(d) Violation of this division (C)(3) shall be a Class C infraction and same will be enforced as a Class C infraction as provided by law.

(Ord. 94-16, passed 12-19-1994; Ord. 02-1, passed 9-9-2002; Ord. 02-2, passed 9-9-2002; Ord. 02-3, passed 9-9-2002; Ord. 04-08, passed 9-13-2004; Ord. 05-01, passed 4-11-2005)

CHAPTER 74: PARKING SCHEDULES

Schedule

- I. No parking
- II. Loading zone
- III. Limited parking

SCHEDULE I. NO PARKING.

(A) The streets or parts of streets described in the table below are designated as no parking zones.

(1) Service trucks may be parked on the streets while operators are engaged in the repair or service of utilities if no suitable off-street parking is available.

(2) Delivery trucks and moving vans may be parked on the streets while loading or unloading cargo.

(3) Any violation of this section is a Class C violation and subject to a \$10 fine.

(B) The streets or parts of streets described in the table below, are designated as no parking zones. When appropriate signs are erected, no person shall park a vehicle upon any of the streets or parts of streets at the times designated in the schedule. No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic, or in compliance with the law or in direction of a police officer or traffic-control device, in any of the following places:

- (1) On a sidewalk;
- (2) In front of a public or private driveway;
- (3) Within an intersection; or
- (4) Within 15 feet of a fire hydrant.

<i>Street</i>	<i>From</i>	<i>To</i>	<i>Side of Street</i>	<i>Time of Restriction</i>	<i>Ord. Passed</i>
Bronco Drive	2nd Street	6th Street	East/West	Anytime	3-9-1998
Circle Drive					5-7-2001

Walnut Street	West Main Street	Commerce Road	East/West	Anytime	1-5-1998
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(Ord. 98-1, passed 1-5-1998; Ord. passed 3-9-1998; Ord. 01-1, passed 5-7-2001) Penalty, see § 10.99

SCHEDULE II. LOADING ZONE.

(A) No person shall stop, stand or park any motor vehicle, or vehicle of any kind, on either the west side or east side of Walnut Street within the aforementioned boundaries, with the sole exception to said prohibition to be loading and unloading as permitted in division (B) below.

(B) There will be a 30-minute loading and unloading zone on the west side of Walnut Street described as follows:

(1) Two hundred twelve feet from the railroad track to SR 32;

(2) On the east side of Walnut Street as follows: 172 feet from the railroad track to State Road 32; and

(3) There will be no parking at all for the purpose of loading or unloading on the west side of Walnut Street from the railroad track south to 3rd Street.

(C) Parking on the west side of Walnut Street in front of the library shall be governed by signs setting out 30-minute parking in specified areas where said signs are erected.

(D) The violation of this schedule will result in the imposition of a reasonable fine in the amount of \$10 to be paid within ten days to the Clerk-Treasurer of the town.

(E) Any vehicle parked in violation of this schedule for more than two hours after notice of violation has been affixed to said vehicle shall be towed with all reasonable charges to be paid by the owner.

(Ord. 92-4, passed 3-2-1992)

SCHEDULE III. LIMITED PARKING.

(A) (1) No person shall stop or park any motor vehicle or vehicle of any kind, on High School Street in the town between the hours of 7:00 a.m. and 5:00 p.m. from the exit of the High School parking lot south to the entrance of the Elementary School parking lot.

(2) The violation of this schedule will result in the imposition of a reasonable fine in the amount of \$25 to be paid within 30 days to the Clerk-Treasurer.

(3) Any vehicle parked in violation of this division (A) will immediately be towed with all reasonable charges to be paid by the owner.

(B) (1) No person shall park any motor vehicle or vehicle of any kind on the south side of 4th Street between Walnut Street and High School Street; that no person shall park any motor vehicle or vehicle of any kind on the west side of Highschool Street;

(2) No delivery trucks in excess of eight feet in height are allowed on East 4th Street.

(3) The violation of this division (B) will result in the imposition of a reasonable fine in the amount of \$10 to be paid within ten days to the Violation Clerk of the town.

(4) Any vehicle parked in violation of this division (B) will immediately be towed with all reasonable charges to be paid by the owner.

(Ord. 89-7, passed 4-10-1989; Ord. 89-14, passed 12-4-1989)

90. ANIMALS

91. ABANDONED VEHICLES

92. NOISE

93. FAIR HOUSING

94. BURNING

95. PUBLIC NUISANCES

96. STREETS AND SIDEWALKS

CHAPTER 90: ANIMALS

Section

- 90.01 General provisions
- 90.02 Definitions
- 90.03 Duty to control animals
- 90.04 Impoundment/disposition of unrestrained dogs and nuisance animals
- 90.05 Liability of owner for animal found at large
- 90.06 Confinement or muzzling dogs upon order of Police Department
- 90.07 Control and disposition of vicious animals
- 90.08 Loud animals that disturb the peace prohibited
- 90.09 Name tags for dogs required
- 90.10 Keeping of wild or vicious animals for display or exhibition prohibited
- 90.11 Treatment and care of animals
- 90.12 Removal of animal waste by owner of animal
- 90.13 Removal and disposition of dead animals
- 90.14 Restrictions on the operation of kennels, stables and other animal pens and shelters
- 90.15 Restriction on the sale of young animals

- 90.99 Penalty

§ 90.01 GENERAL PROVISIONS.

(A) *Town's authority to regulate.* The town may regulate the conduct, use or possession of property which might endanger the public health, safety or welfare of its citizens.

(I.C. 36-8-2-4)

(B) *Preservation of public peace and order.* The town may establish, maintain and operate a police and law enforcement system to preserve public peace and order and may provide facilities and equipment for that system.

(I.C. 36-8-2-2)

(C) *Offense against public health, order and decency.*

(1) All offenses against public health, order or decency not addressed by this chapter shall be governed by applicable state statute.

(2) Except as specifically set forth herein, any violation of any provision of this chapter shall be subject to the penalties hereinafter provided.

(Ord. 11-08, passed 9-12-2011)

Cross-reference:

Citations, see § 90.99

§ 90.02 DEFINITIONS.

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

ANIMAL. Any live vertebrate creature domestic or wild.

KENNEL. Any premises wherein any person engages in the business of boarding, breeding, buying, letting for hire, training-for a fee or selling cats, dogs or any other animal.

OWNER. Any person, partnership or corporation owning, keeping or harboring one or more animals. An animal shall be deemed harbored if it is fed or sheltered for three or more consecutive days.

PET. Any animal kept for pleasure and not denied by state law or by this Code or any ordinance of the town.

PUBLIC NUISANCE. Any animal that:

- (1) Runs at large;
- (2) Attacks other animals;
- (3) Molests passersby or passing vehicles;
- (4) Barks, whines or howls in an excessive, continuous or untimely fashion;
- (5) Damages private or public property;
- (6) Runs at large while in heat;
- (7) Trespasses on school grounds;
- (8) Leaves excrement waste at any place other than within the boundaries of the owners real estate; or
- (9) In any way disrupts the quiet enjoyment of any other citizen in the town.

RESTRAINED ANIMAL. Any animal:

- (1) Secured by a leash or led or under the control of a responsible person and obedient to the person's commands; or
- (2) Within the real property limits of its owner.

VICIOUS ANIMAL. An animal that constitutes a physical threat to human beings or other animals. The determination of viciousness shall not be based on a given event. All animals shall be presumed vicious and same shall be a rebuttable presumption subject to proof to the contrary.

WILD ANIMAL. An animal whose species usually:

- (1) Lives in the wild; or
- (2) Is not domesticated.

(Ord. 11-08, passed 9-12-2011)

§ 90.03 DUTY TO CONTROL ANIMALS.

(A) No person shall allow any cattle, sheep, swine, fowl, dogs, cats or other domestic animals to run at large in the town. To ***RUN AT LARGE*** shall be defined as any animal who is outside the owner's real estate and unattended and under immediate control.

(B) Every owner shall exercise proper care and control of his or her animals to prevent them from becoming a public nuisance.

(C) Every female dog or cat in heat shall be confined in a building or secure enclosure in such a manner that such female dog or cat cannot come into contact with another animal other than for supervised and planned breeding. This section shall not apply to neutered animals.

(D) No animals shall be allowed on any lot, other than a domesticated animal no larger than the largest of the registered dog breeds, and no more than two animals may be kept outside of any dwelling, whether in a pet house or otherwise.

(E) The town shall not be responsible for catching or disposing of wild animals.

(I.C. 15-2.1-21-8) (Ord. 11-08, passed 9-12-2011) Penalty, see § 90.99

§ 90.04 IMPOUNDMENT/DISPOSITION OF UNRESTRAINED DOGS AND NUISANCE ANIMALS.

(A) Unrestrained dogs, cats and other nuisance animals may be taken by a town police officer or other designated person and impounded in an animal shelter and there confined in a humane manner. Further, the town may from time to time contract with outside persons, business entities or other local governmental entities the right to enforce the control of nuisance animals within the town through seizure, impoundment and euthanasia of the animals.

(B) If, by a license tag or other means, means the owner of an impounded animal can be identified, the police officer or other designated person or entity shall upon impoundment notify the owner by telephone or certified mail.

(C) Once an animal has been impounded, the owner of said animal may redeem the animal upon showing proof of all usual and standard vaccinations and receipts of payments of all and any other documentation as required by an outside person, local governmental entity or business entity in the event that the town has entered into an agreement for the impoundment of animals.

(1) All costs of impounding the animal shall be paid directly to the person, local governmental entity or business entity in the event that the town has contracted for said impoundment services.

(2) Animals impounded under any section of this chapter shall be released only upon the approval of, and the sole discretion of a town police officer, upon his or her determination that the animal is not a health or safety threat to other animals or citizens of the town and that all fees above provided for are paid. In the event that the town has contracted without outside persons, local governmental entities or business entities for impoundment services, that outside person, local governmental entity or business entity shall have the sole digression as to releasing the animal to the owner upon his or her determination that the animal is not a health or safety threat to other animals or citizens of the town.

(3) The decision made as to the release of the animal shall be binding and final.

(D) In addition to cost of the impoundment, the owner may be subject to other costs, expenses and fines defined as made otherwise set out within this chapter as related to the nuisance animal.

(Ord. 11-08, passed 9-12-2011; Ord. 2013-04, passed 3-18-2013) Penalty, see § 90.99

§ 90.05 LIABILITY OF OWNER FOR ANIMAL FOUND AT LARGE.

(A) In addition to or in lieu of impounding an animal found at large, the police officer may issue to the known owner of such animal a notice of ordinance violation.

(B) The notice of violation shall impose upon the owner a penalty of a \$125 fine for a dog and a \$90 fine for a cat. The fine for any subsequent violation occurring within the same calendar year shall be the sum of \$150 for matters involving a dog and the sum of \$115

formatters involving a cat.

(C) The owner shall be responsible for repaying the town for any boarding or other fees charged by the animal shelter or any other place where impoundment may occur.

(D) In addition to the above, the owner shall be responsible for any court costs and attorneys' fees associated with collection of the above amounts of fines and costs.

(Ord. 11-08, passed 9-12-2011; Ord. 2013-04, passed 3-18-2013) Penalty, see § 90.99

§ 90.06 CONFINEMENT OR MUZZLING DOGS UPON ORDER OF POLICE DEPARTMENT.

(A) Whenever the Town Police Department determines that there is danger of the existence or spread of hydrophobia within or near the town, it may issue an order requiring any person owning, possessing or having the care and control of any dog either to confine or to muzzle such animal for a term of not less than 30 not more than 60 days after the date of such order.

(B) The order of the Town Police Department shall be published in one issue of a daily or weekly newspaper published in the county or a printed copy thereof shall be posted in at least three public places in the town.

(C) Any person subject to the order of the Town Police Department shall, during the period of time specified therein:

(1) Confine such animal so as to prevent it from biting any other animal or being bitten thereby; or

(2) Securely and effectively muzzle it in such manner as to make it impossible for the animal to bite any person or any other animal.

(D) No muzzle is lawful unless it is of such form, material and strength, and so attached and fastened as to effectively prevent an animal from biting.

(E) Any dog that is found running at large within the town without a muzzle during the time specified in the order of the Town Police Department is declared to be an immediate nuisance which may be summarily eliminated by any means deemed appropriate by any town police officer.

(F) Upon the issuance and publication of the order of the Town Police Department and after the expiration of 24 hours from such publication, the law enforcement authorities may kill any dog running at large within the town during the time specified in such order unless it is securely and effectively muzzled as required by this section.

(Ord. 11-08, passed 9-12-2011) Penalty, see § 90.99

§ 90.07 CONTROL AND DISPOSITION OF VICIOUS ANIMALS.

(A) No person shall keep or permit any vicious animal within the town unless the animal is secured by a chain on his or her premises which shall be fenced or is muzzled to prevent the animal from biting. Further, the owner of any animal deemed vicious or used to provide protection for an owner or owner's property must post a conspicuous sign warning the public that a dangerous animal may be found on the premises. Failure to post a sign shall also constitute a violation of this chapter.

(B) Any dog that has bitten or attacked any person shall be considered vicious and shall be impounded for a period of ten days or so long as the Town Police Department may otherwise determine. In the event that the town has contracted with an outside person, local governmental entity or business entity for animal care services, that outside person, business entity or local governmental entity shall be the party to make the decision as to how long said vicious animal shall be impounded.

(C) Any unmuzzled animal that is found running at large and is believed to be vicious may be destroyed by law enforcement authorities summarily.

(Ord. 11-08, passed 9-12-2011; Ord. 2013-04, passed 3-18-2013) Penalty, see § 90.99

§ 90.08 LOUD ANIMALS THAT DISTURB THE PEACE PROHIBITED.

No person shall keep within the town any animal that by loud and frequent barking, howling, yelping or other animal noises disturbs

the peace and quiet or annoys any citizens.

(Ord. 11-08, passed 9-12-2011) Penalty, see § 90.99

§ 90.09 NAME TAGS FOR DOGS REQUIRED.

(A) No owner or person having custody of any dog or cat shall allow such dog or cat to be on the streets or other public places or upon the lands of others in the town unless such dog or cat is wearing a name tag that gives the name and address of the owner or person having custody of such dog.

(B) Such tags are readily available from all veterinarians throughout the state and are also issued at times normal and necessary vaccinations are administered.

(Ord. 11-08, passed 9-12-2011) Penalty, see § 90.99

§ 90.10 KEEPING OF WILD OR VICIOUS ANIMALS FOR DISPLAY OR EXHIBITION PROHIBITED.

No person shall keep or permit to be kept on his or her premises any wild or vicious animal for display or for exhibition purposes, whether gratuitously or for a fee.

(Ord. 11-08, passed 9-12-2011) Penalty, see § 90.99

§ 90.11 TREATMENT AND CARE OF ANIMALS.

(A) No owner or person responsible shall fail to provide his or her animals with sufficient good and wholesome food and water, proper shelter and protection from the weather, veterinary care when needed to prevent suffering, and humane care and treatment.

(B) No person shall beat, treat cruelly, torment, overload, overwork or otherwise abuse an animal, or cause, instigate or permit any dogfight, cockfight or other combat between animals or between animals and humans.

(C) No owner of an animal shall abandon an animal.

(D) No person shall knowingly expose any known poisonous substance, whether mixed with food or not, so that the substance is liable to be eaten by an animal; however, it is not unlawful for a person to expose on his or her own property common rat poison mixed only with vegetable substance.

(Ord. 11-08, passed 9-12-2011) Penalty, see § 90.99

§ 90.12 REMOVAL OF ANIMAL WASTE BY OWNER OF ANIMAL.

The owner of every animal shall be responsible for removal of any excreta deposited by the animal on public walks, recreation areas or private property not owned by the animal owner. All animal owners shall walk their pets having a scooper or plastic bag handy to remove said excrement.

(Ord. 11-08, passed 9-12-2011) Penalty, see § 90.99

§ 90.13 REMOVAL AND DISPOSITION OF DEAD ANIMALS.

(A) Any person who becomes apprized of the death of any animal owned by him or her within the town shall, within six hours thereafter, cause the animal to be removed and buried or disposed of so as not to become a nuisance.

(B) When such animal is killed by any person other than its owner and the person who killed it is known, the owner shall not be compelled to remove the animal, and the animal shall be removed by the person who killed it; however, in the case of accidental death, when the owner is known, it shall be the obligation of the person causing the demise of the animal to contact the owner post haste and said owner shall be obligated to dispose of the animal immediately.

(Ord. 11-08, passed 9-12-2011) Penalty, see § 90.99

§ 90.14 RESTRICTIONS ON THE OPERATION OF KENNELS, STABLES AND OTHER ANIMAL PENS AND SHELTERS.

No person shall keep within the town any pig sty, kennel, stable or other animal pen or shelter in such a manner as to create or cause any offensive or noxious smell or condition or maintain or use any such animal pen or shelter constructed in such manner as to permit the contents of filth therein to run or wash upon the premises owned or occupied by another or upon any street or other public place.

(Ord. 11-08, passed 9-12-2011) Penalty, see § 90.99

§ 90.15 RESTRICTION ON THE SALE OF YOUNG ANIMALS.

(A) No person shall sell or offer for sale, raffle, offer or give as a prize, premium or advertising device, or display in any store, shop, carnival or other place any chick, duckling, gosling or rabbit that has been dyed or otherwise colored artificially.

(B) No person shall sell or offer for sale, raffle or offer or give as a prize, premium or advertising device, or display in any store, shop, carnival or advertising device any chicks, ducklings or goslings younger than four weeks of age in quantities of less than 12 birds to each individual person.

(C) All stores, shops, vendors and others offering chicks, ducklings or goslings for sale shall provide and operate brooders or other heating devices that may be necessary to maintain the chicks, ducklings or goslings in good health and shall keep adequate food and water available to the birds at all times.

(D) No person shall raffle or offer or give as a prize, premium or advertising device any live vertebrate animal.

(E) This section does not apply to sales between individuals not engaged in breeding animals for profit. This section does apply to commercial breeders of animals which shall specifically be prohibited within the town limits.

(Ord. 11-08, passed 9-12-2011) Penalty, see § 90.99

§ 90.99 PENALTY.

(A) (1) Any person who violates any provision of the chapter commits a Class C ordinance violation and may be fined not less than \$50. Each day that a violation continues may be deemed a separate violation and shall carry a \$50 fine unless specifically stated otherwise herein.

(2) Where a person commits multiple violations of this chapter the sum of all fines shall not exceed in the aggregate \$2,500.

(3) Offenders shall not only be liable for fines and penalties, but also all town costs in pursuing ordinance violations including attorney's fees in prosecuting said violations as well as collecting all fines and costs.

(4) Whenever exact ownership of an animal cannot be exactly determined and the citing town police officer in the exercise of his or her duty and discretion concludes the animal is family owned, both husband and wife or significant other will be deemed the owner of the animal jointly and severally.

(B) An officer of the Town Police Department may issue a town ordinance violation citation to any person who violates this chapter. The first citation issued to an individual who is violating this chapter with regard to a dog shall impose a \$125 fine. The first citation issued to an individual concerning a cat shall impose a \$90 fine per cat. Each subsequent citation issued to an individual concerning a dog shall be the sum of \$150. Each subsequent citation issued to an individual concerning a cat shall be the sum of at least a \$115.

(Ord. 11-08, passed 9-12-2011; Ord. 2013-04, passed 3-18-2013)

Section

- 91.01 Definitions
- 91.02 Abandonment of vehicles
- 91.03 Leaving an abandoned vehicle on the streets
- 91.04 Vehicles deemed not to be abandoned
- 91.05 Tagging abandoned vehicle or parts
- 91.06 Officer's abandoned vehicle report
- 91.07 Disposition of abandoned vehicles

- 91.99 Penalty

§ 91.01 DEFINITIONS.

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

ABANDONED VEHICLE. The following:

- (1) A vehicle located on public property illegally;
- (2) A vehicle left on public property without being removed for 24 hours;
- (3) A vehicle located on public property in such a manner as to constitute a hazard or objection to the movement of pedestrian or vehicular traffic on a public right-of-way;
- (4) A vehicle that has remained on private property without the consent of the owner or person in control of that property for more than 48 hours;
- (5) A vehicle from which the engine, transmission or differential has been removed or that is otherwise partially dismantled or inoperable and left on public property;
- (6) A vehicle that has been removed by a towing service or public agency upon request of an officer enforcing a statute or an ordinance if the impounded vehicle is not claimed or redeemed by the owner or the owner's agent within 20 days after the vehicle's removal; or
- (7) A vehicle that is at least three model years old, is mechanically inoperable, and is left on private property continuously in a location visible from public property for more than 20 days. A vehicle covered by a tarpaulin or other plastic, vinyl, rubber, cloth or textile covering is considered to be visible; and/or
- (8) A vehicle intended to be used in a demolition derby that does not have a license plate for a period of time of 30 days before a demolition derby and not longer than one week after the demolition derby if operable. Vehicles intended to be used in a demolition derby that does not have a license plate on a property for a period of time greater than 30 days before a demolition derby or greater than one week after the demolition derby if the vehicle is operable shall be deemed abandoned. A vehicle used in a demolition derby that is inoperable shall be deemed **ABANDONED**.

STREET or HIGHWAY. The entire width between the boundary lines of every way public maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

VEHICLE. A machine propelled by power other than human power designed to travel along the ground by use of wheels, treads, runners or slides and transport persons or property or pull machinery and shall include, without limitation, automobile, truck, trailer, motorcycle and tractor.

(Ord. 2013-07, passed 5-13-2013)

§ 91.02 ABANDONMENT OF VEHICLES.

No person shall abandon any vehicle within the corporate boundaries of the town and no person shall leave any vehicle at any place within the town for such time and under such certain circumstances as to cause such vehicle reasonably to appear to have been abandoned.

(Ord. 2013-07, passed 5-13-2013) Penalty, see § 91.99

§ 91.03 LEAVING AN ABANDONED VEHICLE ON THE STREETS.

No person shall leave any abandoned, partially dismantled, non-operating, wrecked or junked vehicle on any street or highway within the town.

(Ord. 2013-07, passed 5-13-2013) Penalty, see § 91.99

§ 91.04 VEHICLES DEEMED NOT TO BE ABANDONED.

This chapter shall not apply to the following:

- (A) A vehicle in an enclosed building;
- (B) A vehicle on the premises of a business enterprise operated in a lawful place and manner when necessary to the operating of such business enterprise;
- (C) A vehicle in an appropriate junkyard or scrapyard maintained in town;
- (D) A vehicle used in participation of a demolition derby;
- (E) A vehicle located on a vehicle sale lot;
- (F) A vehicle stored as the property of a member of the armed forces of the United States who is on active duty assignment; or
- (G) A vehicle registered and licensed as an antique vehicle.

(Ord. 2013-07, passed 5-13-2013)

§ 91.05 TAGGING ABANDONED VEHICLE OR PARTS.

The Police Chief or any member of the Police Department who finds or is notified that a vehicle or parts believed to be abandoned shall attach in a prominent place a notice tag containing the following information:

- (A) The date, time, officer's name, the Police Department's address and telephone number to contact for more information;
- (B) The vehicle or parts are considered abandoned;
- (C) The vehicle or parts will be removed after 72 hours;
- (D) The person who owns the vehicle will be held responsible for all costs incidental to the removal, storage and disposal of the vehicle; and
- (E) The person who owns the vehicle may avoid costs by removal of the vehicle or parts within 72 hours.

(Ord. 2013-07, passed 5-13-2013)

§ 91.06 OFFICER'S ABANDONED VEHICLE REPORT.

If a vehicle or part tagged under § 91.05 is not removed within the 72-hour period, the Police Chief or any member of the Police Department shall prepare a written abandoned vehicle report of the vehicle or parts, including information on the condition, missing

parts and other facts that might substantiate the estimated market value of the vehicle or parts. Photographs shall be taken to describe the condition of the vehicle or parts.

(Ord. 2013-07, passed 5-13-2013)

§ 91.07 DISPOSITION OF ABANDONED VEHICLES.

(A) In the event that a vehicle or part tagged under § 91.05 is not removed within the 72-hour period, and if in the opinion of the Police Chief or any member of the Police Department, the market value of an abandoned vehicle or parts less than \$500, the Police Chief, or any member of the Police Department shall immediately dispose of the vehicle to an automobile scrap yard. A copy of the abandoned vehicle report and photographs relating to the abandoned vehicle shall be forwarded to the State Bureau of Motor Vehicles.

(B) If, in the opinion of the Police Chief, or any member of the Police Department, the market value of the abandoned vehicle or parts is at least \$500, the Police Chief, or any member of the Police Department, before placing a notice tag on the vehicle or parts, shall make a reasonable effort to ascertain the person who owns the vehicle or parts or who may be in control of the vehicle or parts. After 72 hours, the Police Chief or any member of the Police Department shall require the vehicle or parts to be towed to a storage area.

(C) Said vehicle shall be impounded until lawfully claimed and reasonable towing and storage charges are paid, or otherwise disposed of in accordance with state law.

(Ord. 2013-07, passed 5-13-2013)

§ 91.99 PENALTY.

(A) Any person violating any of the provisions of this chapter shall be fined. The fine for the first offense is \$150, the second offense \$250 and for the third and each subsequent offense \$500 to \$1,000. Each day any portion of this chapter is violated shall constitute a separate offense.

(B) In addition to any other penalty for herein, the town may take such civil action provided by law, including, but not limited to, injunctive relief, abatement of a nuisance or imposition of a lien for expenses.

(Ord. 2013-07, passed 5-13-2013)

CHAPTER 92: NOISE

Section

92.01 Public policy

92.02 Unlawful noises

92.99 Penalty

§ 92.01 PUBLIC POLICY.

It is hereby declared, as a matter of public policy of the town, as follows:

(A) The making and creation of loud, unnecessary or unusual, noises of various kinds and by various means within the limits of the town have increased as to constitute a public nuisance;

(B) The making, creation or maintenance of loud, unnecessary, unnatural or unusual noises which are prolonged in their time, place and use, affect and are a detriment to the public health, safety, comfort, convenience, welfare, normal enjoyment and use of their property and prosperity of the residents; and

(C) The necessity, in the public interest, for the provisions of this chapter is declared, as a matter of legislative determination for this declaration of public policy, to be designed to secure and promote the public health, comfort, convenience, safety, welfare and prosperity, and the peace and quiet of the inhabitants and visitors in this town.

(Ord. 95-2, passed 3-6-1995) Penalty, see § 92.99

§ 92.02 UNLAWFUL NOISES.

(A) Except as otherwise provided in this section, it shall be unlawful for any person(s) to make, continue or cause to be made or continued any loud, unnecessary or unusual noise, or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health and peace or safety of others within the city.

(B) Accordingly, the following acts, among others, are declared to be loud, disturbing and unnecessary noises and in violation of this section, but such enumeration shall not be deemed to be exclusive:

(1) Horns and signaling devices. The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle in any street or public place of the town, except as a danger warning. This shall not be construed to prevent trains from sounding warnings at all crossings;

(2) Radios, electronic sound devices. Playing, using or operating, or permitting to be played, used or operated, and radio or electronic sound device, musical instrument, CD or tape player, or any device for producing or reproducing sound in such a manner as to disturb the peace, quiet and comfort of the neighboring inhabitants, or at any time with louder volume than is necessary for convenient hearing for the persons in the room, vehicle or chamber in which such device is operated, except when a permit is granted for some special occasion. The operation of any such sound device between the hours of 11:00 p.m. and 7:00 a.m. in such a manner to be plainly audible at a distance of 50 feet from the building or vehicle in which it is located shall be prima facie evidence of a violation of this division (B);

(3) Loudspeakers, amplifiers for advertising, playing, using or operating, or permitting to played, used or operated, any radio, television receiving set, CD or tape player, sound amplifier, musical instrument, loudspeaker or other machine or electronic equipment or device for producing or reproducing sound at any place on the public streets or in any vehicle used for the transportation of persons for hire as a common carrier, for the purpose of commercial or other kind of advertising, or attracting attention of the public to any activity or building or structure, which is used to disturb and annoy other persons in their businesses, homes and elsewhere in their right of personal privacy and quiet;

(4) Animals. The keeping of any animals or bird, which, by causing frequent or long-continued noise, shall disturb the comfort and repose of any person in the vicinity;

(5) Exhausts. The discharge in to the open air of the exhaust of any steam engine, internal combustion engine or any other type of engine or power units on a motorcycle, motorboat, motor vehicle, truck or craft of any kind, except through a muffler or other device which will effectively reduce and prevent loud or explosive noises or fumes therefrom. Leaving a vehicle in a stationary position with the engine idling or running for any extended period of time, or between the hours of 10:00 p.m. and 6:00 a.m., so as to cause unnecessary noise, vibration and exhaust fumes to disturb the businesses in the community or people in residences, or to create a health hazard where exhaust fumes may be drawn into a structure placing inhabitants at risk, is expressly prohibited;

(6) Defect in vehicle or load. The use of any vehicle so out of repair, or so loaded, or in any such manner as to create a loud and unnecessary grating, grinding, rattling or other noises on public streets;

(7) Compacting and loading. The creation of loud and excessive noises in connection with the compacting, loading or unloading of equipment, trash, debris, construction materials, other than during normal work hours;

(8) Construction, alteration or repairing of building or land. The erection, excavating for demolition, alteration or repair of any building or structure or land for development other than between the hours of 7:00 a.m. and 6:00 p.m. on weekdays and Saturday, or as daylight allows by season changes, except in case of urgent necessity in the interest of public health and safety, and then only when allowed by permission of the building and safety personnel of the town, in such case an emergency permit may be granted for a period of time not to exceed three days while the emergency continues. Such emergency time provision may be extended in three-day extensions if the emergency continues. If the public safety, building officials or town officials determine excavating and construction of any road or street, or work in by a public utility, is necessary to serve the public interest, permission may be granted to do such public projects at any hour so as to provide and protect the public safety and welfare. Private construction projects, may, upon request to Building Officials, be given permission to do construction at hours other than what is set forth above, if, it can be shown that little public nuisance will occur and that a loss or inconvenience will occur unless construction timetables can be met;

(9) Schools, churches, hospitals, public facilities and meetings. The creation of any excessive noise on any street adjacent to any school, institution of learning, church or public meeting of the town, which unreasonably interferes with the operation thereof, provided that conspicuous signs are displayed on streets indicating that the same has been declared a school, hospital or other such quiet zone; and

(10) No person shall use and/or ignite any consumer fireworks inside the corporate boundaries of the town during times other than:

(a) Between the hours of 5:00 p.m. and two hours after sunset on June 29, June 30, July 1, July 2, July 3, July 5, July 6, July 7, July 8 and July 9;

(b) Between the hours of 10:00 a.m. and 12:00 midnight on July 4; and

(c) Between the hours of 10:00 a.m. on December 31 and 1:00 a.m. on January 1.

(Ord. 95-2, passed 3-6-1995; Ord. 2013-11, passed 8-12-2013) Penalty, see § 92.99

§ 92.99 PENALTY.

Any person who violates any provision of this chapter shall be fined as follows:

(A) First offense: \$50;

(B) Second offense: \$75;

(C) Third offense: \$100;

(D) Fourth offense: \$125;

(E) Fifth offense: \$150;

(F) Sixth offense: \$175; and

(G) Seventh and all subsequent offense: \$200.

(Ord. 95-2, passed 3-6-1995; Ord. 2013-11, passed 8-12-2013)

CHAPTER 93: FAIR HOUSING

Section

93.01 Policy statement

93.02 Definition

93.03 Unlawful practice

93.04 Discrimination in the sale or rental of housing

93.05 Discrimination in residential real estate-related transactions

93.06 Discrimination in the provision of brokerage services

93.07 Interference, coercion or intimidation

93.08 Prevention of intimidation in fair housing cases

93.09 Exemptions

93.10 Administrative enforcement of chapter

§ 93.01 POLICY STATEMENT.

It shall be the policy of the town to provide, within constitutional limitation, for fair housing throughout its corporate limits as provided for under the Federal Civil Rights Act of 1968, as amended, the Federal Housing and Community Development Act of 1974, as amended, and I.C. 22-9.5-1 et seq.

(Ord. 98-5, passed 2-2-1998)

§ 93.02 DEFINITION.

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

AGGRIEVED PERSON. Any person who:

- (1) Claims to have been injured by a discriminatory housing practice; or
- (2) Believes that the person will be injured by a discriminatory housing practice that is about to occur.

(IC 22-9.5-2-2)

COMMISSION. The Civil Rights Commission or a local agency designated by an ordinance adopted under I.C. 22-9.5-4-1.

(I.C. 22-9.5-2-3)

COMPLAINANT. A person, including the Commission, who files a complaint under I.C. 22-9.5-6.

(I.C. 22-9.5-2-4)

DISABLED.

- (1) With respect to a person:
 - (a) A physical or mental impairment which substantially limits one or more of the person's major life activities;
 - (b) A record of having an impairment described in division (1)(a) above; or
 - (c) Being regarded as having an impairment described in division (1)(a) above;
- (2) The term does not include current illegal use of or addiction to a controlled substance as defined in § 102 of the Controlled Substances Act (21 U.S.C. § 802).
- (3) The term does not include an individual solely because that individual is a transvestite.

DISCRIMINATORY HOUSING PRACTICE. An act that is unlawful under §§ 93.04 through 93.08 or I.C. 22-9.5-5. (I.C. 22-9.5-2-7)

DWELLING. Any building, structure or part of a building or structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families; or any vacant land which is offered for sale or lease for the construction or location of a building, structure or part of a building or structure that is occupied as, or designed or intended for occupancy as a residence by one or more families.

(I.C. 22-9.5-2-8)

FAMILIAL STATUS. One or more individuals (who have not attained the age of 18 years) being domiciled with a parent or another person having legal custody of such individual or the written permission of such parent or other person. The protections afforded against discrimination on this basis of **FAMILIAL STATUS** shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

(I.C. 22-9.5-1-2)

FAMILY. Includes a single individual (I.C. 22-9.5-2-9), with family being farther defined under "familial status" above.

PERSON. One or more individuals, corporations, limited liability companies, partnerships, associations, labor organizations, legal

representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers and fiduciaries.

(I.C. 22-9.5-2-11)

TO RENT. Includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy the premises owned by the occupant.

(I.C. 22-9.5-2-13)

(Ord. 98-5, passed 2-2-1998)

§ 93.03 UNLAWFUL PRACTICE.

Subject to the provisions of division (B) below, I.C. 22-9.5-3 and § 93.09, the prohibitions against discrimination in the sale or rental of housing set forth in I.C. 22-9.5-3-1 and in § 93.04 shall apply to:

(A) All dwellings except as exempted by division (B) below and I.C. 22-9.5-3.

(B) Other than the provisions of division (C) below, nothing in § 93.04 shall apply to:

(1) Any single-family house sold or rented by an owner where the private individual owner does not own more than three such single-family houses at any one time; provided that in the sale of such single-family house by a private individual owner not residing in the house at the time of sale or who was not the most recent resident of such house prior to the sale, the exemption shall apply only to one such sale within any 24-month period. The private individual owner may not own any interest in, nor have owned or reserved on his or her behalf, title to or any right to all or a portion of the proceeds from the sale or rental of more than three such single-family houses at any one time. The sale or rental of any such single-family house shall be excepted from application of this section only if such house is sold or rented:

(a) Without the use in any manner of the sales or rental facilities or services of any real estate broker, agent or salesperson, or any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent or salesperson or person; and

(b) Without the publication, posting or mailing, after notice of advertisement or written notice in violation of § 93.04(C), but nothing in this provision shall prohibit the use of attorneys, escrow agents, abstractors, title companies and other such professional assistance as necessary to perfect or transfer this title.

(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.

(C) For the purposes of division (B), a person shall be deemed to be in the business of selling or renting dwellings if:

(1) He or she has, within the preceding 12 months, participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;

(2) He or she has, within the preceding 12 months, participated as agent other than in the sale of his or her own personal residence, in providing sales or rental facilities or services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or

(3) He or she is the owner of any dwelling unit designed or intended for occupancy by, or occupied by, five or more families.

(Ord. 98-5, passed 2-2-1998) Penalty, see § 10.99

Statutory reference:

Exemptions for sale or rental of certain dwellings, see I.C. 22-9.5-3-1

§ 93.04 DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING.

As made applicable by § 93.03 and except as exempted by §§ 93.03(B) and 93.09, it shall be unlawful:

(A) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, disability or national origin;

(I.C. 22-9.5-5-1(a))

(B) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in providing services or facilities in connection with the sale or rental of a dwelling, because of race, color, religion, sex, family status, disability or national origin;

(I.C. 22-9.5-5-1(b))

(C) To make, print or publish, or cause to be made, printed or published any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, disability, familial status or national origin, or an intention to make such a preference, limitation or discrimination;

(I.C. 22-9.5-5-2)

(D) To represent to any person because of race, color, religion, sex, disability, familial status or national origin that any dwelling is not available for inspection, sale or rental when such dwelling is available for inspection;

(I.C. 22-9.5-3-3)

(E) For profit to induce or attempt to induce any person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person of a particular race, color, religion, sex, disability, familial status or national origin; and

(I.C. 22-9.5-5-4)

(F) (1) To discriminate in the sale or rental or otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of:

(a) That buyer or renter:

(b) A person residing in or intending to reside in the dwelling after it is sold, rented or made available; or

(c) Any person associated with the buyer or renter.

(2) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with the dwelling, because of a disability of:

(a) The person;

(b) A person residing in or intending to reside in the dwelling after it is sold, rented, or made available; or

(c) Any person associated with the person.

(3) For purposes of this division (C), **DISCRIMINATION** includes:

(a) A refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications may be necessary to afford the person full enjoyment of the premises except that in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(b) A refusal to make reasonable accommodations in rules, policies, practices or services, when the accommodations may be necessary to afford the person equal opportunity to use and enjoy a dwelling;

(c) In connection with the design and construction of covered multi-family dwellings for first occupancy after March 13, 1991, a failure to design and construct those dwellings in a manner that:

1. The public use and common use parts of the dwellings are readily accessible to and usable by persons with disabilities;

2. All the doors are designed to allow passage into and within all premises within the dwellings and are sufficiently wide to allow passage by persons with disabilities in wheelchairs; and

3. All premises within dwellings contain the following features of adaptive design:

- a. An accessible route into and through the dwelling;
- b. Light, switches, electrical outlets, thermostats and other environmental controls in accessible locations;
- c. Reinforcements in bathroom walls to allow later installation of grab bars;
- d. Usable kitchens and bathrooms so that an individual in a wheelchair can maneuver about the space.

(4) As used in (F)(3)(c) above, **COVERED MULTI-FAMILY DWELLINGS** means:

- (a) Buildings consisting of four or more units if the buildings have one or more elevators; or
- (b) Ground floor units in other buildings consisting of four or more units.

(5) Compliance with the rules of the fire prevention and building safety commission that incorporate by reference the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for people with physical disabilities (ANSI A117.1) satisfies the requirements of division (F)(3)(c)3. above.

(6) This section does not require that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals of whose tenancy would result in substantial physical damage to the property of others.

(I.C. 22-9.5-5-5)

(Ord. 98-5, passed 2-2-1998)

Penalty, see § 10.99

§ 93.05 DISCRIMINATION IN RESIDENTIAL REAL ESTATE-RELATED TRANSACTIONS.

(A) It shall be unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, religion, sex, familial status, disability or national origin.

(B) As used in this section, the term **RESIDENTIAL REAL ESTATE-RELATED TRANSACTION** means any of the following:

- (1) The making or purchasing of loans or providing other financial assistance:
 - (a) For purchasing, constructing, improving, repairing, or maintaining a dwelling; or
 - (b) Secured by residential real estate.
- (2) The selling, brokering or appraising of residential real property.

(C) Nothing in this chapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, disability or familial status.

(Ord. 98-5, passed 2-2-1998) Penalty, see § 10.99

Statutory reference:

Appraisals of real estate, see I.C. 22-9.5-3-5

Loans or financial assistance, see I.C. 22-9.5-5-6

§ 93.06 DISCRIMINATION IN THE PROVISION OF BROKERAGE SERVICES.

It shall be unlawful to deny any person access to or membership or participation in a multiple-listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against a person in the terms or conditions of access, membership or participation in such an organization, service of facility because of race, color, religion, sex, disability, familial status or national origin.

(I.C. 22-9.5-5-7) (Ord. 98-5, passed 2-2-1998) Penalty, see § 10.99

§ 93.07 INTERFERENCE, COERCION OR INTIMIDATION.

It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of any right granted or protected by this chapter, or because the person has exercised or enjoyed or has encouraged any other person in the exercise or enjoyment of any right granted or protected by this chapter.

(I.C. 22-9.5-3-8) (Ord. 98-5, passed 2-2-1998) Penalty, see § 10.99

§ 93.08 PREVENTION OF INTIMIDATION IN FAIR HOUSING CASES.

Whoever, whether or not acting under color of law, by force or threat of force intentionally injures intimidates or interferes with, or attempts to injure, intimidate or interfere with:

(A) Any person because of his or her race, color, religion, sex, disability, familial status or national origin and because he or she is or has been selling, purchasing, renting, financing, occupying or contracting or negotiating for the sale, purchase, rental, financing or occupation of any dwelling, or applying for or participating in any service, organization or facility relating to the business of selling or renting dwellings; or

(B) Any person because he or she is or has been, or to intimidate the person from:

(1) Participating, without discrimination on account of race, color, religion, sex, disability, familial status or national origin, in an activity, service, organization or facility described in division (A) above;

(2) Affording another person opportunity or protection to participate in any activity, service, organization or facility described in division (A) above; or

(3) Any citizen because he or she is or has been, or in order to discourage such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion, sex, disability, familial status or national origin, in an activity, service, organization or facility described in division (A) above, or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to participate is subject to the following penalties under state law:

(a) A fine of not more than \$1,000, or imprisonment for not more than one year, or both;

(b) A fine of not more than \$10,000 or imprisonment for not more than ten years, or both, if bodily injury results from the violation; and

(c) Imprisonment for any term of years or for life if death results from the violation.

(Ord. 98-5, passed 2-2-1998)

Statutory reference:

Fair Housing Code offenses, see I.C. 22-9.5-10-1

§ 93.09 EXEMPTIONS.

(A) Exemptions defined or set forth under I.C. 22-9.5-3 et seq. shall be exempt from the provisions of this chapter to include those activities or organizations set forth under divisions (B) and (C) below.

(B) Nothing in this chapter shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color or national origin, nor shall anything in this chapter prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(C) (1) As used in this section, ***HOUSING FOR OLDER PERSONS*** means housing that the Commission determines:

(a) Specifically designed and operated to assist elderly persons under a federal or state program;

(b) Intended for and solely occupied by persons at least 62 years of age or older; or

(c) Intended and operated for occupancy by at least one person at least 55 years of age in each unit.

(2) Housing that includes units that are unoccupied or that are occupied by persons who do not meet the age requirements of divisions (C)(1)(b) and (C)(1)(c) above does not fail to meet the requirements for housing for older persons if:

(a) The unoccupied units are reserved for persons who meet the age requirements of divisions (C)(1)(b) and (C)(1)(c) above; or

(b) The occupants who do not meet the age requirements of divisions (C)(1)(b) and (C)(1)(c) above have resided in the housing since September 13, 1988, or an earlier date, and the persons who became occupants after September 13, 1988, meet the age requirements of divisions (C)(1)(b) and (C)(1)(c) above.

(3) The provisions of I.C. 22-9.5-1-2 relating to familial status do not apply to housing for older persons.

(Ord. 98-5, passed 2-2-1998)

Statutory reference:

Housing for older persons, see I.C. 22-9.5-3-4

Private clubs, see I.C. 22-9.5-3-3

Religious organizations, see I.C. 22-9.5-52

§ 93.10 ADMINISTRATIVE ENFORCEMENT OF CHAPTER.

(A) The authority and responsibility for properly administering this chapter and referral of complaints hereunder to the Commission as set forth in division (B) below shall be vested in the chief executive officer of the town.

(B) Notwithstanding the provisions of I.C. 22-9.5-4-8, the town, because of a lack of financial and other resources necessary to fully administer enforcement proceedings and possible civil actions under this chapter, herein elects to refer all formal complaints of violation of the sections of this chapter by complainants to the State Civil Rights Commission ("Commission") for administrative enforcement actions pursuant to I.C. 22-9.5-6 and the chief elected officer of the town, shall refer all complaints to the Commission as provided for under division (A) above to the Commission for purposes of investigation, resolution and appropriate relief as provided for under I.C. 22-9.5-6.

(C) All executive departments and agencies of the town, shall administer their departments, programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this chapter and shall cooperate with the chief executive officer and the Commission to further such purposes.

(D) The Chief Executive Officer of the town, or the chief executive officer's designee, shall provide information on remedies available to any aggrieved person or complainant requesting such information.

(Ord. 98-5, passed 2-2-1998)

Statutory reference:

Administration of Fair Housing Code, see I.C. 22-9.5-4 et seq.

Appeals, see I.C. 22-9.5-11-1, I.C. 22-9.5-11-2

Civil Rights Commission, see I.C. 22-9.5-8.1 et seq.

Complaints, see I.C. 22-9.5-6 et seq.

Hearings, see I.C. 22-9.6-14

Investigations, see I.C. 22-9.5-6-3, IC22-9.5-6-7

Private persons, see I.C. 22-9.5-7 et seq.

Remedies, administrative, exhaustion of, see I.C. 22-9.5-11-3

Section

- 94.01 Leaf burning
- 94.02 Conditions
- 94.03 Residential burning

- 94.99 Penalty

§ 94.01 LEAF BURNING.

No person shall initiate, cause or allow any form of leaf burning within the town, except that leaf burning will be allowed from one hour after sunrise to one hour before sunset upon private property at the following times during the year from September 15 to December 15, and From March 15 to May 15 of each year.

(Ord. 90-3, passed 5-14-1990) Penalty, see § 94.99

§ 94.02 CONDITIONS.

All leaf burning shall be attended by a responsible person and all leaf burning shall be off of town roadways.

(Ord. 90-3, passed 5-14-1990) Penalty, see § 94.99

§ 94.03 RESIDENTIAL BURNING.

Where residence contains four or fewer units, burning shall be in a non-combustible container sufficiently vented to induce adequate primary combustion air with enclosed sides, a bottom, and a mesh covering with openings no larger than one-quarter inch square. Burning is prohibited in apartment complexes and mobile home parks.

(Ord. 90-29, passed 11-12-1990) Penalty, see § 94.99

§ 94.99 PENALTY.

The violation of this chapter will result in the imposition of a fine: \$25 first offense, \$50 second offense, \$75 third offense and \$100 for fourth offense, to be paid within ten days to the Violation Clerk of the town.

(Ord. 90-3, passed 5-14-1990)

CHAPTER 95: PUBLIC NUISANCES

Section

- 95.01 Definitions
- 95.02 Land use, maintenance and appearance
- 95.03 Enforcement
- 95.04 Hearing; extension of time limits; performance bonds; records of findings and action

- 95.05 Emergency action; recovery of costs; challenge of determination of emergency
- 95.06 Action to enforce orders
- 95.07 Performance of work required by orders; procedure
- 95.08 Liability for costs for performance of work required by orders
- 95.09 Notice of unpaid costs; filing with Clerk of Court; hearing; judgement lien
- 95.10 Unpaid costs for unsafe premises repairs; notice; certification as special assessment; collection as delinquent taxes; disposition of collections
- 95.11 Unsafe Building Fund; deposits and expenditures
- 95.12 Civil actions regarding unsafe premises
- 95.13 Appointment of receiver
- 95.14 Court order authorizing performance of work; judgment for costs
- 95.15 Emergencies; court order authorizing action to make premises safe; judgment for costs
- 95.16 Manner of serving notice
- 95.17 Recording of orders, statements of rescission, statements of public bids, and records of actions taken by hearing authority

§ 95.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. The following definitions are deemed consistent with and, where applicable, in addition to the same definitions found in other pertinent local and state statutes which are hereinafter included by reference.

COMMON NUISANCE. Any failure to abide by the provisions of this chapter shall be deemed to be the maintenance of a common nuisance by the violator.

GARBAGE. Rejected or discarded food wastes including every waste and waste accumulations of animals, fruit or vegetable matter intended for food or used in the preparation, use, cooking, sale or storage of meat, fish, fowl, vegetables or fruit.

HABITABILITY. Any issue or condition which directly or indirectly relates to livability or use in or about any structure, dwelling or otherwise, found within the town limits.

LITTER. Waste materials (residential, commercial and industrial) including, but not necessarily limited to: newspapers, paper goods of all sorts not in current use, used or unused building materials, manufacturing parts and containers, automobile parts, trash or other discarded and unused rubbish not conducive to habitability.

OWNER. The person/persons, firm or corporation whose name appears on the current tax records in the office of the County Auditor, as the owner of such real estate.

RUBBISH. Such residential, commercial or industrial matter as trash, ashes, cans, packing materials, glass, crockery, plastic, filthy substances, dirt, sweepings, cardboard, paper, wood, grass, weeds, branches, construction materials, discarded machinery, parts of vehicles (including but not limited to tires, discarded oil and other fluids), discarded toys, furniture, clothing and other waste matter of any kind.

UNATTENDED ANIMAL. Any animal, dog, cat or otherwise, commonly considered a household pet or otherwise which shall be found within the town unsupervised or uncontrolled by its owner whether on private or public property.

VACANT LOT. Any land or acreage within proximity to a residence, public street or public building, and upon which there are no permanent structures.

(Ord. 96-3, passed 2-3-1997)

§ 95.02 LAND USE, MAINTENANCE AND APPEARANCE.

(A) Generally, this chapter includes by reference I.C. 36-7-9, I.C. 36-7-10.1 and I.C. 36-1-6 in that the Town Council has determined that it is in the best interests of all the citizens of the town that this comprehensive land use ordinance be passed and that same be expanded to regulate abandoned vehicles and unattended animals.

(B) It shall be the duty of any person owning a substantial interest or controlling interest in any house, building, structure, premises or vacant lot within the town to maintain said premises in a reasonably clean, orderly and safe condition of habitability.

(C) Further, it shall be a violation of this chapter to allow animals to exist and to roam unattended within the town limits.

(D) Finally, it shall be a violation of this comprehensive ordinance to maintain abandoned vehicles within the town.

(1) *Unsafe buildings and unsafe premises.* For purposes of this chapter, a building or structure, or any part of a building, structure or premises that is:

(a) In an impaired structural condition that makes it unsafe to person or property;

(b) A fire hazard;

(c) A hazard to the public health;

(d) A public nuisance;

(e) Dangerous to a person or property because of violation of a statute or ordinance concerning building condition or maintenance;

(f) Vacant and not maintained in a manner that would allow human habitation, occupancy or use under the requirements of a statute or an ordinance; or

(g) Used and maintained in any manner contrary to the Comprehensive Zoning Ordinance.

(2) *Removal of weeds and rank vegetation.* It shall be the duty of all property owners to cut and remove weeds and rank vegetation growing on their property located within the town limits. As used in this chapter, ***WEEDS AND OTHER RANK VEGETATION*** does not include agricultural crops. Weeds and rank vegetation shall include all vegetation in excess of 12 inches in growth.

(3) *Unattended animals.* It shall be a violation of this chapter to keep or maintain unattended animals within the town limits.

(4) *Unauthorized use of property.* It shall be a violation to use any property or premises or part thereof in violation of the comprehensive zoning ordinance as currently written and as hereinafter amended.

(Ord. 96-3, passed 2-3-1997) Penalty, see § 10.99

§ 95.03 ENFORCEMENT.

(A) The Town Planning and Zoning Board shall have the exclusive jurisdiction to enforce this chapter. For purposes of this chapter, the Town Planning and Zoning Board shall be the enforcement authority.

(B) Enforcement of this statute is predicated on the following factors in whole or in part.

(1) In the town, there exists a number of unoccupied, dilapidated and deteriorated structures that are not maintained and that constitute a hazard to public health, safety and welfare.

(2) Vacant or dilapidated structures often become dilapidated because the structures are not maintained and repaired by the owners or persons in control of the structures.

(3) Vacant or dilapidated structures attract children, become harborage for vermin, serve as temporary abodes for vagrants and criminals, and are likely to be damaged by vandals or set ablaze by arsonists.

(4) Unkept grounds surrounding vacant structures invite dumping of garbage, trash and other debris.

(5) Many vacant or dilapidated structures are situated on narrow city lots and in close proximity to neighboring structures, thereby

increasing the risk of conflagration and spread of insect and rodent infestation.

(6) Vacant, deteriorated structures contribute to blight, cause a decrease in property values and discourage neighbors from making improvements to properties.

(7) Structures that remain boarded up or dilapidated for an extended period of time also exert a blighting influence and contribute to the decline of the neighborhood by decreasing property values, discouraging persons from moving into the neighborhood and encouraging persons to move out of the neighborhood.

(8) Vacant or dilapidated structures often continue to deteriorate to the point that demolition of the structure is required, thereby decreasing available housing in a community and further contributing to the decline of the neighborhood.

(9) The blighting influence of vacant, deteriorated structures adversely affects the tax revenues of local government.

(10) The Town Council has determined that vacant, deteriorated structures create a serious and substantial problem in the town and are public nuisances.

(11) In recognition of the problems created in a community by vacant or dilapidated structures, the Town Council finds that vigorous and disciplined action should be taken to ensure the proper maintenance and repair of vacant or dilapidated structures.

(12) The existence of abandoned vehicles encourages blight, community deterioration, a health hazard and an attractive nuisance.

(13) The existence of unattended animals within the town not only are a health hazard, but a potential safety hazard as well.

(14) The enforcement authority is hereby empowered and authorized to proceed as follows in the enforcement of this chapter. The enforcement authority may issue an order requiring action relative to any violation of this chapter, including:

(a) Vacating of an unsafe building;

(b) Sealing an unsafe building against intrusion by unauthorized persons, in accordance with a uniform standard established by ordinance;

(c) Extermination of vermin in and about the unsafe premises;

(d) Removal of trash, debris or fire hazardous material in and about the unsafe premises;

(e) Repair or rehabilitation of an unsafe building to bring it into compliance with standards for building condition or maintenance required for human habitation, occupancy or use by a statute, a rule adopted under I.C. 4-22-2, or an ordinance;

(f) Removal of part of an unsafe building;

(g) Removal of an unsafe building;

(h) Requiring, for an unsafe building that will be sealed for a period of more than 90 days:

1. Sealing against intrusion by unauthorized persons and the effects of weather;

2. Exterior improvements to make the building compatible in appearance with other buildings in the area; and

3. Continuing maintenance and upkeep of building and premises.

(i) Abandoned vehicles must be removed from any property, public or private, where found;

(j) Litter, garbage, rubbish, weeds and rank vegetation must be removed from any property; and

(k) Unattended animals must be attended or seized by the town in accordance with standards established by this chapter.

(C) Notice of the order must be reasonably given. The ordered action must be reasonably related to the condition of the unsafe premises and the nature and use of nearby properties. The order supersedes any permit relating to building or land use of nearby properties. The order supersedes any permit relating to building or land use, whether that permit is obtained before or after the order is issued.

(D) The order must contain:

(1) The name of the person to whom the order is issued;

(2) The legal description or address of the unsafe premises that are the subject of the order;

(3) The action that the order requires;

(4) The period of time in which the action is required to be accomplished, measured from the time when the notice of the order is given;

(5) If a hearing is required, a statement indicating the exact time and place of the hearing, and stating that person to whom the order was issued is entitled to appear at the hearing with or without legal counsel, present evidence, cross-examine opposing witnesses and present arguments;

(6) If a hearing is not required, a statement that an order under divisions (A), (B) or (C) above becomes final ten days after notice is given, unless a hearing is requested in writing by a person holding a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises, and the request is delivered to the enforcement authority before the end of the ten-day period;

(7) A statement briefly indicating what action can be taken by the enforcement authority if the order is not complied with;

(8) A statement indicating the obligation created by § 95.17 relating to notification of subsequent interest holders and the enforcement authority; and

(9) The name, address and telephone number of the enforcement authority.

(E) The order must allow a sufficient time, of at least ten days from the time when notice of the order is given, to accomplish the required action. If the order allows more than 30 days to accomplish the action, the order may require that a substantial beginning be made in accomplishing the action within 30 days.

(F) The order expires two years from the day the notice of the order is given, unless one or more of the following events occurs within that two-year period:

(1) A complaint requesting judicial review is filed under I.C. 36-7-9-8.

(2) A contract for action required by the order is let at public bid under § 95.07.

(3) A civil action is filed under § 95.12.

(Ord. 96-3, passed 2-3-1997)

§ 95.04 HEARING; EXTENSION OF TIME LIMITS; PERFORMANCE BONDS; RECORDS OF FINDINGS AND ACTION.

(A) A hearing must be held relative to each order of the enforcement authority. The hearing shall be conducted by the hearing authority.

(B) The hearing shall be held on a business day no earlier than ten days after notice of the order is given. The hearing authority may, however, take action at the hearing, or before the hearing if a written request is received by the enforcement authority not later than five days after notice is given, to continue the hearing to a business day not later than 14 days after the hearing date shown on the order. Unless the hearing authority takes action to have the continued hearing held on a definite, specified date, notice of the continued hearing must be given to the person to whom the order was issued at least five days before the continued hearing date. If the order being considered at the continued hearing was served by publication, it is sufficient to give notice of the continued hearing by publication unless the enforcement authority has received information in writing that enables it to make service by a method other than publication.

(C) The person to whom the order was issued, any person having a substantial property interest in the unsafe premises that are the subject of the order, or any other person with an interest in the proceedings may appear in person or by counsel at hearing. Each person appearing at the hearing is entitled to present evidence, cross-examine opposing witnesses and present arguments.

(D) At the conclusion of any hearing at which a continuance is not granted, the hearing authority may make findings and take action to:

(1) Affirm the order;

(2) Rescind the order; or

(3) Modify the order, but unless the person to whom the order was issued, or counsel for that person, is present at the hearing, the hearing authority may modify the order in only a manner that makes its terms less stringent. In addition to affirming the order, in those cases in which the hearing authority finds that there has been a willful failure to comply with the order, the hearing authority may impose a civil penalty in an amount not to exceed \$1,000. The effective date of the civil penalty may be postponed for a reasonable period, after which the hearing authority may order the civil penalty reduced or stricken if the hearing authority is satisfied that all work necessary to fully comply with the order has been done. For purposes of an appeal under this chapter or enforcement of an order as provided by this chapter, action of the hearing authority is considered final upon the affirmation of the order, even though the hearing authority may retain jurisdiction for the ultimate determination of a fine.

(E) If, at a hearing, a person to whom an order has been issued requests an additional period to accomplish action required by the order, and shows good cause of this request to be granted, the hearing authority may grant the request; however, as a condition for allowing the additional period, the hearing authority may require that the person post a performance bond to be forfeited if the action required by the order is not completed within the additional period.

(F) The record of the findings made and action taken by the hearing authority at the hearing shall be available to the public upon request; however, neither the enforcement authority nor the hearing authority is required to give any person notice of the findings and action.

(G) A civil penalty under division (D) above may be collected in the same manner as costs under other sections of this chapter. The amount of the civil penalty that is collected shall be deposited in the Unsafe Building Fund.

(Ord. 96-3, passed 2-3-1997)

§ 95.05 EMERGENCY ACTION; RECOVERY OF COSTS; CHALLENGE OF DETERMINATION OF EMERGENCY.

(A) If the enforcement authority finds it necessary to take emergency action concerning an unsafe premises in order to protect life, safety or property, it may take that action without issuing an order or giving notice; however, this emergency action must be limited to removing any immediate danger.

(B) The enforcement authority may recover the costs incurred by the enforcement authority in taking emergency action, by filing a civil action in the Circuit Court or Superior Court of the county against the persons who held a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises at the time the enforcement authority found it necessary to take emergency action. The Department is not liable for the costs of this civil action.

(C) If an unsafe premises poses an immediate danger to the life or safety of persons occupying or using nearby property, the enforcement authority may, without following this chapter's requirements for issuing an order and giving notice, take emergency action to require persons to vacate and not use the nearby property until the danger has passed; however, any person required to vacate an unsafe premises under this division (C) may challenge in an emergency court proceeding the enforcement authority's determination that the premises poses an immediate danger to the life or safety of any person. In an emergency court proceeding, the enforcement authority has the burden of proving that emergency action is necessary to protect from immediate danger the life or safety of persons occupying or using nearby property.

(Ord. 96-3, passed 2-3-1997)

§ 95.06 ACTION TO ENFORCE ORDERS.

(A) The enforcement authority may cause the action required by an order issued under the sections of this chapter to be performed by a contractor if:

(1) The order has been served, in the manner prescribed by this chapter, on each person having a fee interest, life estate interest or equitable interest of a contract purchaser in the unsafe premises that are the subject of the order;

(2) The order has not been complied with;

(3) A hearing was not requested under various provisions of this chapter, or, if a hearing was requested, the order was affirmed at the hearing; and

(4) The order is not being reviewed.

(B) The enforcement authority may cause the action required by an order, to be performed if:

(1) Service of an order, in the manner prescribed herein, has been made on each person having a substantial property interest in the unsafe premises that are the subject of the order;

(2) The order has been affirmed or modified at the hearing in such a manner that all persons having a substantial property interest in the unsafe premises that are the subject of the order are currently subject to an order requiring the accomplishment of substantially identical action;

(3) The order, as affirmed or modified at the hearing, has not been complied with; and

(4) The order is not being reviewed under I.C. 36-7-9-8.

(C) If action is being taken under this section on the basis of an order that was served by publication, it is sufficient to serve the statement that the enforcement authority intends to perform the work by publication, unless the authority has received information in writing that enables it to make service other than publication.

(Ord. 96-3, passed 2-3-1997)

§ 95.07 PERFORMANCE OF WORK REQUIRED BY ORDERS; PROCEDURE.

(A) The work required by an order of the enforcement authority may be performed in the following manners.

(1) If the work is being performed under an order of this chapter, and if the cost of this work is estimated to be less than \$5,000, the enforcement authority or other agent, may perform the work by means of its own workers and equipment owned or leased by it. Notice that this work is to be performed must be given to all persons with a substantial property interest, in the manner prescribed herein at least ten days before the date of performance of the work by the enforcement authority. This notice must include a statement that an amount representing a reasonable estimate of the cost incurred by the enforcement authority in processing the matter and performing the work may, if not paid, be recorded after a hearing as a lien against all persons having a fee interest, life estate interest or equitable interest of a contract purchaser in the unsafe premises.

(2) If the work is being performed under an order of this chapter, and if the estimated cost of this work is \$5,000 or more, this work must be let at public bid to a contractor licensed and qualified under law. The obligation to pay costs imposed by this chapter is based on the condition of the unsafe premises at the time the public bid was accepted. Changes occurring in the condition of the unsafe premises after the public bid was accepted do not eliminate or diminish this obligation.

(3) If the work is being performed under this chapter, the work may be performed by a contractor who has been awarded a base bid contract to perform the work for the enforcement authority, or by the Department, acting through its enforcement authority or other governmental agency and using its own workers and equipment owned or leased by it. Work performed under an order issued under this chapter may be performed without further notice to the persons holding a fee interest, life estate interest or equitable interest of a contract purchaser, and these persons are liable for the costs incurred by the enforcement authority in processing the matter and performing the work, as provided by herein.

(B) Bids may be solicited and accepted for work on more than one property if the bid reflects an allocation of the bid amount among the various unsafe premises in proportion to the work to be accomplished. The part of the bid amount attributable to each of the unsafe premises constitutes the basis for calculating the part of the costs described.

(C) All persons who have a substantial property interest in the unsafe premises and are subject to an order other than an order as provided herein must be notified about the public bid in the manner prescribed herein by means of a written statement including:

(1) The name of the person to whom the order was issued;

(2) A legal description or address of the unsafe premises that are the subject of the order;

(3) A statement that a contract is to be let at public bid to a licensed contractor to accomplish work to comply with the order;

(4) A description of work to be accomplished;

(5) A statement that both the bid price of the licensed contractor who accomplishes the work and an amount representing a reasonable estimate of the cost incurred by the enforcement authority in processing the matter of the unsafe premises may, if not paid, be recorded after a hearing as a lien against all persons having a fee interest, life estate interest or equitable interest of a contract purchaser in the unsafe premises;

- (6) The time of the bid opening;
- (7) The place of the bid opening; and
- (8) The name, address and telephone number of the enforcement authority.

(D) If the notice of the statement that public bids are to be let is served by publication, the publication must include the information required by this chapter, except that it need only include a general description of the work to be accomplished. The publication must also state that a copy of the statement of public bid may be obtained from the enforcement authority.

(E) Notice of the statement that public bids are to be let must be given, at least ten days before the date of the public bid, to all persons who have a substantial property interest in the property and are subject to an order other than an order under divisions (A), (B) or (C) above.

(F) If action is being taken under this section on the basis of an order that was served by publication, it is sufficient to serve the statement that public bids are to be let by publication, unless the enforcement authority has received information in writing that enables it to make service under this chapter by a method other than publication.

(Ord. 96-3, passed 2-3-1997)

§ 95.08 LIABILITY FOR COSTS FOR PERFORMANCE OF WORK REQUIRED BY ORDERS.

(A) When action required by an order is performed by the enforcement authority or by a contractor acting under this chapter, each person who held a fee interest, life estate interest or equitable interest of a contract purchaser in the unsafe premises from the time when the order requiring the work performed was recorded to the time that the work was completed is jointly and severally responsible for the following costs:

(1) The actual cost of the work performed by the enforcement authority or the bid price of work accomplished by the contractor under this chapter.

(2) An amount that represents a reasonable forecast of the average processing expense that will be incurred by the enforcement authority in taking the technical, administrative and legal actions concerning typical unsafe premises that are necessary under this chapter so that the action required by an order may be performed by a contractor under this chapter. In calculating the amount of the average processing expense, the following costs may be considered:

(a) The cost of obtaining reliable information about the identity and location of persons who own a substantial property interest in the unsafe premises;

(b) The cost of notice of orders, notice of statements of rescission, notice of continued hearing, notice of statements that public bids are to be let or that the enforcement authority intends to accomplish the work, and notice that a hearing may be held on the amounts indicated in the record, in accordance with § 95.16;

(c) Salaries for employees; and

(d) The cost of supplies, equipment and office space.

(B) The board or commission having control over the Department shall determine the amount of the average processing expense at the public hearing, after notice has been given in the same manner as is required for other official action of the board or commission. In determining the average processing expense, the board or commission may fix the amount at a full dollar amount that is an even multiple of ten.

(Ord. 96-3, passed 2-3-1997)

§ 95.09 NOTICE OF UNPAID COSTS; FILING WITH CLERK OF COURT; HEARING; JUDGMENT LIEN.

(A) (1) If all or any part of the costs listed in § 95.15 remain unpaid for any unsafe premises (other than unsafe premises owned by a governmental entity) for more than 15 days after the completion of the work, the enforcement authority does not act under this chapter, and the enforcement authority determines that there is a reasonable probability of obtaining recovery, the enforcement authority shall prepare a record stating:

(a) The name and last known address of each person who held a fee interest, life estate interest or equitable interest of a contract purchaser in the unsafe premises from the time the order requiring the work to be performed was recorded to the time that the work was completed;

(b) The legal description or address of the unsafe premises that were the subject of work;

(c) The nature of the work that was accomplished;

(d) The amount of the unpaid bid price of the work that was accomplished; and

(e) The amount of the unpaid average processing expense.

(2) The record must be in a form approved by the State Board of Accounts.

(B) The enforcement authority, or its head, shall swear to the accuracy of the record before the Clerk of the Circuit Court and deposit the record in the Clerk's office. Notice that the record has been filed and that a hearing on the amounts indicated in the record may be held must be sent to the persons named in the record, in the manner prescribed by § 95.16.

(C) If, within 30 days after the notice required by division (B) above, a person named in the record files with the Clerk of the Circuit Court a written petition objecting to the claim for payment and requesting a hearing, the Clerk shall enter the cause on the docket of the Circuit or Superior Court as a civil action, and a hearing shall be held on the question in the manner prescribed by I.C. 4-21.5; however, issues that could have been determined under § 95.10 may not be entertained at the hearing. At the conclusion of the hearing, the court shall either sustain the petition or enter a judgment against the persons named in the record for the amounts recorded or for modified amounts.

(D) If no petition is filed under division (C) above, the Clerk of the Circuit Court shall enter the cause on the docket of the court and the court shall enter a judgment for the amounts stated in the record.

(E) A judgment under divisions (C) or (D) above, to the extent that it is not satisfied under I.C. 27-2-15, is a debt and a lien on all the real and personal property of the person named, or a joint and several debt and lien on the real and personal property of the persons named. The lien on real property is perfected against all creditors and purchasers when the judgment is entered on the judgment docket of the court. The lien on personal property is perfected by filing a lis pendens notice in the appropriate filing office, as prescribed by the State Rules of Trial Procedure.

(F) Judgments rendered under this section may be enforced in the same manner as all other judgments are enforced.

(Ord. 96-3, passed 2-3-1997)

§ 95.10 UNPAID COSTS FOR UNSAFE PREMISES REPAIRS; NOTICE; CERTIFICATION AS SPECIAL ASSESSMENT; COLLECTION AS DELINQUENT TAXES; DISPOSITION OF COLLECTIONS.

(A) This section does not apply to the collection of an amount if a court determines under this chapter that the enforcement authority is not entitled to the amount.

(B) (1) If all or any part of the costs listed in § 95.15 remain unpaid for any unsafe premises (other than unsafe premises owned by a governmental entity) for more than 15 days after completion of the work, the enforcement authority may send notice under this chapter to each person who held a fee interest, life estate interest or equitable interest of a contract purchaser in the unsafe premises.

(2) The notice must require full payment of the amount owed within 30 days.

(C) If full payment of the amount owed is not made less than 30 days after the notice is delivered, the enforcement officer may certify the following information to the County Auditor:

(1) The name of each person who held a fee interest, life estate interest or equitable interest of a contract purchaser in the unsafe premises;

(2) The description of the unsafe premises, as shown by the records of the County Auditor; and

(3) The amount of the delinquent payment, including all costs described in § 95.15.

(D) The County Auditor shall place the total amount certified under division (C) above on the tax duplicate for the affected property as a special assessment. The total amount, including accrued interest, shall be collected as delinquent taxes are collected.

(E) An amount collected under division (D) above, after all other taxes have been collected and disbursed, shall be disbursed to the Unsafe Building Fund.

(F) A judgment entered under this chapter may be collected under this section; however, a judgment lien need not be obtained under § 95.09 before a debt is certified under this section.

(Ord. 96-3, passed 2-3-1997)

§ 95.11 UNSAFE BUILDING FUND; DEPOSITS AND EXPENDITURES.

(A) The enforcement authority shall establish in its operating budget a fund designated as the Unsafe Building Fund. Any balance remaining at the end of a fiscal year shall be carried over in the Fund for the following year and does not revert to the General Fund.

(B) Money for the Unsafe Building Fund may be received from any source, including appropriations by local, state or federal governments, and donations. The following money shall be deposited in the fund:

- (1) Money received as payment for or settlement of obligations or judgments pursuant to this chapter;
- (2) Money received from bonds posted under this chapter;
- (3) Money received in satisfaction of receiver's notes or certificates that were issued under this chapter of this chapter and were purchased with money from the Unsafe Building Fund;
- (4) Money received for payment or settlement of civil penalties imposed pursuant to this chapter; and
- (5) Money received from the collection of special assessments under this chapter.

(C) Money in the Unsafe Building Fund may be used for the expenses incurred in carrying out the purposes of this chapter, including:

- (1) The cost of obtaining reliable information about the identity and location of each person who owns a substantial property interest in unsafe premises;
- (2) The cost of an examination of an unsafe building by a registered architect or registered engineer not employed by the Department;
- (3) The cost of surveys necessary to determine the location and dimensions of real property on which an unsafe building is located;
- (4) The cost of giving notice of orders, notice of statements of rescission, notice of continued hearing, and notice of statements that public bids are to be let in the manner prescribed by this chapter;
- (5) The bid price of work by a contractor under this chapter;
- (6) The cost of emergency action under this chapter; and
- (7) The cost of notes or receiver's certificates issued under § 95.13.

(D) Payment of money from the Unsafe Building Fund must be made in accordance with applicable law.

(Ord. 96-3, passed 2-3-1997)

§ 95.12 CIVIL ACTIONS REGARDING UNSAFE PREMISES.

The Department, acting through its enforcement authority or a person designated by the enforcement authority, may bring a civil action regarding unsafe premises in the Circuit, Superior or Municipal Court of the county. The Department is not liable for the costs of such an action. The court may grant one or more of the kinds of relief authorized by this chapter.

(Ord. 96-3, passed 2-3-1997)

§ 95.13 APPOINTMENT OF RECEIVER.

(A) A court acting under this chapter may appoint a receiver for the unsafe premises, subject to the following conditions.

(1) The purpose of the receivership must be to take possession of the unsafe premises for a period sufficient to accomplish and pay for repairs and improvements.

(2) The receiver may be a not-for-profit corporation the primary purpose of which is the improvement of housing conditions in the town where the unsafe premises are located, or may be any other capable person residing in the county.

(3) Notwithstanding any prior assignments of the rents and other income of the unsafe premises, the receiver must collect and use that income to repair or remove the defects as required by the order, and may, upon approval by the court, make repairs and improvements in addition to those specified in the order or required by applicable statutes, ordinances, codes or regulations.

(4) The receiver may make any contracts and do all things necessary to accomplish the repair and improvement of the unsafe premises.

(5) The court may, after a hearing, authorize the receiver to obtain money needed to accomplish the repairs and improvement by the issuance and sale of notes or receiver's certificates to the receiver or any other person or party bearing interest fixed by the court. The notes or certificates are a first lien on the unsafe premises and the rents and income of the unsafe building. This lien is superior to all other assignments of rents, liens, mortgages or other encumbrances on the property, except taxes, if, within 60 days following the sale or transfer for value of the notes by the receiver, the holder of the notes files a notice containing the following information in the County Recorder's office:

(a) The legal description of the tract of real property on which the unsafe building is located;

(b) The face amount and interest rate of the note or certificate;

(c) The date when the note or certificate was sold or transferred by the receiver; and

(d) The date of maturity.

(6) Upon payment to the holder of a receiver's note or certificate of the face amount and interest, and upon filing in the recorder's office of a sworn statement of payment, the lien of that note or certificate is released. Upon a default in payment on a receiver's note or certificate, the lien may be enforced by proceedings to foreclose in the manner prescribed for mechanic's liens or mortgages; however, the foreclosure proceedings must be commenced within two years after the date of default.

(7) The receiver is entitled to the same fees, commissions, and necessary expenses as receivers in actions to foreclose mortgages. The fees, commissions and expenses shall be paid out of the rents and incomes of the property in receivership.

(B) The issuance of an order concerning unsafe premises is not a prerequisite to the appointment of a receiver nor does such an order prevent the appointment of a receiver.

(C) If the enforcement authority or the enforcement authority's designee requests the appointment of a receiver, all persons having a substantial property interest in the unsafe premises shall be made party defendants.

(Ord. 96-3, passed 2-3-1997)

§ 95.14 COURT ORDER AUTHORIZING PERFORMANCE OF WORK; JUDGMENT FOR COSTS.

(A) A court acting pursuant to this chapter may authorize the Department, acting through its enforcement authority, to cause the action required by the order to be performed by a contractor licensed and qualified under law, if it is shown that:

(1) An order was issued to each person having a substantial property interest in the unsafe premises;

(2) Each of the orders has been affirmed or modified at a hearing in such a manner that all persons having substantial property interest in the unsafe premises that are the subject of the orders are currently subject to an order requiring substantially identical action;

(3) The order, as affirmed or modified at the hearing, has not been complied with;

(4) The building that is the subject of the order is an unsafe building; and

(5) The order is not being reviewed under I.C. 36-7-9-8.

(B) If the enforcement authority requests permission to cause the action required by the order to be performed by a contractor, all persons having a substantial property interest in the unsafe premises shall be made party defendants.

(C) The cost of the work and the processing expenses incurred by the enforcement authority computed under this chapter may, after a hearing, be entered by the court as a judgment against persons having a fee interest, life estate interest or equitable interest of a contract purchaser in the unsafe premises.

(Ord. 96-3, passed 2-3-1997)

§ 95.15 EMERGENCIES; COURT ORDER AUTHORIZING ACTION TO MAKE PREMISES SAFE; JUDGMENT FOR COSTS.

(A) A court acting pursuant to this chapter may set a hearing to be held within ten days after the filing of a complaint alleging the existence of unsafe premises presenting an immediate danger to the health and safety of the surrounding community sufficient to warrant emergency action.

(1) Upon a finding at the hearing in favor of the Department, the court may:

(a) Permit the enforcement authority to cause the action necessary to make the premises safe to be immediately performed by a contractor licensed and qualified under law;

(b) Permit the enforcement authority to cause the action necessary to make the premises safe to be immediately performed by a contractor licensed and qualified under law after the defendants have had a reasonable time, as established by the court, to make the unsafe premises safe and have failed to complete the necessary action; or

(c) Grant a mandatory injunction relative to the unsafe premises that would require a defendant who has an interest in the premises that allows the defendant to take corrective action to immediately make the premises safe.

(2) In granting relief under divisions (A)(1)(b) or (A)(1)(c) above, the court shall set a date certain for the completion of the necessary action and shall hold a hearing within ten days after that date to determine whether the necessary action has been completed.

(B) The issuance of an order concerning the unsafe premises is not a prerequisite to permission by the court to cause action to be performed on the unsafe premises. If an order has been issued concerning the unsafe premises, it does not prevent the permission by the court to cause action to be performed on the unsafe premises.

(C) If the enforcement authority requests authority to cause action on the unsafe premises to be performed by a contractor, all persons having a substantial property interest in the unsafe premises shall be made party defendants.

(D) The cost of accomplishing the work may, after a hearing, be entered by the court as a judgment against persons having a fee interest, life estate interest or equitable interest of a contract purchaser in the unsafe premises.

(Ord. 96-3, passed 2-3-1997)

§ 95.16 MANNER OF SERVING NOTICE.

(A) Notice of orders, notice of continued hearings without a specified date, notice of a statement that public bids are to be let, and notice of claims for payment must be given by:

(1) Sending a copy of the order or statement by registered or certified mail to the residence or place of business or employment of the person to be notified, with return receipt requested;

(2) Delivering a copy of the order or statement personally to the person to be notified; or

(3) Leaving a copy of the order or statement at the dwelling or usual place of abode of the person to be notified.

(B) If, after a reasonable effort, service is not obtained by a means described in division (A) above, service may be made by publishing a notice of the order or statement in accordance with I.C. 5-3-1 in the county where the unsafe premises are located; however, publication may be made on consecutive days. If service of an order is made by publication, the publication must include the information required by this chapter, and must also include a statement indicating generally what action is required by the order and

that the exact terms of the order may be obtained from the enforcement authority.

(C) When service is made by any of the means described in this section, except by mailing or by publication, the person making service must make an affidavit stating that he or she has made the service, the manner in which service was made, to whom the order or statement was issued, the nature of the order or statement, and the date of service. The affidavit must be placed on file with the enforcement authority.

(D) The date when notice of the order or statement is considered given is as follows.

(1) If the order or statement is delivered personally or left at the dwelling or usual place of abode, notice is considered given on the day when the order or statement is delivered to the person or left at his or her dwelling or usual place of abode.

(2) If the order or statement is mailed, notice is considered given on the date shown on the return receipt, or, if no date is shown, on the date when the return receipt is received by the enforcement authority.

(3) Notice by publication is considered given on the date of the second day that publication was made.

(E) Notice of orders, notice of continued hearings without a specified date, and notice of a statement that public bids are to be let need not be given to a person holding a property interest in an unsafe premises if:

(1) No instrument reflecting the property interest held by the person is recorded in the Recorder's office of the county where the unsafe premises is located;

(2) The order or statement was recorded in accordance with this chapter; and

(3) The enforcement authority has received neither written information nor actual notice of the identity of the person who holds a property interest in the unsafe premises.

(F) A person who fails to record an instrument reflecting an interest in his or her unsafe premises is considered to consent to action taken under this chapter relative to which notice would otherwise be given.

(Ord. 96-3, passed 2-3-1997)

§ 95.17 RECORDING OF ORDERS, STATEMENTS OF RESCISSION, STATEMENTS OF PUBLIC BIDS, AND RECORDS OF ACTIONS TAKEN BY HEARING AUTHORITY.

(A) The enforcement authority shall record in the office of the County Recorder orders issued under this chapter, statements of rescission, statements that public bids are to be let, and records of action in which an order is affirmed, modified or rescinded taken by the hearing authority. The Recorder shall charge the fee required under I.C. 36-2-7-10 for recording these items.

(B) A person who takes an interest in unsafe premises that are the subject of an order takes that interest, whether or not a hearing has been held, subject to the terms of the order and in such a manner that all of the requirements of this chapter relating to the issuance of orders, service of orders and affirmation of orders are considered satisfied. If a hearing has been held, the interest is taken subject to the terms of the order as modified at the hearing and in such a manner that all of the requirements of this chapter relating to the issuance of orders, service of orders and modification of orders at hearing are considered satisfied.

(C) A person who takes an interest in unsafe premises that are the subject of a statement that public bids are to be let takes the interest subject to the terms of the statement and in such a manner that the notice of the statement required by this chapter is considered given to the person.

(Ord. 96-3, passed 2-3-1997)

CHAPTER 96: STREETS AND SIDEWALKS

Section

96.01 Assemblies on walkways, driveways and parking areas

96.02 Policy for renaming streets

§ 96.01 ASSEMBLIES ON WALKWAYS, DRIVEWAYS AND PARKING AREAS.

(A) It shall be unlawful to intentionally block entrances or exits to any parking area adjacent to any business building or public building in any manner unless by direction of the owner or manager of any public building or business, whereby doing so, causes any difficulty in entering or exiting the premises or adjacent drive or parking area, except for the purpose of repairs by municipal authorities or private contractors engaged by the owner.

(B) It shall be unlawful for any person to drive motor vehicles through any parking area or driveways of any public buildings or business building without attempting to park said vehicle.

(C) It shall be unlawful for any person to leave any unoccupied motor vehicle upon a walkway, driveway or parking area of a public building or business building and to leave such premises to go elsewhere without the knowledge and consent of the owner, manager or person in charge of such premises, if such premises are so posted by the owner or manager.

(D) It shall be unlawful for any person to assemble on the private parking lots or private property without the consent of the owner or manager of said parking lot or private property.

(E) It shall be the duty of the owner or manager of public and business premises to post notices in a conspicuous location by one or more signs displaying the fact that said premises are protected by the terms of this section.

(Ord. 88-22, passed 12-5-1988) Penalty, see § 96.99

§ 96.02 POLICY FOR RENAMING STREETS.

The following procedure shall be followed in carrying out the street name changes necessary to avoid name duplication or conflict.

(A) The administering agency, the Delaware-Muncie Metropolitan Plan Commission, shall be responsible for identifying such street name duplications during the process of numbering and renumbering structures in the incorporated area of the town.

(B) The street name duplication identification shall be based upon the name designation only, not the directional prefix or the street type suffix, i.e., the address 100 West Main Street is composed of four parts: the number (100); the directional prefix (West); the street name (Main); and the street type suffix (Street).

(C) When such duplications are identified, a Town Development Committee meeting shall be convened and said Committee shall be charged with determining which street names warrant renaming and with selecting new names for those streets which have name duplications elsewhere in the county causing potential confusion and misdirection in the location of individual structures.

(D) The warrants for street name changes shall include consideration of emergency service jurisdiction, identical number ranges, the number of identical names and similar factors deemed appropriate by the Committee membership. The Committee will also consult with post office representatives, emergency service representatives, utility representatives and government representatives as needed to assess the warrants. Whenever a street name, a number range and a jurisdictional area would all be duplicated, the street name under consideration shall be changed.

(E) The selection of new names shall be guided by the following.

(1) New street names shall not reflect the first, middle or last name of current residents on the street or in the area unless a written statement from all residents on the street in question is received requesting a specified resident's name be selected. Such statement must be filed with the Delaware-Muncie Metropolitan Plan Commission Office one week prior to the date for consideration of the street name changes by the Town Council.

(2) Where applicable, selection of new names shall follow existing street name themes such as tree names, bird names, British names, colonial names and the like. Where no street name theme exists, selection of a new name shall be guided by natural features, land usage, historical significance and similar factors to achieve some continuity in street names for an area.

(F) After the Committee has selected new street names, the Delaware-Muncie Metropolitan Plan Commission shall send notice, by first class mail, to residents along the street in question using available resources to attempt delivery to such residents. Failure to

achieve notification of all residents shall not preclude the renaming of a street.

(G) The notice to residents shall include the proposed new street name and the date, time and place of the Town Council meeting during which the street name changes shall be considered and acted upon by the Council. The notice shall also direct all questions and requests for information to the Delaware-Muncie Metropolitan Plan Commission Office. The notice shall include the procedure for requesting that a personal name of a resident be selected. Notice shall also include the procedure for remonstrance which shall be as follows.

(1) Where residents wish to request an alternative street name, they shall present a written statement setting forth the alternative name(s) with signatures representing 50% or more of the properties on the street in question. The written statement shall be filed with the Delaware-Muncie Metropolitan Plan Commission Office at least one week prior to the date for consideration by the Town Council. The alternative name shall be automatically approved provided they are not duplicated elsewhere in the county. If such duplication exists, the name proposed by the Town Development Committee shall be used. Residents are encouraged to present more than one alternative, in order of preference, in case of such duplication.

(2) Where residents are opposed to the change, they may appear at the designated Town Council meeting to present oral evidence why such street name should not be changed and to present a written statement of opposition from residents with signatures representing 50% or more of the properties on the street in question. A copy of the written statement of opposition with signatures shall be filed with the Delaware-Muncie Metropolitan Plan Commission Office one week prior to the date for consideration by the Town Council. Opposition to a street name change shall not automatically prevent the Town Council from renaming a street.

(3) Absence of response to the written notice shall be construed as acceptance of the street name change as proposed in the notice.

(H) Following the completion of the procedures described herein, a resolution setting forth all proposed street name changes shall be prepared, including resident names and alternative names if properly presented. The resolution shall be presented by the Town Development Committee and the Town Council shall consider the proposed street name changes and take action as deemed appropriate in accordance with I.C. 36-7-4-405.

(Res. 90-33, passed 11-12-1990)

§ 96.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99.

(B) Any person who shall violate any provision of § 96.01 shall be fined the amount of \$5, to be paid within ten days to the Clerk-Treasurer of the Town Council.

(Ord. 88-22, passed 12-5-1988)

TITLE XI: BUSINESS REGULATIONS

Chapter

110. ALCOHOLIC BEVERAGES

111. RUMMAGE SALES

112. PEDDLERS AND SOLICITORS

CHAPTER 110: ALCOHOLIC BEVERAGES

Section

110.01 Liquor retail permits

§ 110.01 LIQUOR RETAIL PERMITS.

The Town Council hereby consents that liquor retail permits be issued to applicants in respect to premises located within town limits.

(Ord. 90-35, passed 12-3-1990)

CHAPTER 111: RUMMAGE SALES

Section

- 111.01 Definition
- 111.02 Permit required
- 111.03 Frequency and length of sale
- 111.04 Public safety
- 111.05 Sale inventory
- 111.06 Sale advertisement
- 111.07 Cleanup
- 111.08 Enforcement

- 111.99 Penalty

§ 111.01 DEFINITION.

For the purposes of this chapter, **RUMMAGE SALES** shall be defined as the sales of clothing, furniture, housewares and miscellaneous personal items by an individual, group of individuals, or an organization, said individual or group not being a holder of a retail merchant's permit or license from any location within the town limits.

(Ord. 02-3, passed 12-2-2002)

§ 111.02 PERMIT REQUIRED.

(A) No rummage sale will be conducted within the town limits, without the owner of the location of the sale first having obtained a rummage sale permit issued by the Town Building Commissioner.

(B) Upon application, the rummage sale permit shall be issued without costs to the owner of the real estate at which the sale is to occur.

(Ord. 02-3, passed 12-2-2002) Penalty, see § 111.99

§ 111.03 FREQUENCY AND LENGTH OF SALE.

(A) Rummage sales may only occur over three days commencing Thursday at 8:00 a.m. and closing at 5:00 p.m., on Sunday.

(B) A real estate owner within the town, may only apply for and receive two permits within an annual period and said annual period commences January 1 of each year and ends on December 31 of the same year.

(C) Upon written request to the Town Building Commissioner, the Commissioner, at his or her discretion and to avoid hardship, may waive the "two permit rule" per annum.

(Ord. 02-3, passed 12-2-2002) Penalty, see § 111.99

§ 111.04 PUBLIC SAFETY.

Any location for which a permit is sought must have adequate off-street parking for business invitees as none shall be allowed in any street or other public roadway within the town. The determination of the existence of adequate parking shall be made by the Town Building Inspector and his or her decision shall be enforceable and grounds to withhold issuance of a permit.

(Ord. 02-3, passed 12-2-2002) Penalty, see § 111.99

§ 111.05 SALE INVENTORY.

Sale inventory, rummage, unless under roof (no tents), may be displayed within a yard or other location so long as said inventory shall not encroach on a 25-foot all property setback. All sale inventory shall be removed from public view during nighttime hours.

(Ord. 02-3, passed 12-2-2002) Penalty, see § 111.99

§ 111.06 SALE ADVERTISEMENT.

All locations of advertisements, notices and directional signs must be registered by the applicant and all such advertisements, notices and directional signs must be removed by 5:00 p.m. on the last day of the sale. All signs, advertisements and notices, must have the name of the rummage sale permit holder clearly identified on the sale notice or advertising sign/poster.

(Ord. 02-3, passed 12-2-2002) Penalty, see § 111.99

§ 111.07 CLEANUP.

All sale inventory, rummage, shall be removed from sight by 7:00 p.m., on Sunday, the last day of the sale.

(Ord. 02-3, passed 12-2-2002) Penalty, see § 111.99

§ 111.08 ENFORCEMENT.

The Town Building Commissioner is hereby authorized and directed to enforce this chapter and furtherance thereof is authorized to issue cease and desist orders as to all such rummage sales not in compliance with the provision of this chapter.

(Ord. 02-3, passed 12-2-2002)

§ 111.99 PENALTY.

Any violation of this chapter and any of the provisions contained herein shall result in a minimum fine of \$25. A fine of \$10 per day will be imposed in addition to the minimum fine for every day that any violation of this chapter shall continue. Further, should the Town Building Commissioner determine that a violation of this chapter has occurred, he or she may file a notice of said violation with the Planning and Zoning Board of the town which, upon notice to the real estate owner and hearing before the Board, may impose and collect the fine or fines herein provided.

(Ord. 02-3, passed 12-2-2002)

CHAPTER 112: PEDDLERS AND SOLICITORS

Section

General Provisions

112.01 Definitions

- 112.02 Necessity for license; exclusions
- 112.03 Application for license; attached statements
- 112.04 License fee
- 112.05 Duration of license
- 112.06 Transient merchants; surety bond; agent for service of process; action upon bond
- 112.07 Photographs; fingerprints, identification
- 112.08 License not transferable
- 112.09 Carrying, display of license
- 112.10 Permissible times for solicitation
- 112.11 Transient merchant; inventory of goods sold
- 112.12 Revocation of license
- 112.13 Use and disposition of receipts
- 112.14 Transient merchant; temporary association or partnership
- 112.15 Solicitation within public rights-of-way

Handbills and Posters

- 112.30 Purpose
- 112.31 Definitions
- 112.32 Distribution of handbills
- 112.33 Bill posters
- 112.34 Bills and posters

- 112.99 Penalty

Cross-reference:

Alcoholic beverages, see Chapter 110

Rummage sales, see Chapter 111

GENERAL PROVISIONS

§ 112.01 DEFINITIONS.

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

CANVASSER. Any person who goes door to door, or by telephone, soliciting signatures or money for a specific cause.

PEDDLER. One who sells or offers for sale tangible commodities directly to a consumer from house to house, store to store, or on the streets. **PEDDLERS** shall include persons selling and peddling the goods from a stall, stand, pushcart, receptacle, motor vehicle or other vehicle, or offering them from such in any public or private sale; persons going on foot as "pack peddlers" and persons commonly known as transient merchants.

SOLICITOR. Any person who goes from house to house, from place to place or from street to street or by telephone, soliciting or taking orders for sale of goods, wares or merchandise, including magazines, books, periodicals or personal property for future delivery, or for service to be performed in the future. Such definition includes any person who, for himself or herself or another, leases, uses or occupies any building, vehicle, trailer, tent, railroad car, hotel room or other place in the town for the primary purpose of exhibiting samples and taking orders for future delivery.

TRANSIENT MERCHANT. Any person, firm or corporation, both as principal and agent, who engages in, does or transacts any temporary or transient business in the town, offering for sale or selling goods, wares or merchandise, and one who, for the purpose of carrying on such business, hires, leases or occupies any permanent or mobile building, structure or real estate for the exhibition by means of samples, catalogues, photographs and price lists or sale of such goods, wares or merchandise but does not include:

- (1) Any person, individual, copartner or corporation which grows the goods, wares or merchandise that is sold or is offered for sale;
- (2) A person who makes crafts or items by hand and sells them or offers them for sale;
- (3) An auctioneer who is licensed under I.C. 25-6.1;
- (4) A resident of the county in which the sale takes place who conducts a sale of tangible personal property for no more than four days per calendar year;
- (5) An organization that is exempt from the state gross retail tax under I.C. 6-2.5-5-26;
- (6) A person who:
 - (a) Sells merchandise;
 - (b) Offers to sell merchandise; and
 - (c) Provides proof that the sale is being conducted as part of an activity sponsored by an organization described in division (5) above;
- (7) A person who:
 - (a) Organizes;
 - (b) Sells merchandise;
 - (c) Offers to sell merchandise; or
 - (d) Exhibits at a trade show, public show or convention.
- (8) Any merchant, even those with permanent locations within the town, that operates a temporary sales facility in a parking lot, vacant lot, tent, building or other facility or location that is not the property of the person or entity conducting the temporary sale.

(Ord. 07-02, passed 5-7-2007)

§ 112.02 NECESSITY FOR LICENSE; EXCLUSIONS.

(A) It shall be unlawful for any peddler, solicitor, transient merchant or canvasser to transact business in the town unless such peddler, solicitor, transient merchant or canvasser and the owners of any goods, wares or merchandise to be offered for sale or sold, if such are now owned by the vendor, shall have first secured a license as herein provided and shall have complied with the other requirements of this subchapter herein set forth.

(B) (1) This section shall not apply to the selling of personal property at wholesale to dealers in such articles; to newsboys; to merchants or their employees in delivering goods in the regular course of business; to vendors of milk, bakery products, groceries or ice who distribute their products to regular customers on established routes; or to farmers or truck gardeners who vend, sell or dispose of, or offer to sell, vend or dispose of the products of the farms or gardens occupied and cultivated by them. This section does not prohibit any sale required by statute or by order of any court, or prohibit any auction sales conducted pursuant to law.

(2) Further, this section does not apply to religious or charitable organizations with tax exempt status from both state and federal government, Salem Township Volunteer Fire Departments, public or private schools, local service clubs, local churches and all United Way agencies and any other agencies or groups specifically exempted by the Town Council including Boy Scouts, Girl Scouts, Little

Leagues or other similar locally based activities. This section shall also not apply to politicians engaged in local elections. Further, the provisions of this subchapter shall not apply to sales made to dealers by commercial travelers or selling agents in the usual course of business nor to bona fide sale of goods, wares or merchandise by sample for future delivery, or to sheriffs, constable or other public officers selling goods, wares and merchandise according to law, nor to bona fide assignees or receivers appointed in this state selling goods, wares and merchandise for the benefit of creditors.

(Ord. 07-02, passed 5-7-2007)

§ 112.03 APPLICATION FOR LICENSE; ATTACHED STATEMENTS.

(A) Any peddler, solicitor, transient merchant or canvasser desiring to transact business in the town shall file application for a license for the purpose with the office of the Clerk-Treasurer.

(B) Where applicable, the application shall state the following facts:

(1) The name, residence and post-office address of the person, firm or corporation making the application, including the telephone number, license plate number of any vehicle to be used in such business, and operator's driver's license number, and if a firm or corporation, the name and address of the members of the firm or officers of the corporation, as the case may be;

(2) If the applicant is a corporation, then there shall be stated on the application form the date of incorporation, the state of incorporation, and if the applicant is a corporation formed in a state other than Indiana, the date on which such corporation qualified to transact business as a foreign corporation in the state;

(3) A statement showing the kind of business proposed to be conducted, the length of time for which the applicant desires to transact business, and if for the purpose of transacting such business any permanent or mobile building, structure or real estate is to be used for the exhibition by means of samples, catalogues, photographs and price lists or sale of goods, wares or merchandise, the location of such proposed place of business;

(4) A detailed inventory and description of such goods, wares and merchandise to be offered for sale or sold, the manner in which the same is to be advertised for sale and the representations to be made in connection therewith, the names of the persons from whom the goods, wares and merchandise so to be advertised or represented were obtained, the date of receipt of such goods, wares and merchandise by the applicant for the license, the place from which the same were last taken, and any and all details necessary to locate and identify all goods, wares and merchandise to be sold;

(5) Attached to the application shall be a receipt showing that personal property taxes on the goods, wares and merchandise to be offered for sale or sold have been paid. This provision shall apply only to transient merchants;

(6) Attached to the application shall be a copy of a notice, which ten days before said application has been filed, shall have been mailed by registered mail by the applicant to the State Department of State Revenue or such other department as may be charged with the duty of collecting gross income taxes or other taxes of a comparable nature or which may be in lieu of such gross income taxes. The said notice shall state the precise period of time and location from which said applicant intends to transact business, the approximate value of the goods, wares and merchandise to be offered for sale or sold, and such other information as the State Department of State Revenue or its successor may request or by regulation require, this provision shall apply only to transient merchants;

(7) Said application shall be verified;

(8) A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation of any municipal ordinance, other than a traffic violation, the nature of the offense and the penalty imposed;

(9) The last cities or villages, not exceeding three, where applicant carried on business immediately preceding date of application and the addresses from which such business was conducted in those cities;

(10) A statement to the effect that if a license is granted, it will not be used or represented in any way as an endorsement by the town, or any department or office thereof;

(11) The Social Security number or the business identification number of the applicant; and

(12) A declaration by the Clerk-Treasurer that the applicant has complied with all prerequisites for issuance of the license.

(Ord. 07-02, passed 5-7-2007) Penalty, see § 112.99

§ 112.04 LICENSE FEE.

The applicant desiring to file an application with the Clerk-Treasurer for a peddler, solicitor, transient merchant or canvasser license shall pay to the Clerk-Treasurer a license fee of \$500 for each six-month period in which the applicant proposes to transact business.

(Ord. 07-02, passed 5-7-2007) Penalty, see § 112.99

§ 112.05 DURATION OF LICENSE.

Every license issued under this subchapter shall expire three calendar months after the date issued. If the licensee wishes to continue his or her business after expiration of his or her license, a new license must be obtained.

(Ord. 07-02, passed 5-7-2007) Penalty, see § 112.99

§ 112.06 TRANSIENT MERCHANTS; SURETY BOND; AGENT FOR SERVICE OF PROCESS; ACTION UPON BOND.

(A) (1) At the time of filing the application for transient merchant license, the applicant shall also file and deposit with the Clerk-Treasurer a bond with sureties to be approved by the Clerk-Treasurer in the penal sum of \$750 or three times the value of the goods, wares and merchandise to be offered for sale or sold as shown by the inventory filed, whichever sum is greater, running to the town. Cash may be posted and deposited with the Clerk-Treasurer in lieu of a bond. The bond shall be forfeited and used for the benefit of:

(a) Any purchaser of goods, wares or merchandise sold by the applicant, if the purchaser is awarded a judgement as a result of a cause of action against the applicant that was commenced within one year of and that arose out of the sale;

(b) The operating budget of the town's prosecuting attorney, if the applicant is found by a court to have violated of this subchapter, although the amount forfeited under this division (A) may not exceed one-third of the bond;

(c) The town, if the applicant fails to pay all taxes due from the applicant to the state; or

(d) A court in payment or partial payment of any fines that may be assessed by the court against the applicant, its agents or employees for violation of this chapter.

(2) However, the aggregate liability of the surety for all taxes, fines, disbursements/and causes of action may not exceed the amount of such bond. There shall be no limitation of liability against the transient merchant or the applicant for the license.

(B) In such bond, the applicant and surety shall appoint the Clerk-Treasurer the agent of the applicant, and the surety for the service of process. In the event of such service of process, the agent on whom such service is made shall, within five days after the service, mail by ordinary mail a true copy of the process served upon him or her to each party for whom he or she has been served, addressed to the last known address of such party. Failure to mail the copy shall not, however, affect the court's jurisdiction.

(C) The town or any person having a cause of action arising from or out of any sale or sales of goods, wares or merchandise or against the applicant may join the applicant and the surety on such bond in the same action or may sue either such applicant or the surety alone.

(Ord. 07-02, passed 5-7-2007) Penalty, see § 112.99

§ 112.07 PHOTOGRAPHS; FINGERPRINTS, IDENTIFICATION.

(A) Prior to the issuance of the license, the applicant shall furnish the Clerk-Treasurer with two photographs of a size not smaller than two inches by one and one-half inches. One of the photographs shall be attached to the license certificate issued to the licensee and the other shall be retained in the office of the Clerk-Treasurer.

(B) Prior to the issuance of the license, the applicant shall submit to the taking of a set of fingerprints by the Police Department and shall sign the cards upon which the fingerprints are taken. This requirement may be waived by the Town Police Chief in writing.

(Ord. 07-02, passed 5-7-2007)

§ 112.08 LICENSE NOT TRANSFERABLE.

No license issued under this subchapter shall in any manner be assignable or transferable, or authorize any other person than the licensee to sell or solicit, or authorize the sale of, or solicitation for, any other class of articles other than those specified in the application for license.

(Ord. 07-02, passed 5-7-2007) Penalty, see § 112.99

§ 112.09 CARRYING, DISPLAY OF LICENSE.

Every licensee shall display his or her license on his or her person at all times while engaged in selling or soliciting and shall, when so requested by a public officer or a private person with whom the registrant is or is attempting to conduct business, produce and show such person or officer the license.

(Ord. 07-02, passed 5-7-2007)

§ 112.10 PERMISSIBLE TIMES FOR SOLICITATION.

It shall be unlawful for any peddler, solicitor, transient merchant or canvasser to solicit, sell or offer for sale any goods, wares, merchandise, services, insurance policies of any description, or subscriptions to any kind of publication except newspapers, to the occupant of any dwelling place either by going from dwelling place to dwelling place or by telephone before 9:00 a.m. (E.S.T.) or after 5:00 p.m. (E.S.T.) without first having secured permission to do so from a resident of such dwelling place.

(Ord. 07-02, passed 5-7-2007) Penalty, see § 112.99

§ 112.11 TRANSIENT MERCHANT; INVENTORY OF GOODS SOLD.

Within ten days after a transient merchant license expires the holder thereof shall file in duplicate with the Clerk-Treasurer an inventory of all goods, wares and merchandise sold and the price received therefor, which inventory shall be verified by the person who filed the application for the license with the said Clerk-Treasurer. The Clerk-Treasurer shall immediately after receiving such report and inventory forward a copy thereof to the Indiana Department of State Revenue or its successor.

(Ord. 07-02, passed 5-7-2007)

§ 112.12 REVOCATION OF LICENSE.

Any person who violates or fails to comply with any of the provisions of this subchapter shall be fined as set forth in for each and every violation thereof, and the Council and/or Chief of Police may revoke such license issued under this subchapter to any person for any violation or failure to comply with its provisions.

(Ord. 07-02, passed 5-7-2007)

§ 112.13 USE AND DISPOSITION OF RECEIPTS.

All fees collected under this subchapter shall be paid into the General Fund of the town.

(Ord. 07-02, passed 5-7-2007)

§ 112.14 TRANSIENT MERCHANT; TEMPORARY ASSOCIATION OR PARTNERSHIP.

A temporary association or partnership with a person excluded from the definition of *TRANSIENT MERCHANT* under does not relieve a transient merchant from complying with this subchapter.

(Ord. 07-02, passed 5-7-2007)

§ 112.15 SOLICITATION WITHIN PUBLIC RIGHTS-OF-WAY.

(A) Except as otherwise provided under this section, no person shall, directly or indirectly, upon any street, public place or park in the town, solicit aims or gratuities, or seek donations by silent or vocal appeal to sympathy through attention to physical or mental infirmities of such person or of another person; or seek donations by means of music, singing, selling small articles or any other aids or devices to accomplish such purpose.

(B) The solicitation of donations for charitable purposes shall not be permitted at intersections within the town.

(Ord. 07-02, passed 5-7-2007) Penalty, see § 112.99

HANDBILLS AND POSTERS

§ 112.30 PURPOSE.

(A) In order to protect the people against the nuisance of the promiscuous distribution of handbills and circulars, particularly commercial handbills, the public interests, convenience and necessity requires the regulation thereof, and to that end the purposes of this subchapter shall be as follows:

(1) To protect the people against the activities or operations of persons representing themselves as solicitors, canvassers or handbill distributors, by requiring the registration of all such solicitors, canvassers or handbill distributors, together with the names of their employers, and by regulating the business of handbill and advertising distribution through the imposition of reasonable license fees;

(2) To protect local residents against trespassing by solicitors, canvassers or handbill distributors on the private property of such residents if they have given reasonable notice that they do not wish to be solicited by such persons or do not desire to receive handbills or advertising matter;

(3) To protect the people against the health and safety menace and the expense incident to the littering of the streets and public places by the promiscuous and uncontrolled distribution of advertising matter and commercial handbills; and

(4) To preserve to the people their constitutional rights to receive and disseminate information not restricted under the ordinary rules of decency and good morals and public order, by the promiscuous distribution of advertising and commercial circulars and the right to deliver noncommercial handbills to all who are willing to receive such handbills.

(B) Nothing in this section shall prohibit political candidate running for any local office from distributing politically motivated materials except random posting of handbills and posters on polls and signs shall be prohibited.

(Ord. 07-02, passed 5-7-2007) Penalty, see § 112.99

§ 112.31 DEFINITIONS.

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

BILLPOSTER. Any person engaging in the business for hire of posting, fastening, nailing, or affixing any written, painted or printed matter of any kind, containing a message of information of any kind, to any outdoor billboard, or on any bridge, fence, pole, post, sidewalk, tree or on the exterior of any other structure. This definition shall not apply to or include any sign mounted on, fastened to, or suspended from the outside of any building or other structure, in accordance with and authorized by any provision of any other town ordinance or any statute, either for any public convenience or use or for regulating the construction or use of outdoor display signs whether the display signs are illuminated or not.

COMMERCIAL HANDBILL. Any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, paper booklet or any other printed or otherwise reproduced original or copies of any matter of literature:

(1) Which advertises for sale any merchandise, produce, commodity or thing;

(2) Which directs attention to any business or mercantile or commercial establishment, or other activity, for the purpose of either directly or indirectly promoting the interest thereof by sales;

(3) Which directs attention to or advertises any meeting, theatrical performance, exhibition, or event of any kind, for which an admission fee is charged for the purposes of private gain or profit; but the terms of this division shall not apply where an admission fee is charged or a collection is taken up for the purpose of defraying the expenses incident to such meeting, theatrical performance, exhibition or event of any kind, when either of the same is held, given or takes place in connection with the dissemination of information which is not restricted under ordinary rules of decency, good morals, public peace, safety and good orders; provided, that nothing contained in this division shall be deemed to authorize the holding, giving or taking place of any meeting, theatrical performance, exhibition or event of any kind, without a license, where such license is or may be required by any law of this state, or under any ordinances of this town; or

(4) Which, while containing reading matter other than advertisement, and is distributed or circulated for advertising purposes or for the private benefit and gain of any person so engaged as advertiser or distributor.

HANDBILL DISTRIBUTOR. Any person engaging or engaged in the business for hire or gain of distributing commercial or noncommercial handbills, other than newspapers distributed to subscribers thereof, and any person receiving compensation directly or indirectly for the distribution of such handbills.

NEWSPAPERS. Any newspaper of general circulation as defined by general law, and newspaper duly entered with the Post Office Department of the United States, in accordance with federal statute or regulation, and any newspaper filed and recorded with any recording office as provided by general law; and in addition thereto, shall mean and include any periodical or current magazine regularly published with no less than four issues per year, and sold to the public.

NONCOMMERCIAL HANDBILL. Any printed or written matter, any sample or device, dodger, circular, leaflet, pamphlet, newspaper, magazine, paper, booklet or any other printed or otherwise reproduced original or copies of any matter of literature not included in the definitions of commercial handbill or newspaper.

PRIVATE PREMISES. Any dwelling, house, building or other structure designed or used either wholly or in part for private residential purposes, whether inhabited or temporarily uninhabited or vacant, and shall include any yard, ground, walk, driveway, porch, steps, vestibule or mailbox belonging or appurtenance to such dwelling, house, building or other structure.

(Ord. 07-02, passed 5-7-2007)

§ 112.32 DISTRIBUTION OF HANDBILLS.

(A) *Throwing or distributing handbills in public places.* No person shall throw or deposit any commercial or noncommercial handbill in or on any sidewalk, street or other public place within the town, or hand out or distribute or sell any commercial handbill in any public place; provided, that any person may hand out or distribute or sell to the receiver thereof, any noncommercial handbill to any person willing to accept it.

(B) *Placing commercial and noncommercial handbills on vehicle.*

(1) No person shall throw or deposit any commercial or noncommercial handbill in or on any vehicle.

(2) This division (B) shall not prohibit any person in any public place from handing out or distributing, without charge to the receiver thereof, a noncommercial handbill to any occupant of a vehicle who is willing to accept it.

(C) *Distributing handbills on streets, highways and intersections.*

(1) No person shall, in the course of distributing noncommercial handbills to occupants of vehicles temporarily stopped on town streets, highways or intersections, distribute handbills if such actions:

(a) Obstruct any public street, highway or intersection by hindering, impeding or tending to hinder or impede the free and uninterrupted passage of vehicles, traffic or pedestrians;

(b) Create or cause to be created a danger of breach of the peace; or

(c) Create or cause to be created any danger to the life and safety of pedestrians or occupants of vehicles engaged in lawful passage on any street, highway or intersection.

(2) Whenever any police officer shall, in the exercise of reasonable judgment, decide that the presence of any handbill distributor

on a street, highway or intersection is causing any of the conditions enumerated in division (C)(1) above, he or she may, if he or she deems it necessary for the preservation of the public peace and safety, order the person to leave that place. Any person who shall refuse to leave after being ordered to do so by a police officer shall be guilty of a violation of this division.

(D) *Depositing commercial and noncommercial handbills on uninhabited or vacant premises.* No person shall throw or deposit any commercial or noncommercial handbill in or on any private premises which are temporarily or continuously uninhabited or vacant:

- (1) Where it is apparent that the property is unoccupied;
- (2) Where it is apparent that a previous day's distribution of handbills has not been removed; or
- (3) Where the owner has not given his or her permission to do so.

(E) *Distribution of commercial and noncommercial handbills at inhabited private premises.*

(1) No person shall throw, deposit or distribute any commercial or noncommercial handbill in or on private premises which are inhabited, except by handing or transmitting any such handbill directly to the owner, occupant or other person then present in or on such private premises.

(2) Any person may place or deposit any noncommercial handbill in or on inhabited private premises which are not posted, as provided in division (F) below, unless requested by anyone on such premises not to do so, if such handbill is so placed or deposited as to secure or prevent such handbill from being blown or drifted about such premises or sidewalks, streets or other public places, and except that mailboxes may not be so used when so prohibited by federal postal law or regulations.

(3) This division (E) shall not apply to the distribution of mail by the United States, nor to newspapers, except that newspapers shall be placed on private property in such a manner as to prevent their being carried or deposited by the elements on any street, sidewalk or other public place or on private property.

(F) *Distributing handbills prohibited where premises properly posted.* No person shall throw, deposit or distribute any commercial or noncommercial handbill on private premises, if requested by anyone thereon not to do so, or if there is placed on such premises in a conspicuous position near the entrance thereof, a sign bearing the words "No Trespassing", "No Peddlers or Agents", "No Advertisement" or any similar notice, indicating in any matter that the occupants of the premises do not desire to be molested or have their right of privacy disturbed or to have any such handbills left on such premises.

(G) *Handbill distributor for hire.* No person shall engage in the business of a handbill distributor for hire, without first complying with the provisions of this subchapter and all other relevant laws and regulations.

(H) *Exception.* Nothing contained in this subchapter shall apply to any person advertising his or her business or activity on his or her own premises, if such business or activity is regularly established at a definite location in the town, and if a license has been obtained therefor, if a license is required under the terms of any applicable law or ordinance.

(I) *Application for commercial distributor's license; contents.*

(1) Any person desiring to engage, as principal, in the business of distributing commercial or noncommercial handbills for hire, shall make application to and receive from the Clerk-Treasurer, a distributor's license. Such applicant shall make written application to the Clerk-Treasurer on forms provided for such purpose by the Clerk-Treasurer.

(2) The forms shall contain, among other things that may be required, the name, the business address and a brief description of the nature of the business to be conducted by the applicant, the probable number of agents and employees so to be engaged, together with a request for a license for the period for which the applicant seeks to engage in such business.

(J) *License fees.* License fees for a commercial distributor's license shall be \$500.

(K) *Transferability of commercial distributor's license.* No license issued under this subchapter shall be transferable to any other person.

(L) *Refund of license fees.* If any commercial distributor's license is surrendered by the licensee or is revoked for cause, neither the licensee named in such license nor any other person shall be entitled to any refund of part of the license fee.

(M) *Revocation of commercial distributor license.* The Police Chief may revoke any license obtained under this subchapter, following the procedures set forth in I.C. 36-4-5-5.

(N) *Exemptions from division.* The provisions of this section shall not be deemed to apply to distribution of mail by the United

States nor to newspapers.

(O) *Commercial handbills; names of printer and distributor required.* All commercial handbills which are distributed, deposited, scattered, handed out or circulated in any place or under any circumstances shall have printed on the corner, front or back thereof, the following information:

- (1) The name and address of the person who printed, wrote, compiled or manufactured such handbill; and
- (2) The name and address of the person who caused such handbill to be distributed.

(Ord. 07-02, passed 5-7-2007) Penalty, see § 112.99

§ 112.33 BILL POSTERS.

(A) *License required; exception.*

(1) No person shall engage in the business of a bill poster for hire without first complying with the terms of this subchapter and all other relevant laws and regulations.

(2) Nothing contained in this subchapter shall apply to any person advertising his or her business or activity on his or her own premises, if such business or activity is regularly established at a definite location in such town, and also if a license has been obtained therefor, if such license is required under the terms of any applicable law or ordinance.

(B) *Application for bill poster's license.*

(1) Any person, desiring to engage, as principal, in the business of a bill poster for hire, shall make application to and receive from the Clerk-Treasurer a license in the manner and for the period prescribed by the terms of this subchapter. Such applicant shall make written application to the Clerk-Treasurer on forms provided for such purpose by the Clerk-Treasurer.

(2) The forms shall contain, among other things that may be required, the name, the business address and a brief description of the nature of the business to be conducted by the applicant, the probable number of agents and employees so to be engaged, together with a request for a license for the period for which the applicant seeks to engage in such business. Such application shall be accompanied by the fee provided by the Common Council.

(C) *Transferability of bill poster's license.* No license issued under this section shall be transferable to any other person.

(D) *Refund of license fee.* If any bill poster's license is surrendered by the licensee, or is revoked for cause, neither the licensee named in such license, nor any other person, shall be entitled to any refund of any part of the license fee.

(E) *Revocation of bill poster's license.* The Mayor may revoke any license obtained under this subchapter, as set forth in I.C. 36-4-5-5.

(Ord. 07-02, passed 5-7-2007) Penalty, see § 112.99

§ 112.34 BILLS AND POSTERS.

(A) *Posting notices prohibited; exception.* No person shall post or affix any notice, poster or other paper or device, calculated to attract the attention of the public, to any lamp post, public utility pole or on any public structure or building, except as may be authorized or required by law.

(B) *Advertisements on sidewalks prohibited.* No person shall print or paint any signs or advertisements for any purpose whatsoever on the sidewalks of the town.

(C) *Bill posting without property owner's consent prohibited.* No person shall post, paint, burn, sit up or expose any bill, placard or advertisement, or cause the same to be posted, painted, burnt, set up or exposed on the property or premises of any other person without first obtaining the consent of the legal owner or custodian of such property or premises.

(D) *Removing or defacing bills prohibited.* No person shall willfully or recklessly remove, tear down, deface, injure or destroy any written or printed handbill, poster or other notice or advertisement of like character legally posted or otherwise legally displayed, in any public place in this town, so long as the same shall be of value for the purposes thereof to the person who posted or displayed the same, or caused it to be posted or displayed.

(E) *Posting bills on utility poles.* No person shall paint, post, paste or otherwise in any manner attach any bills, posters, streamers or display advertisements on any telephone, telegraph or electric light poles located on the streets, thoroughfares or alleys in the town.

(F) *Town employees to remove bills or advertisements.*

(1) Authorized town personnel shall tear down or remove any bills, posters or display advertisements in any manner attached to any telephone, telegraph or electric light poles.

(2) This section shall not apply to traffic signs.

(G) *Permits for signs and advertisements on and across streets.* No person shall erect, hang or display signs and advertisements for any purpose whatsoever on and across the streets and public thoroughfares of the town, without first obtaining a permit.

(Ord. 07-02, passed 5-7-2007) Penalty, see § 112.99

§ 112.99 PENALTY.

(A) Any violator of this chapter shall be subject to a fine of \$100 per day up to an annual maximum of \$2,500.

(B) The town may, through its legal department or other appropriate agency, seek a temporary restraining order and/or permanent restraining order against the offender in any court of competent jurisdiction.

(C) The town's remedies shall be cumulative and pursuit of one remedy shall not preclude another.

(D) Willful or intentional disregard of this chapter shall entitle the town to collect from the violator its costs of attorney's fees, court costs and other reasonable expenses incurred by the town in obtaining a restraining order or other necessary remedy.

(E) Upon any violation of the provisions herein, the town may declare the posted bond or other security posted immediately forfeit.

(Ord. 07-02, passed 5-7-2007)

TITLE XIII: GENERAL OFFENSES

Chapter

130. CURFEW FOR MINORS

CHAPTER 130: CURFEW FOR MINORS

Section

130.01 Violation

130.02 Exception

130.03 Guardian violation

130.99 Penalty

§ 130.01 VIOLATION.

(A) It is a curfew violation for a child under 18 years of age to be in a public place in the town at any time during the following hours:

(1) Between 1:00 a.m. and 5:00 a.m. on Saturday or Sunday;

(2) After 11:00 p.m. on Sunday, Monday, Tuesday, Wednesday or Thursday; or

(3) Before 5:00 a.m. on Monday, Tuesday, Wednesday, Thursday or Friday.

(B) A law enforcement officer may not detain a child or take a child into custody based on a violation of this section unless the law enforcement officer, after making a reasonable determination and considering the facts and surrounding circumstances reasonably believes the child has violated this section.

(Ord. 08-05, passed 10-6-2008) Penalty, see § 130.99

§ 130.02 EXCEPTION.

This chapter does not apply to a child who is:

(A) Accompanied by the child's parent, guardian or custodian;

(B) Accompanied by an adult specified by the child's parent, guardian or custodian;

(C) Participating in, going to or returning from:

(1) Lawful-employment;

(2) A school sanctioned activity;

(3) A religious event;

(4) An emergency involving the protection of a person or property from an imminent threat of serious bodily injury or substantial damage; or

(5) An activity involving the exercise of the child's rights protected under the First Amendment to the United States Constitution or Article 1, § 31 of the Constitution of the state, or both, such as freedom of speech and the right of assembly.

(D) Participating in an activity undertaken at the prior written direction of the child's parent, guardian or custodian; or

(E) Engaged in interstate or international travel from a location outside the state to another location outside the state.

(Ord. 08-05, passed 10-6-2008)

§ 130.03 GUARDIAN VIOLATION.

It is curfew violation for a parent, guardian or custodian of a child under the age of 18 years knowingly to allow that child to commit a curfew violation.

(Ord. 08-05, passed 10-6-2008) Penalty, see § 130.99

§ 130.99 PENALTY.

Upon first violation of this chapter, the violator shall be subject to a warning. Upon a second violation of this chapter, the violator shall be subject to a \$25 fine. Upon a third violation of this section the violator shall be subject to a \$50 fine. Upon a subsequent violation of this section the violator shall be subject to a \$100 fine.

(Ord. 08-05, passed 10-6-2008)

TITLE XV: LAND USAGE

Chapter

150. GENERAL PROVISIONS

151. BUILDING REGULATIONS

152. COMPREHENSIVE LAND USE

Section

General Provisions

- 150.01 Permit fees
- 150.02 Uniform numbering system
- 150.03 Mobile homes

Residential Construction Contractors Registration Fees

- 150.15 Purpose
- 150.16 Definitions
- 150.17 Exclusions
- 150.18 Citizens Advisory Board
- 150.19 Registration procedure
- 150.20 Compliance
- 150.21 Unsafe Building Fund

GENERAL PROVISIONS

§ 150.01 PERMIT FEES.

- (A) *Purpose.* To establish fee schedules for electrical plumbing and heating and ventilating permits.
- (B) *Electrical permit fees.*
 - (1) New construction:
 - (a) One- and two-family residence: \$1 per room, excluding baths and closets, plus inspection fee of \$20; and
 - (b) Multi-family residence: \$20 inspection fee for first unit with an inspection fee of \$10 per unit thereafter. Maximum: \$500.
 - (2) Alterations, repairs and remodeling: same as new construction.
 - (3) Commercial and industrial:
 - (a) New construction:
 - 1. Inspection fee 100 amp and 200 amp service: \$50;
 - 2. Inspection fee 400 amp and up to 1,000 amp: \$75;
 - 3. Inspection fee for 1,000 amp and up \$100; and
 - 4. Plus permit fee of \$2 per 100 square feet of floor area: minimum \$100, maximum \$500.
 - (b) Alteration repair and remodeling:
 - 1. Partial or complete rewire permit fee plus \$15 inspection fee: \$25; and
 - 2. Change of service (increase amperage) new or moved panel box, new or moved meter \$25.
 - (4) Agriculture and warehouse structures: permit fee \$30, up to 400 AMPS, same as commercial and industrial.

(5) Electricians registration fee (annual): \$15. (Electrical contractors must have a local electrician license on file before work permit is issued.)

(C) *Plumbing permit fees.*

(1) New construction:

(a) Each complete bathroom consisting of a stool, lavatory, shower and/or tub: \$10, plus \$3 for each additional stool, lavatory, shower and/or tub;

(b) Kitchen sink, garbage disposal and dishwasher: \$3;

(c) Automatic clothes washer and dryer ventilation: \$3; and

(d) All other openings, such as clean-out drains and the like: \$3.

(2) Alteration, repairs and remodeling: same as new construction.

(3) Commercial, industrial, apartment and public buildings: same as new construction.

(4) Agriculture and warehouse structures: permit fee \$30, up to the equivalent of two complete baths; above that same as new construction.

(5) Plumbers registration fee: (annual) \$15, (Plumbing contractors must have a State Master Plumber License on file before permit for plumbing is issued.)

(D) *Heating and ventilating permit fees.*

(1) New construction:

(a) One- and two-family residence:

1. Conversion burner installation \$15;

2. New or replacement furnace installation \$15;

3. Air conditioning installation \$20; and

4. Combination furnace and air conditioning unit or heat pump installation new or replacement: \$35.

(b) Multi-family residence: same as one- and two-family residence, plus inspection fee of \$10 per unit above one. Maximum: \$500.

(c) Replacement on any of the above: same as new construction.

(2) Commercial and industrial:

(a) Air conditioner: \$20 inspection fee plus \$1 per ton.

(b) Electric heat: \$20 inspection fee plus \$1 per 10 KWs.

(c) Fossil heat: \$20 inspection fee plus \$1 per 103,000 BTUs.

(d) Replacement: same as new construction.

(3) Heating and ventilating registration fee (annual) \$15.

(Ord. 88-27, passed 1-9-1989)

§ 150.02 UNIFORM NUMBERING SYSTEM.

The uniform numbering system for the town shall be the uniform numbering system used in Salem Township and the remainder of the county, as set forth in "An Ordinance Establishing a Uniform Numbering System for Houses and Structures", adopted by the Board of County Commissioners of Delaware County, Indiana, on the August 27, 1979.

(Ord. 90-34, passed 11-12-1990)

§ 150.03 MOBILE HOMES.

(A) For purposes herein, a **MOBILE HOME** will be defined as any residence that is required to be titled through the State Bureau of Motor Vehicles as a vehicle.

(B) No mobile homes shall be placed within the town limits of the town as an attached, anchored or permanent structure.

(C) This section shall not affect the temporary placement of a mobile home on the following basis and circumstances:

(1) For the use of a caretaker's quarters or a construction office at a job site;

(2) For use as a temporary residence located on a building lot during the course of construction of the site built dwelling and upon granting by the Zoning Board of a variance and permit for the temporary replacement of said mobile home; and/or

(3) For use as a temporary residence located adjacent to an existing residence when the zoning board has approved the placement of said mobile by granting a variance to the owner whose health or the health of another necessitates care and where the facts show that an unnecessary hardship would occur if the temporary placement of the mobile home was not permitted.

(D) A temporary placement permit shall be obtained prior to the placement of a mobile home for any of the uses set out herein. In addition, the temporary placement shall be subject to the following:

(1) Applicable health provisions for sanitary facilities;

(2) Providing adequate ground anchor; and

(3) Setback provisions in accordance with the Zoning Board regulations.

(E) Temporary placements shall not be issued for a period to exceed one year. Subsequent permits may be issued to the initial one year permit with the permission of the Zoning Board and for each additional year requested, an additional filing fee will be required.

(Ord. 93-11, passed 6- -1993)

RESIDENTIAL CONSTRUCTION CONTRACTORS REGISTRATION FEES

§ 150.15 PURPOSE.

An ordinance to promote the health and safety of the citizens of the town. From and after the effective date of this subchapter, it shall be unlawful for any person to engage in the business of, or to act in the capacity of, a general residential or skilled trades contractor in any incorporated area of the town, unless such person shall be registered as a general residential or skilled trades contractor as herein provided.

(Ord. 89-2, passed 1-9-1989) Penalty see § 10.99

§ 150.16 DEFINITIONS.

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

BOARD. The Delaware County Residential Contractors Appeal Board.

PERSON. Any individual, firm, partnership, association, co-partnership, corporation, trust or any other organization or any combination thereof.

RESIDENTIAL CONTRACTOR. Any person engaged in the construction of residential structures, who for a fixed sum, price, fee, percentage, valuable consideration or other compensation undertakes with another or offers to undertake or purports to have the capacity to undertake with another for the erection, construction, replacement, repair alteration or any addition to, subtraction from or

improvement of a residential structure, or any person who manufactures, assembles, constructs, deals in, or distributes residential structures which are pre-fabricated, pre-assembled, pre-cut, packaged or shell housing, or any person who erects a residential structure, except for his or her own use and occupancy on his or her own property.

RESIDENTIAL STRUCTURE. Any structure used for human habitation.

SHAREHOLDER. Any person who owns more than 10% of the stock of a corporation that is engaged in any undertaking set forth in the definition of "residential contractor".

SKILLED TRADES CONTRACTOR. Any person, firm, partnership or corporation whose principle owner contracts to perform for a fee; plumbing, electrical, heating, cooling or subsequent ventilation work in the field of residential construction in the incorporated area of the town.

(Ord. 89-2, passed 1-9-1989)

§ 150.17 EXCLUSIONS.

This subchapter shall not apply to:

(A) Owners of property upon which structures are located and constructed for their own use of occupancy, such construction not to exceed one such structure in each 12-month period;

(B) Any undertaking as described in the definition for residential contractor in § 150.16, wherein the total price for labor and materials does not exceed \$1,500; provided, however, this exemption does not apply in any case wherein the undertaking is only a part of a larger undertaking and the division of the undertaking is made in amounts less than \$500 each for the purpose of evasion of this subchapter;

(C) Roofing, guttering, siding, cabinets, window replacement, non-covered patio construction, aluminum patio enclosure, erection of aluminum canopies or awnings, unless the same is a part of an entirely new residential structure. These are considered component subcontracts, and are subject to the Building Contractors permits and supervision; or

(D) Any unlawful act or violation of any of the provisions of this act upon the part of any employee or any officer or member of a registered general residential or skilled trades contractor shall not be cause for suspension, revocation or denial of the registration of any general residential or skilled trades contractor, unless it shall appear to the satisfaction of the Board that the general residential or skilled trades contractor had knowledge thereof and acquiesced therein.

(Ord. 89-2, passed 1-9-1989)

§ 150.18 CITIZENS ADVISORY BOARD.

The County Residential Contractors Board shall consist of seven members, one shall be the County Building Inspector, two shall be registered residential contractors during the time of their appointment, one shall be from the general public, and one from each of the following skilled trades: plumbing, electrical, heating and air conditioning. All members from the registered contractors list for the county. Each member except the Building Commissioner shall serve for a period of four years, or until his or her successor is appointed and qualified; provided, however, the terms of office of the first members appointed to the Board shall be, one for one year, two for two years, two for three years, and one for four years respectively. The Building Commissioner shall serve as administrative officer and shall conduct all hearings and meetings and retain all board records and files in his or her office. The Board shall elect from its members a Secretary, who shall be responsible for keeping minutes and records of all official sections of the Board.

(Ord. 89-2, passed 1-9-1989)

§ 150.19 REGISTRATION PROCEDURE.

All applications for registration shall be made in writing to the Building Commissioner, who shall be the responsibility to prepare and process the form of application for registration.

(A) Every applicant for registration shall furnish a sworn statement setting forth his or her present address, both of his or her business and his or her residence, the complete address of all former places where he or she may have resided or have been engaged

in business during the last five years, and the length of such residence.

(B) Every applicant for registration, shall also state the name of the person, firm, partnership, association, copartnership or corporation and the location of the place for which such registration is desired, and set forth the period of time, if any, during which said applicant has been engaged in the business and such application shall be executed by such person or by the president and secretary of any corporation or by all partners in any partnership.

(C) The Building Commissioner upon application, may register a general residential or skilled trades contractor once the application has been a resident of the state for one year.

(D) No applicant shall be refused registration by the Building Commissioner (new or renewal) without an opportunity for a hearing before the Board. Upon compliance with all the provisions of this ordinance, registration shall be granted forthwith. Thereafter, renewal annually, as long as the applicant continues to comply with all other provisions of this subchapter. If after a hearing of record before the board, a residential builder or skilled tradesman, is found guilty of violating any of the provisions of this chapter or the rules and regulations adopted pursuant thereto, the Board may require in writing such restrictions as so determined by the Board of such residential builder. Building Commissioner, County Board of Health or their duly authorized representatives shall have the right of access to such premises. Prior to making such inspection, the Commissioner shall give at least 48 hours advance notice of the proposed inspection to the owner, lessee or occupants. The notice shall state the date and time of the inspection and shall include the name of the person or persons who will conduct the inspection.

(E) An action taken under this subchapter is subject to review or appeal pursuant to the provisions of I.C. 36-7-9-8.

(Ord. 89-2, passed 1-9-1989)

§ 150.20 COMPLIANCE.

(A) All work for the reconstruction, alteration, repair or demolition of buildings and other structures shall be performed in a good workmanlike manner according to accepted standards and practices in the trade. The provisions of the rules and regulations pertaining to construction, plumbing, electrical, mechanical and one- and two-family dwellings, promulgated by the Administrative Building Council of the state shall be considered standards and acceptable practice for all matters covered by this chapter or orders issued pursuant to this chapter by the Building Commissioner of the town.

(B) No person, firm or corporation, whether as owner lessee, sublessee or occupant, shall erect, construct, enlarge, alter, repair, move, improve, remove, demolish, equip, use, occupy or maintain any building or premises, or cause or permit the same to be done contrary to or in violation of any of the provisions of this subchapter or any order issued by the Department. Any person violating the provisions of this subchapter or the provisions of I.C. 36-7-9-28 shall commit a Class C infraction for each day such violation continues.

(Ord. 89-2, passed 1-9-1989) Penalty, see § 10.99

§ 150.21 UNSAFE BUILDING FUND.

An Unsafe Building Fund is hereby established in the operating budget of the town, in accordance with the provisions of I.C. 36-7-9-14.

(Ord. 89-2, passed 1-9-1989)

CHAPTER 151: BUILDING REGULATIONS

Section

Building Code

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- 151.03 Authority
- 151.04 Scope
- 151.05 Adoption of rules by reference
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- 151.26 Bond, condition
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- 151.30 Revocation
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- 151.32 Public record

- 151.99 Penalty

Cross-reference:

Mobile homes, see § 150.03

Permit fees, see § 150.01

Uniform numbering system, see § 150.02

BUILDING CODE

§ 151.01 TITLE.

This subchapter, and all ordinances supplemental or amendatory hereto, shall be known as the "Building Code of the Town of Daleville, Indiana", may be cited as such, and will be referred to herein as "this code".

(Ord. 88-26, passed 3-6-1989)

§ 151.02 PURPOSE.

The purpose of this code is to provide minimum standards for the protection of life, health, environment, public safety and general welfare, and for the conservation of energy in the design and construction of buildings and structures.

(Ord. 88-26, passed 3-6-1989)

§ 151.03 AUTHORITY.

The Building Commissioner of the town is hereby authorized and directed to administer and enforce all of the provisions of this code. Whenever in this code, it is provided that anything must be done to the approval of or subject to the direction of the Building Commissioner or any other officer of the town, this shall be construed to give such officer only the discretion of determining whether this code has been complied with; and no such provision shall be construed as giving any officer discretionary powers as to what this code shall be, or power to require conditions not prescribed by ordinances or to enforce this code in an arbitrary or discriminatory manner. Any variance from adopted building rules are subject to approval under I.C. 22-13-2-7(b).

(Ord. 88-26, passed 3-6-1989)

§ 151.04 SCOPE.

The provisions of this code apply to the construction, alteration, repair, use, occupancy and addition to all buildings and structures, other than industrialized building systems or mobile structures certified under I.C. 22-15-4, in the town, prior to issuance of an occupancy permit, other than fences and farm service buildings.

(Ord. 88-26, passed 3-6-1989)

§ 151.05 ADOPTION OF RULES BY REFERENCE.

(A) Building rules of the State Fire Prevention and Building Safety Commission as set out in the following articles of Title 675 of the Indiana Administrative Code are hereby incorporated by reference in this code and shall include later amendments to those articles as the same are published in the Indiana Register or the Indiana Administrative Code with effective dates as fixed therein:

- (1) Article 13 - Building Codes;
- (2) Article 14 - One and Two Family Dwelling Codes;
- (3) Article 16 - Plumbing Codes: Indiana Plumbing Code;
- (4) Article 17 - Electrical Codes;
- (5) Article 18 - Mechanical Codes: Indiana Mechanical Code;
- (6) Article 19 - Energy Conservation Codes; and
- (7) Article 20 - Swimming Pool Codes: Indiana Swimming Pool Codes.

(B) Copies of adopted building rules, codes and standards are on file in the office of the Clerk-Treasurer's Office.

(Ord. 88-26, passed 3-6-1989)

§ 151.06 APPLICATION FOR PERMITS.

No building permit shall be issued for the foregoing purposes, unless the application for a permit is accompanied by a plat or sketch of the proposed location showing lot boundaries, and by plans and specifications showing the work to be done. In addition, a copy of a design release, issued by the State Building Commissioner and the State Fire Marshal pursuant to I.C. 22-15-3-1, shall be provided to the Building Commissioner before issuance of a permit for construction covered by such design release.

(Ord. 88-26, passed 3-6-1989)

§ 151.07 VIOLATIONS.

It shall be unlawful for any person, firm or corporation, whether as owner, lessee, sub-lessee or occupant, to erect, construct, enlarge, alter, repair, improve, remove, convert, demolish, equip, use, occupy or maintain any building or structure, other than fences, in the town or cause or permit the same to be done, contrary to or in violation of the provisions of this code.

(Ord. 88-26, passed 3-6-1989) Penalty, see § 151.99

§ 151.08 RIGHT OF APPEAL.

All persons shall have the right to appeal any order of the Building Commissioner first through the Town Council, and then to the Fire Prevention and Building Safety Commission of the state in accordance with the provisions of I.C. 22-13-2-7 and I.C. 4-21.5-3-7.

(Ord. 88-26, passed 3-6-1989)

§ 151.09 EFFECTIVE DATE.

This code shall be in full force and effect from and after its adoption, approval by the Fire Prevention and Building Safety Commission of the state and publication as required by law.

(Ord. 88-26, passed 3-6-1989)

MOVING OF BUILDINGS

§ 151.20 PURPOSE.

A subchapter prohibiting the moving of buildings over across and along streets, and highways of the town, without a permit first obtained, providing for permits, license fees and providing penalties.

(Ord. 89-1, passed 1-9-1989)

§ 151.21 PERMIT; APPLICATION.

(A) It shall be unlawful for any person, persons, firm, company or corporation to move or cause to be moved, any building or buildings, house, barn or other structure of any kind, in, along, through or upon any street, or highway under the jurisdiction of the town, without a permit from the County Highway Supervisor, and no person moving any such building shall permit the same to stand on such street or highway for a longer period than two days, unless permission be granted by the County Highway Supervisor for just and sufficient cause.

(B) Application for said permit must be accompanied by the following written information:

- (1) Extreme width, length and of the structure to be moved;
- (2) Present location;
- (3) Proposed location;
- (4) Route of proposed moving; and
- (5) Date when said moving is to commence, and estimated time required for such operation.

(Ord. 89-1, passed 1-9-1989) Penalty, see § 151.99

§ 151.22 INSPECTION; ESTIMATES OF EXPENSE.

(A) The County Highway Supervisor shall, within 48 hours of the filing of the aforesaid written application, cause such building to be inspected and if he or she shall find that it can be moved safely in the manner proposed and he or she shall then notify the applicant that said building can be moved and that a permit will be granted under the provisions of this subchapter.

(B) The County Highway Supervisor shall then notify any person, persons, firm, company or corporation, owning or controlling any telegraph, telephone, electric light, electric power fire alarm, police alarm or across arms with which said building may come in contact or which may be affected by such moving, of the filing of said petition giving at least two days' notice thereof. Such person, persons, firm, company or corporation, owning two days thereafter present to the County Highway Supervisor an estimate showing the expense to which said person, firm, company or corporation shall be put by the moving of said building, house or other structure along the proposed line and shall file such estimate with the County Highway Supervisor, which if correct shall be approved by him or her.

(Ord. 89-1, passed 1-9-1989)

§ 151.23 EXPENSES AND FEE.

The person, firm, company or corporation filing the application aforesaid shall then deposit with the County Highway Supervisor an amount sufficient to pay such expenses, and estimate and damages to which said town person, persons, firm, company or corporation may be put to the County Highway Supervisor shall upon the depositing of such money issue to such person, persons, firm, company or corporation making such application a permit for the removal of such buildings, house, barn or other structure on or along the streets, or highways described in said application which permit shall also specify the length of time to be taken in moving said building, house, barn or other structure and for such permit the applicant shall pay to the County Highway Supervisor the additional sum of \$10 as fee for such permit.

(Ord. 89-1, passed 1-9-1989)

§ 151.24 SCHEDULE OF TIME; NOTICE.

The applicant for the aforesaid permit shall, at least 48 hours before commencing operations, submit to the County Highway Supervisor a schedule of the proposed time said building or buildings, house, barn or other structure is to be moved to each point in contact with any telegraph, telephone, electric light or power, fire alarm, police alarm or cross arms. The County Highway Supervisor shall then cause notice of such schedule to be given to the person, persons, firm, company or corporation owning or controlling the aforesaid wires or cross arms.

(Ord. 89-1, passed 1-9-1989)

§ 151.25 FILING EXPENSE STATEMENTS.

Within two weeks after the passage of such building or buildings, house, barn or other structure by or under the aforesaid wires, or across arms, the person, firm or corporation shall, by its agent or manager, file with the County Highway Supervisor an itemized statement certified by affidavit showing actual cost and expense incurred by said person, firm or corporation in taking care of its wires, and the County Highway Supervisor shall cause to be paid to the person, firm or corporation aforesaid the amount due the said person, firm or corporation as per such statement. If such actual cost and expense shall exceed the amount of money deposited with the County Highway Supervisor to cover expenses, then the balance or difference shall be immediately paid to the County Highway Supervisor by such applicant to be paid to said person, firm or corporation as aforesaid, and if such cost and expense does not equal the amount paid in by such applicant then such surplus shall be returned by County Highway Supervisor to such applicant. If any person, firm or corporation so cutting or adjusting its wires or cross arms shall fail to file its expense account as herein required and within said two weeks, then the County Highway Supervisor shall return to the person who made the deposit the estimated sum deposited for the benefit of such person, firm or corporation.

(Ord. 89-1, passed 1-9-1989)

§ 151.26 BOND, CONDITION.

It shall be unlawful for any person, persons, firm or company or corporation to move or cause to be moved any building, house, barn or other structure upon or along any street or highway under the jurisdiction of the county, without first having filed with the County Auditor a bond in the sum of \$5,000, indemnifying the county against any and all loss, cost or damages to said streets and pavements, cause by the moving of said building, house, barn or other structure and further condition that said person, firm, company or corporation will indemnify and pay all damages to any person or property cause by any act in moving such building which bond shall be approved by the County Auditor.

(Ord. 89-1, passed 1-9-1989) Penalty, see § 151.99

§ 151.27 BOND.

At the time of filing an original or renewal application, the applicant shall furnish to the Council a bond by a surety insurer or in cash in which the County Commissioners shall appear as the insured.

(A) Such bond shall be in the amount of \$1,000 for each residential contractor or skilled trade contractor registration. In addition thereto, each applicant shall provide proof of general liability insurance of not less the \$100,000, worker's compensation insurance coverage for all the registrant's employees.

(B) If application for registration is made by any person whose registration has been revoked as a result of disciplinary action for violation of any of the provisions of this subchapter or of the rules and regulations adopted pursuant thereto and/or all state and local building codes, the Building Commissioner may require as a condition precedent to the reregistration of such applicant that such applicant file or have on file with the Building Commissioner a bond issued by a surety insurer or cash in a sum to be fixed by the Council, not to exceed the sum of \$10,000 in which the county shall appear as the insured.

(C) The failure to maintain in full force and effect the bond or cash deposit and insurance as required by this section shall result in the suspension of that person's privilege to contract in the county and shall not be reinstated until a new bond, cash deposit or proof of insurance has been furnished.

(Ord. 89-1, passed 1-9-1989)

§ 151.28 CERTIFICATE.

The Building Commissioner shall issue to each registrant a certificate in such form and size as shall be prescribed by the County Commissioners. Each certificate shall have imprinted thereon the name and address of the registrant, and shall contain such other matters as shall be prescribed by the Council. The certificate shall be delivered or mailed to the place of business of the registrant.

(Ord. 89-1, passed 1-9-1989)

§ 151.29 REGISTRATION FEE.

Application for a residential contractor and/or skilled trades contractor registration shall be made to the Building Commissioner with the fee herein prescribed.

(A) The registration fee shall be \$25 for the initial period and \$15 annually thereafter.

(B) All fees and charges collected by the county under the provisions of this subchapter shall be paid into the general fund of the county treasury. All expenses incurred by the Council under the provisions of this subchapter shall be paid out of the Building Commissioner's General Fund from time to time; when claim vouchers therefor are exhibited and approved by the County Commissioners and appropriated by the Town Council.

(Ord. 89-1, passed 1-9-1989)

§ 151.30 REVOCATION.

The Town Council may, upon its motion, or upon the complaint in writing of any such person made within 12 months after completion, occupancy or purchase of a residential or combination of residential and commercial building, investigate the actions of any

residential builder or skilled trades contractor or any person who shall assume to act in such capacity within this county:

- (A) Willful violation of the building laws of the state or the Town Building Code thereof, or of the safety laws or labor laws or compensation insurance laws of the state;
- (B) Misrepresentation of a material fact by a registrant;
- (C) Making any substantial misrepresentation, or making any false promise of a character likely to influence, persuade or induce false statements upon a county citizen;
- (D) Advertising in any manner whatsoever that said residential builder or residential maintenance and alteration contractor is registered under this act, when actually he or she is not;
- (E) Insolvency, filing in bankruptcy, receivership or assigning for the benefit of creditors;
- (F) Aiding or abetting a non-registered person to evade the provisions of this subchapter, or knowingly combining or conspiring with, or acting as agent, partner or associate for a non-registered person; or
- (G) The violation of any of the provisions of this subchapter.

(Ord. 89-1, passed 1-9-1989)

§ 151.31 SUSPENSION PROCEDURE.

The Council shall, before suspending or revoking any registration and at least ten days prior to the date set for the hearing, notify in writing the holder of such registration of any charge made, and shall furnish said registrant with a copy of the complaint and afford said registrant an opportunity to be heard in person or by counsel in reference thereto. Such written notice shall be served by delivery of the same, personally to the registrant. The hearing on such charge of the same, personally to the registrant. The hearing on such charge shall be at such time and place as the Council shall prescribe. If the Council shall determine that any registrant is guilty of any violation of any of the provisions of this subchapter, said registration shall be suspended or revoked for such period of time as shall be determined by the Council.

(Ord. 89-1, passed 1-9-1989)

§ 151.32 PUBLIC RECORD.

(A) The Building Commissioner shall maintain open to public inspection during office hours a complete indexed record of all pending applications and all registrations issued under this subchapter and of all terminations, suspensions and revocations thereof.

(B) It shall be the duty of the Town Council to administer and provide for the enforcement of all the provisions of this subchapter.

(Ord. 89-1, passed 1-9-1989)

§ 151.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is provided shall be subject to § 10.99.

(B) Any person or persons who shall violate any provisions of §§ 151.20 through 151.32 shall be guilty of a misdemeanor. On conviction, the violator shall be punished by a fine of not more than \$500, to which may be added imprisonment for any determinate period not exceeding 90 days.

(C) Any person, firm, copartnership, corporation, association or other organization, acting in the capacity of a residential or skilled trades contractor within the meaning of §§ 151.20 through 151.32, who shall violate any of the provisions of §§ 151.20 through 151.32 without properly maintaining registration as here provided, or any person aiding or abetting another person in the violation of any of the provisions of §§ 151.20 through 151.32 or conspiring with another person to violate any of the provisions of §§ 151.20 through 151.32, shall upon conviction thereof, be punished by a fine of not to exceed \$500. The same penalties shall apply, upon conviction, to a member of a copartnership or any construction or contracting officer or agent of any corporation, association or other organization who shall consent to, participate in, or aid or abet any violation of §§ 151.20 through 151.32 upon the part of the copartnership of which he or she is a member of the corporation, association or organization of which he or she is such an officer or agent.

CHAPTER 152: COMPREHENSIVE LAND USE

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GENERAL PROVISIONS

§ 152.001 PREAMBLE.

(A) This chapter and all subsequent supplemental ordinances thereto and amendments thereto shall be known as the Town of Daleville Comprehensive Land Use Ordinance as it shall be found throughout and implemented.

(B) Generally this chapter is promulgated and enacted by the town, by and through the actions of its Town Council by recommendation and approval of the Planning and Zoning Board under and pursuant to those powers authorized by the Indiana Home Rule Act, I.C. 36-1-3-1 et seq. and more specifically I.C. 36-7-2-2. The Planning and Zoning Board is an advisory board as provided by I.C. 36-7-4-100 et seq. In interpreting and applying the provisions of this chapter, the provisions in this chapter shall be held to be the minimum requirements for the promotion of the public health, safety, comfort, morals, convenience and general welfare of the citizens and other inhabitants of the town and all those who may visit. In some instances, the provisions provided within this chapter may be stricter than state, county or township regulations and in such a case, the provisions of this chapter shall apply.

(C) This chapter shall apply to the use, construction, maintenance, alterations, repair, rehabilitation, removal, demolition, occupancy, and additions to all buildings, structures, structural systems, fences, signs and land found within the town limits. In addition to land improvements, this chapter also addresses the manner in which said land is built, rehabilitated and maintained and to a limited extent by whom said work is performed.

(D) The lawful use of a building, structure, land or premises existing at the time of the passage of this chapter into law may be continued although such use does not conform to all the provisions of this chapter, except as provided:

(1) A nonconforming use may be extended throughout a building or other structure provided no structural alterations are made therein and the use of the premises is not changed, except those required by law and this chapter. Use shall mean the employment or occupation of a building, structure, or land for a person's service, benefit or enjoyment. A non-conforming use shall be a lawful pre-existing use of land or building which fails to comply with the requirements set forth in this chapter including, but not necessarily limited to construction, remodeling, maintenance or rehabilitation without proper permit or the requirements set forth in the zoning code applicable to the location and district in which such use is located.

(2) A nonconforming use may not be discontinued or a new nonconforming use of the premises adopted as same will then be in violation of this chapter. Any owner desiring to discontinue one nonconforming use for another may only do so if the owner seeks and obtains a variance from the Planning and Zoning Board or rezoning and, pursuant to consideration by said Planning and Zoning Board or the Board of Zoning Appeals and same is approved and ratified by the Town Council resulting in a Planning and Zoning Ordinance (PZO) and same is recorded in the PZO Book kept in the Office of the Clerk-Treasurer.

(3) No building shall be erected or addition made to any premise devoted to a nonconforming use or subject to a special exception except in conformance with regulations and provisions of this chapter as written.

(4) The Planning and Zoning Board may authorize, by written permit, in any district for a period of not more than one year from the date of such permit, a temporary building and use permit for business or industrial use incidental to the construction and development within an existing district or granted variance. Said temporary building and use permits may be renewed only upon specific written approval of the Planning and Zoning Board by written request.

(5) In the event that a nonconforming use or special exception is discontinued for a period of three months or longer as the result of casualty thereto and the nonconforming use or the special exception, variance, benefit of the special exception cannot be restored within said three-month period of time, the nonconforming use will be lost except that nothing herein shall prevent the owner from seeking and obtaining a variance or exception as provided elsewhere in this chapter. However, the granting of a variance or exception shall be grounded in the sound judgment and discretion of the Planning and Zoning Board as it shall consider the facts presented on a

case to case basis and determine what's beneficial to the town and its citizens as a whole at the time of owner application.

(6) Nothing herein contained shall require any change in the plans, construction, or designated use of a building for which a building permit or improvement location permit has been heretofore issued, and the construction of which has been diligently prosecuted within 90 days of the date of such permit, and which the entire building shall be completed according to such plans filed with the Building Commissioner within one year from the date of passage of this chapter.

(E) This chapter recognizes the fact that historically, prior to the enactment of this statute, various subdivisions and plats in the town were passed and approved and that individual parcels of land may be bound and encumbered by said restrictive covenants as a matter of public record. These historical restrictive covenants, though a matter of public record, shall be deemed null, void and unenforceable and superceded by the requirements of this chapter and unenforceable by the Building Commissioner as of the passage of this act. Anticipating future growth and development within the town, all future restrictive covenants of record (plats, re-plats, PUD's and the like) filed after the enactment of this chapter shall by reference here made be incorporated into this chapter as same shall impact the specific real estate encumbered and shall be given full effect and credence. All restrictive covenants so created subsequent to this act shall be enforceable by the town.

(F) This chapter also guides development in identifiable flood zone areas in order to reduce the potential for health and safety hazards, and to reduce the potential for extraordinary public expenditures for flood protection and relief including the prevention of unwise developments from increasing flood or drainage hazards to others; the protection of new buildings and major improvements to buildings from flood damage; the protection of human life and health from the hazards of flooding; the lessening of the burden on the taxpayers for flood control projects, repairs to flood damaged public facilities and utilities, and flood rescue and relief operations; the maintaining of property values and a stable tax base by minimizing the potential for creating flood blighted areas; and the making available of federally subsidized flood insurance for structures and their contents in the town by fulfilling the requirements of the National Flood Insurance Program.

(G) If any provisions of this chapter or the application of any provision to particular circumstances is held unconstitutional or invalid by the courts, the remainder of this chapter or the application of such provision to other circumstances shall not be affected. If two or more provisions within the ordinance are in conflict or are inconsistent with one another, then the provision which is most restrictive shall control.

(H) The town has given consideration to the future and probable use of land in the territory affected by this chapter, and has prepared an amended Comprehensive Master Plan showing the future development of this area which has served as a guide in the preparation of this chapter. That said Master Plan was adopted by ordinance in 2004 and thereafter served as the basis for Planning and Zoning to the town. Since 2004, there have been several instances of spot zoning. The Comprehensive Master Plan may be amended from time to time either through the adoption of amendments by rezoning, variances or special exceptions in the discretion of the Planning and Zoning Board, the BZA or the Town Council.

(I) This chapter shall not apply to lands owned by the federal government found within the town limits.

(J) Upon the effective date of this chapter all prior ordinances, rules and regulations heretofore promulgated and passed into law by the town dealing with land usage shall be deemed repealed. However, this chapter shall not impact Chapter 95.

(K) Generally, local planning and zoning is provided and controlled by I.C. 36-7-4-100-1500. A quick reference guide is part of this section.

(L) This preamble is hereby recognized and acknowledged as a part of this chapter. The town recognizes that it is impossible to address every conceivable issue that may or could arise within the context of land use, planning and zoning. Faced with issues not directly addressed by the town's Master Plan or this chapter; it is recognized that the town may address these issues though consideration of variances or special exceptions as same may be applied for from time to time. In addressing special uses, variances and exceptions; it is recognized that the town, acting through its Planning and Zoning Board, Board of Zoning Appeals, and Town Council is vested in discretion as to the decisions each legislative body shall make relative to its findings and recommendations. However, the Town Council shall have ultimate decision making authority in all matters of land use, planning and zoning except as otherwise determined by law. The Town Council is vested with the inherit right to overturn and overrule, if it shall so choose, any decision or recommendation of a lesser body which includes the Planning and Zoning Board and the Board of Zoning Appeals. However, the Town Council shall value the recommendations of the Planning and Zoning Board and Board of Zoning Appeals highly in exercising its ultimate decision making powers.

<i>Series</i>	<i>Heading</i>	<i>Summary</i>
100	Applicability and rules of construction	Explains the basic organization of the state's local planning and zoning statutes; each state planning and zoning jurisdiction falls into one of the following categories: advisory, area or metro
200	Commission establishment and membership	Sets forth the statutory requirements for municipal entities wishing to exercise planning and zoning powers; the rules regarding where municipalities are permitted to exercise such powers; and Plan Commission membership requirements
300	Commission organization	Explains the workings of the various Plan Commission types; how Plan Commission officers are selected; Plan Commission meeting and recordkeeping procedures; the authority of Plan Commissions to expend and receive monies; and the authority of Plan Commissions to appoint employees
400	Commission duties and powers	Sets forth Plan Commission duties; basic requirements for the hiring of Plan Commission employees; public hearing rules; rules for establishing committees of the Plan Commission and fee schedules
500	Comprehensive plan	Sets forth the required elements of the comprehensive plan; additional elements permitted to be included in the comprehensive plan; and the procedures for adopting, rejecting and amending a comprehensive plan
		Sets forth the purposes and procedures for the adoption, modification and repeal of zoning

600	Zoning ordinance	ordinances and zoning maps; notice requirements for adoption, modification and repeal of zoning ordinances and zoning maps; and standards for written commitments
700	Subdivision control	Sets forth procedures for administering the subdivision control ordinance, approval of primary and secondary plats, serving notice for public hearings, and the vacation of plats
800	Improvement location permit	Sets forth the basic requirements for obtaining improvement location permits
900	Board of Zoning Appeals (BZA)	Sets forth BZA organizational structure and composition; details the duties of the BZA regarding appeals of administrative decisions/determinations, special exceptions/conditional uses, variances of use, and variances of development standard; sets forth procedures for public hearings and notice requirements
1000	Remedies and enforcement	Sets forth procedures for zoning enforcement actions; provides for remedies
1100	Miscellaneous provisions	Includes miscellaneous provisions dealing with mineral resources and forests, eminent domain, memorials and monuments, manufactured homes, children's homes and child care homes
1200	Township joinder	Includes provisions which permit townships to merge with municipalities for planning and zoning purposes; includes special joinder related Plan Commission provisions
1300	Impact fees	Establishes requirements in order to adopt impact fees; procedures for impact fee adoption, amendment and administration;

		rules regarding use of impact fee revenues, appeal of fees, and impact fee credits
1400	Development plans	Sets forth requirements and procedures for municipalities wishing to require development plan approval
1500	Planned Unit Development	Sets forth requirements and procedures for municipalities wishing to permit Planned Unit Development (PUD) districts as alternatives to the use of traditional zoning districts

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 1)

§ 152.002 TITLE AND PURPOSE.

(A) *Title.* This chapter shall be known and may be cited as the "Daleville Planning and Zoning Ordinance", "Comprehensive Plan" or "Act".

(B) *Purpose.*

(1) The purpose of this chapter is to establish a planning and zoning ordinance for the town and provide for the administration, enforcement, and amendment thereof and for the repeal of all ordinances in conflict herewith. The purpose of this chapter is to address land use historically, currently and into the future.

(2) This chapter is deemed necessary by the Town Council in order:

(a) To preserve, promote and protect the public health, safety, comfort, morals, convenience, enjoyment and general welfare of the town as to land use;

(b) To provide for adequate light, air and privacy, to secure safety from fire, flood and other dangers, and to prevent overcrowding of the land and the undue congestion of population;

(c) To protect the character and economic stability of all parts of the town and to encourage the orderly and beneficial land use development to all parts of the town;

(d) To protect and conserve the value of land throughout the town and the value of buildings and improvements upon the land while minimizing conflicts among the uses of land and buildings;

(e) To guide public and private policy in order to provide adequate and efficient transportation, water, sewerage, schools, parks, playgrounds, recreation and other public improvements and facilities;

(f) To prevent the pollution of air, streams, and ponds, to assure the adequacy of drainage facilities, to safeguard the water table, and to encourage the wise use and management of natural resources throughout the town in order to preserve the integrity, stability and beauty of the community along with the value of land; and

(g) To preserve the natural beauty and topography of the town and to insure appropriate development with regard to these natural features.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, §§ 2.101, 2.102)

§ 152.003 WORD INTERPRETATIONS; DEFINITIONS.

(A) *Word interpretations.* For the purpose of this chapter, the following terms have the meanings indicated below:

- (1) The present tense includes the future tense;
- (2) The singular number includes the plural and the plural includes the singular;
- (3) The word "shall" is mandatory and the word "may" is permissive;
- (4) The word "used" includes "designed" or "intended to be used".

(B) *Definitions.* For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCESSORY USE OF STRUCTURE. A use which:

- (a) Is subordinate to and serves a principal building;
- (b) Is subordinate in area, as defined as the occupied first floor living area of a building, and subordinate in extent or purpose of the principal building;
- (c) Contributes to the comfort, convenience, or necessity of occupants of the principal building; and
- (d) Is located on the same lot as the principal building, with the single exception of the accessory off-street parking facilities, which are permitted to locate elsewhere.

AGRICULTURE. The use of land or structures for agricultural purposes, including farming, dairying, pasturage, aquaculture, agriculture, horticulture, floriculture, viticulture, and animal and poultry husbandry, and the necessary accessory structures and uses such as tenant housing and those for the packing, treating, or storing of produce. However, the operation of any accessory uses shall be secondary to that of normal and common agricultural activities.

AIR POLLUTION. Presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of characteristics and duration that are injurious to human, plant, or animal life, to property, or which may unreasonably interfere with the comfortable enjoyment of life and property.

ALLEY. A public right-of-way which normally affords a secondary means of access to abutting property.

BED AND BREAKFAST INN. An owner-occupied dwelling unit that contains no more than three guest rooms where lodging, with or without meals, is provided for compensation.

BOARD. The Daleville Planning and Zoning Board. The Board shall consist of seven members appointed by the Town Council and all members shall reside inside the town limits. Three of the members shall be Councilmembers. Four sitting members shall be members of the majority party on the Town Council and three sitting members shall be members of the minority party.

BOAT STORAGE. Any premises or portions thereof on which there is either stored, maintained or located, inside or outside of any structure on the premises, more than one boats regardless of whether the property owner receives compensation of any nature whatsoever for this service.

BUILDING. A structure built for the support, enclosure, shelter, or protection of persons, animals, chattel, or movable property of any kind, and which is permanently affixed to the land.

BZA. The Daleville Board of Zoning Appeals.

CHILDCARE FACILITY. The definition of childcare distinguishes among the following types of establishments:

(a) ***FAMILY CHILDCARE HOME.*** A private residence where care, protection, and supervision are provided, for a fee, at least twice a week to no more than six children at one time, including children of the adult provider.

(b) ***GROUP CHILDCARE CENTER, CLASS A.*** A building or structure where care, protection, and supervision are provided, on a regular schedule, at least twice a week to at least seven and no more than 12 children, including children of the adult provider.

(c) ***GROUP CHILDCARE CENTER, CLASS B.*** A building or structure where care, protection, and supervision are provided on a regular schedule, at least twice a week to more than 12 children, including the children of the adult provider.

CLINIC. Any establishment where human patients are examined and treated by medical doctors dentists or other medically oriented professionals but not hospitalized overnight. **CLINIC** may also apply to the practice of veterinary science as well.

COMMERCIAL RECREATIONAL USES. An occupation, employment or enterprise that is carried on to provide recreational services for profit by an owner, lessee or licensee.

COMMISSION. The Daleville Planning and Zoning Board.

CONFINED FEEDING. The confined feeding of animals for food, fur, or pleasure purposes in lots, pens, ponds, sheds, or buildings where all food is supplied to the animal by means other than grazing. **CONFINED FEEDING** includes hog farrowing.

DESIGNATED ENFORCEMENT ENTITY. The Daleville Planning and Zoning Board for itself or acting through the Building Commissioner of the town.

DIRECTOR. The Daleville Building Commissioner.

DRIVE-IN FACILITY. An establishment that, by design of physical facilities or by service or packaging procedures, encourages or permits customers to receive a service or obtain a product that may be used or consumed in a motor vehicle on the premises or to be entertained while remaining in an automobile.

DWELLING. A permanent building, or portion thereof, but not a mobile home or camper, designed or used exclusively for residential occupancy, including single-family dwellings, two-family dwellings, and multiple-family dwellings, but not including hotels, motels, or lodging houses.

DWELLING, MULTIPLE-FAMILY. A dwelling or portion thereof, containing three or more dwelling units, including condominiums.

DWELLING, SINGLE-FAMILY. A dwelling containing one dwelling unit only wherein one family may live.

DWELLING, TWO-FAMILY. A dwelling containing two dwelling units only wherein two families may live.

DWELLING UNIT. One or more rooms which are arranged, designed or used as living quarters for one family.

EDUCATIONAL FACILITY. Any structural facility used directly, indirectly or in the support of education be it public or private. Same may include religious purposes as well.

ESSENTIAL SERVICES. The erection, construction, alteration, or maintenance by public utilities or municipal or other governmental agencies of underground or overhead gas, electrical, telephone, sewer, or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduit cables, fire alarm boxes, police call boxes, traffic signals, hydrants, street signs, and other similar equipment and accessories in connection therewith, reasonably necessary for the furnishing of adequate service by public utilities or municipal or other governmental agencies or for the public health safety, or general welfare, and same shall include public buildings.

FAMILY. One or more persons each related to the other by blood, marriage, or adoption, or a group of not more than three persons not all so related, together with his, her or their domestic servant, maintaining a common household in a dwelling unit. A **FAMILY** may include not more than two roomers, boarders, or permanent guests, whether or not gratuitous.

FRONT YARD. The space not containing any structures between a structure and thoroughfare right-of-way line.

FRONTAGE. The width of a tract, parcel of land or lot which continuously abuts the right-of-way of a street.

GRADE. The average level of the finished surface on the ground adjacent to the exterior walls of the building or structure.

HAZARDOUS WASTE. Hazardous waste, as defined by I.C. 13-1 1-2-99 or any amendments thereto.

HOME OCCUPATION. An occupation or activity conducted entirely within a residence or an accessory building, provided that it is attached to the principal residential structure by means of an enclosed space. The home occupation must be carried on by a member of the family residing in the dwelling unit and must be clearly incidental to the use of the building for dwelling purposes.

INDUSTRIAL. The manufacturing, storage, processing, assembly, fabrication, or repairing of certain materials or products where no process involved will produce noise, vibration, electrical disturbance, air pollution, water pollution, heat, glare, waste matter, odor or fire hazard which will disturb or endanger any neighboring property and where all operations and storage are entirely within enclosed buildings, under roof or fenced areas.

INOPERABLE MOTOR VEHICLE.

(a) Any motor vehicle from which there has been removed the engine, transmission, or differential or that is otherwise partially dismantled or mechanically inoperable.

(b) Any motor vehicle which cannot be driven on a city street without being subject to the issuance of a traffic citation by reason of its operating condition or not displaying a valid and current license plate.

INSPECTORS. Employees or agents of the Commission authorized by the Director to enter, examine, and survey all lands and structures within the town to accomplish the enforcement of all zoning ordinances and land use regulations of the town. An ***INSPECTOR*** may also be any member of the Board or a Town Councilmember.

JUNK YARD. An open area where waste, scrap materials, or two or more motor vehicles not in running or operable condition or parts thereof are bought, sold, exchanged, stored, baled, packed, disassembled, or handled, but excluding a use established entirely within closed buildings.

KENNEL. Any premises or portions thereof on which more than four dogs, cats, or other household domestic animals over four months of age are kept or on which more than two animals are maintained, boarded, bred, or cared for, in return for remuneration, or are kept for the purpose of sale.

LAND USE PETITION. A rezoning petition, variance petition, special exception petition or any other petition permitted by rules of procedure adopted by the Commission.

LOT. A track or parcel of land of a sufficient size to meet minimum zoning requirements for use and area and to provide the yards and other open spaces as are herein required. The ***LOT*** shall have frontage on a public street. For building purposes, a ***LOT*** shall be considered as the outside dimensions of one or more adjoining lots under the same ownership, and same shall be considered as one building lot and cannot be further subdivided for building purposes. This definition shall not be construed to supersede or modify the restrictive covenants of any platted subdivision which covenants prohibit or restrict development. Only one single-family residence shall be allowed for each deeded lot or lots of record.

LOT, CORNER. A lot situated at the intersection of two or more streets.

LOT DEPTH. The mean horizontal distance between the front lot line and the rear lot line of a lot, measured within the lot boundaries.

LOT FRONTAGE. That contiguous portion of a lot which is immediately adjacent to the road or street providing access to the lot.

LOT OF RECORD. A lot which is part of a subdivision, the plat of which has been recorded in the office of the County Recorder, or a parcel of land, the deed to which was recorded in the office of the County Recorder prior to September 8, 1975, whether or not the property has been subsequently transferred, but must have been transferred by the same description that was of record prior to September 8, 1975.

LOT, THROUGH. A lot having a frontage on two nonintersecting streets as distinguished from a corner lot.

MANUFACTURED HOME. A dwelling unit fabricated in an off-site manufacturing facility for installation or assembly on a permanent foundation at the building site. The ***MANUFACTURED HOME*** shall bear a seal certifying that it is built in compliance with the Federal Manufactured Housing Construction and Safety Standards Code or I.C. 22-12-1, as promulgated and approved by the State Fire Prevention and Building Safety Department. A ***MANUFACTURED HOME*** shall have a permanent in-ground foundation to which it shall be permanently attached.

MASSAGE PARLOR. An establishment where, for any form of consideration, massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body is administered, unless the treatment or manipulation is administered by a medical practitioner, chiropractor, physical therapist or similar professional person licensed by the state on site.

MOBILE HOME. A factory-fabricated building unit on a chassis and constructed as to permit its being towed upon public thoroughfares, and designed to be used for year-round living when connected to the required utilities. ***MOBILE HOME*** includes expandables and double units, or doublewides. A ***MOBILE HOME*** shall remain a mobile home even if attached to a permanent foundation.

MODULAR HOME. A factory-fabricated transportable building designed to be used alone or to be incorporated with similar units at a building site and designed and constructed with a perimeter frame to become a permanent structure on a site, with all outside walls supported by a permanent foundation. A ***MODULAR HOME*** is a single-family dwelling for purposes of this chapter.

NONCONFORMING STRUCTURES. A structure designed, converted, or adopted for a use prior to the adoption of provisions prohibiting the use or structure in the subject location by this chapter as well as the Master Plan.

NONCONFORMING USE. Any use or arrangement of land or structures legally existing at the time of enactment of this chapter, or any of its amendments, which does not conform to the provisions of this chapter.

OFF-STREET PARKING. The provision of parking spaces which are not located on any public right-of-way.

PRIVATE CLUB. An organization of persons for special purposes or for the promulgation of sports, arts, literature, politics or the like, but not operated for profit, excluding churches, synagogues, or other houses of worship. The term may also apply to sexually oriented associations whether for profit or not.

PUBLIC UTILITY STRUCTURES. Electric and telephone substations and distribution centers, filtration plants, pumping stations and water reservoirs; public or package sewage treatment plants, telephone exchanges; radio and television transmitting or relay stations; antenna towers and other similar public utility service structures.

RECREATIONAL VEHICLE. A temporary dwelling vehicle for travel, recreation and vacation use including, but not limited to travel trailers, pick-up coaches, motor homes and camping trailers.

RECREATIONAL VEHICLE PARK. An area of land used for the parking of two or more recreational vehicles.

RIGHT-OF-WAY. A strip of land occupied or intended to be occupied by a street, crosswalk, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, or other special use.

SETBACK. A line drawn parallel to a lot line at a distance therefrom equal to the depth of the minimum required yard for the zone in which the lot is located, as established by this chapter.

SCHOOL. Any structure site where one or more persons and a teacher or instructor shall meet for the purpose of learning or teaching.

SEXUALLY ORIENTED BUSINESS. For purposes of this chapter, a **SEXUALLY ORIENTED BUSINESS** shall be:

(a) **ADULT ENTERTAINMENT ESTABLISHMENT** and/or **SEXUALLY ORIENTED BUSINESS.**

1. An adult arcade, adult bookstore or adult video store, adult cabaret, adult theater, adult motion picture theater, escort agency, nude model business or sexual encounter center; and/or
2. Any establishment whose principal business is the offering of a service or the selling, renting or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to its customers, and which is distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas; or whose employees or customers appear in a state of nudity as defined and provided in I.C. 35-45-4-1 and 35-49-2-1.

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

(c) **ADULT BOOKSTORE** or **ADULT VIDEO STORE.** A commercial establishment, which, as its principal business purpose, offers for sale or rental for any form of consideration any one or more of the following:

1. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which depict or describe sexual activities or anatomical areas; or
2. Instruments, devices, or paraphernalia which are designed for use in connection with sexual activities. This does not include items used for birth control or for prevention of sexually transmitted diseases.

(d) **ADULT CABARET.** A nightclub, bar, restaurant or similar commercial establishment which regularly features:

1. Persons who appear in a state of nudity (I.C. 35-45-4-1 and 35-49-2-1);
2. Live performances which are characterized by the exposure of anatomical areas or by sexually oriented activities; or
3. Films, motion pictures, videocassettes, slides, or other photographic reproductions which are characterized by the depiction or description of sexual activities or anatomical areas.

(e) **ADULT MOTION PICTURE THEATER.** A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photograph reproductions are regularly shown which are characterized by the depiction or description of sexual activities or anatomical areas.

(f) **ADULT THEATER.** A theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of anatomical areas or by sexual activities.

(g) For purposes of this chapter, any organization of people, for profit or not for profit, involved in any of the above activities privately or by invitation to the public.

SIGN. A name, identification, description, display, or illustration which is affixed to or represented directly or indirectly upon a building, structure, or tract of land and which directs attention to an object, product, place, activity, person, institution, organization, or business. A **SIGN** shall not include the display of official court or public office notices, the flag, emblem, or insignia of a nation, political unit, school or religious group, nor one located completely within an enclosed building, except signs located behind window areas intended to be viewed from outside the building.

(a) **BILLBOARD.** A surface whereon advertising or other informational matter is set in view conspicuously and which advertising does not apply to premises or any use of the premises wherein it is displayed or posted. Most commonly **BILLBOARDS** are built on posts and/or stations along throughways.

(b) **BUSINESS.** A sign which directs attention to a business or profession conducted or to a commodity, service or entertainment sold or offered upon the premises where the sign is located or to which it is affixed.

(c) **FREE STANDING.** A sign (includes billboards) supported by one or more upright poles, columns, or braces placed in or on the ground and not attached to any building or structure.

(d) **GROSS AREA OF.** The area of a sign shall be determined by the smallest circle, triangle or rectangle that can be used to enclose the sign, exclusive of supporting members that bear no message.

(e) **OUTDOOR ADVERTISING.** A sign, including a billboard, which directs attention to a business, commodity, service or entertainment not exclusively related to the premises where the sign is located or to which it is affixed.

(f) **PORTABLE.** Any sign not permanently affixed to the ground or to a building, including any sign attached to or displayed on a vehicle that is used for the express purpose of advertising a business establishment, product, service or entertainment, when that vehicle or sign is so parked as to attract the attention of the motoring or pedestrian traffic.

(g) **PUBLIC SERVICE.** Any sign or public informational sign constructed by the town, township, county, state or agency of the federal government.

(h) **REAL ESTATE SALE.** Any sign used in the sale of real estate.

SITE IMPROVEMENT. The erection, construction, placement, repair, alteration, conversion, removal, demolition, maintenance, moving, razing, or remodeling of any new or existing structure or any part thereof and any activity for which a basic improvement location permit is required.

STREET. A partially or fully improved public right-of-way which affords the principal means of access to abutting property.

STRUCTURE. Anything constructed or erected structure, the use of which may or may not require permanent location on the ground or attached to something having a permanent location on the ground, except public utility, communication and electrical transmission lines, and equipment and facilities supporting the same and/or incidental thereto. **STRUCTURE** includes a manufactured home, prefabricated building and recreational vehicles or travel trailers capable of being installed or located on a site for more than 30 days.

SUPPLY YARDS. A commercial establishment storing or offering for sale building supplies, steel supplies, coal, heavy equipment, feed and grain, and similar goods. **SUPPLY YARDS** do not include the wrecking, salvaging, dismantling or storage of automobiles and similar vehicles.

USE. The purpose or activity for which the land or building thereon is designed, arranged, or intended, or for which it is occupied, maintained or used both by humans and animals. This term shall not be narrowly construed or narrowly defined. A **USE** may be any activity that provides a benefit or detriment to the land, inhabiting persons, inhabiting animals, business, commerce or impacting surrounding uses or neighboring persons.

YARD. An open space on the same lot with a building or structure, unoccupied and unobstructed from its lowest level upward, except as otherwise permitted by this chapter.

YARD, FRONT. A yard extending along the full length of the front lot line between the side lot lines and from the front lot line to the front building line in depth.

YARD, REAR. A yard extending along the full length of the rear lot line between the side lot lines.

YARD, SIDE. A yard extending along a side lot line from the front to the rear yard boundaries.

ZONING DISTRICTS. The districts depicted by the amended Comprehensive Master Plan of the town as of the last Master Plan created 2004.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, §§ 2.103, 2.104; Ord. 08-01, passed 2-4-2008)

§ 152.004 AUTHORITY, COMPLIANCE, APPLICATION AND JURISDICTION.

(A) *Authority.* This chapter is adopted pursuant to I.C. 36-4 and all acts supplemental and amendatory thereto. See also I.C. 36-7-2-2.

(B) *Compliance.* No structure shall be located, erected, constructed, reconstructed, rehabilitated, moved, converted or enlarged; nor shall any structure or land be used or be designed to be used, except in full compliance with all the provisions of this chapter as a whole and after the lawful issuances of the various permits required by this chapter.

(C) *Application.* The provisions of this chapter shall be interpreted and applied as minimum requirements. Whenever the requirements of this chapter are at variance or in any way conflict with other lawfully adopted rules, regulations, ordinance or restrictions, the most restrictive requirements, or the higher standards shall govern.

(D) *Jurisdiction.* This chapter shall apply to all incorporated land within the town limits.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, §§ 2.105 - 2.108)

§ 152.005 STATE REGULATION.

Whenever, however or wherever land use within the town limits shall also be regulated by the state, then said regulation shall apply unless local town regulations shall be more stringent. Where such state regulation exists, nothing in this chapter shall empower the town to waive or abrogate said regulation. Where concomitant regulations exist, both shall be satisfied.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1101)

§ 152.006 SAVINGS CLAUSE.

If any provision or the application of any provision of this chapter is held unconstitutional or invalid by the courts, the remainder of the chapter or the application of such provision to other circumstances shall not be affected.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1102)

§ 152.007 ENACTMENT.

STATE OF INDIANA)

COUNTY OF DELAWARE)

TOWN OF DALEVILLE)

BE IT KNOWN, that the Town of Daleville, by and through action its Town Council, did on the 5th day of March, 2007, adopt into law this Comprehensive Land Use Ordinance in its regularly constituted monthly public meeting.

BE IT FURTHER KNOWN, that on the 22nd day of January, 2007, the Daleville Planning and Zoning Board, pursuant to its regularly scheduled meeting, did examine and review this Ordinance and pursuant to unanimous vote approve and recommend this Ordinance to the Daleville Town Council for passage.

BE IT FURTHER KNOWN, that on the 5th day of February, 2007, this Ordinance received its first reading before the Daleville Town Council at which time the second reading of the Ordinance was waived by unanimous vote of the Council.

THAT HENCEFORTH, this Ordinance shall be in full force and effect as of March 5, 2007.

Signed:

Steve Overmyer, President

Jeffrey Shore, Vice-President

Joe Scott, Council Member

Jay Shellabarger, Council Member

Mike Murphy, Council Member

ATTEST:

Kay Gipson, Daleville Clerk-Treasurer

Kay Gipson

CERTIFICATION:

Comes now, Kay Gipson, Clerk-Treasurer of Daleville, Indiana, who, upon her affirmation, certifies the foregoing to be a true and accurate record and that same is duly entered of record in the records of Daleville, Indiana.

Dated: _____

Kay Gipson, Clerk-Treasurer, Daleville, Indiana

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 12.101)

CODES ADOPTED BY REFERENCE

§ 152.025 AMENDED COMPREHENSIVE MASTER PLAN.

(A) *Amended Comprehensive Master Plan.* On January 5, 2004, the Town Council, pursuant to law, passed the Comprehensive Master Plan by Ordinance PZ-04-01.

(B) *Adoption and inclusion.* That PZ-04-01, amended Comprehensive Master Plan is, by reference, made a part of this chapter.

(C) *Amendment.* The Master Plan may be amended from time to time through rezoning, issuance of variances and exceptions. Since said changes are of public record (PZO order book) available in the Office of the Clerk-Treasurer, all persons shall be deemed to have knowledge not only of the 2004 Master Plan, but all changes thereto.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, §§ 10.101 - 10.103)

§ 152.026 BUILDING CODE ADOPTED BY REFERENCE.

Except where otherwise specifically provided, the town hereby by reference adopts the following Indiana Codes:

(A) Article 12 General Administrative Rules (675 IAC 12 GAR);

(B) Article 13 Indiana Building Code (675 IAC 3 IBC);

(C) Article 14 Indiana Residential Code (675 IAC 14 OTFDC);

- (D) Article 15 Industrialized Building Systems (675 IAC-1 5 ISB);
- (E) Article 16 Indiana Plumbing Code (675 IAC 16 IPC);
- (F) Article 17 Indiana Electrical Code (675 IAC 17 IEC);
- (G) Article 18 Indiana Mechanical Code (675 IAC-18 IMC);
- (H) Article 19 Indiana Energy Conservation Code (675 IAC 19 IECC);
- (I) Article 20 Indiana Swimming Pool Code (675 IAC 20 ISPC);
- (J) Article 21 Indiana Safety Code for Elevators, Escalators, Manlifts and Hoists (675 IAC 21 SCEEMH);
- (K) Article 22 Indiana Fire Prevention Code (675 IAC 22 IFC); and
- (L) Article 24 Indiana Supplementary Fire Safety Rules (675 IAC 24 SFSR).

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 11.101)

§ 152.027 BUILDING INSPECTOR POWER TO MODIFY.

The Building Inspector may from time to time modify the Indiana Building Codes when he or she deems, in the exercise of his or her discretion, it is beneficial to the town and its citizens and the facts of each case scenario.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 11.102)

§ 152.028 COMPLIANCE WITH RULE 13 PROVISIONS.

The town is subject to the provisions of 327 IAC 15-13 et seq., Indiana Administrative Code, Title 327, Water Control Board, Article 15 NPDES General Permit Rule Program Rule 13, storm water run-off associated with municipal separate storm sewer system conveyances.

(A) *One acre rule.* Any construction within the town limits that disturbs one or more acres of land is subject to the regulations of Rule 13 and compliance thereto.

(B) *Compliance.* Any construction within the town must be conducted and in conformance with the dictates of Rule 13 as it currently exists and as regulations thereunder may be forthcoming from IDEM.

(C) *Rule 13 permit.* Any construction, whether it be residential, business or industrial subject to Rule 13 shall require a specific permit issued by the town to insure compliance.

(D) *Permit application.* The applicant, upon the payment of a non-refundable application/permit fee of \$300, shall make application to the Building Inspector for the issuance of a Rule 13 permit.

(E) *Application requirements.* In addition to the payment of the application fee, the applicant, if Rule 13 applies, will also present a written plan to comply with the provisions of Rule 13 during construction and after construction.

(F) *Issuance of Rule 13 permit.* Following review of the application for a Rule 13 permit, the Building Inspector shall have the authority to issue said Rule 13 permit.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, §§ 11.201 - 11.207)

ZONING MAP, DISTRICTS AND BOUNDARIES

§ 152.040 ZONING MAP.

The amended Comprehensive Master Plan and its map of the town, Ordinance PZ-04-01, passed March 1, 2004, same herein incorporated by reference, shall apply and same shall reflect any rezoning approved by the Town Council after March 1, 2004. The

current master zoning map shall be kept on file and available for examination in the Office of the Town Clerk-Treasurer.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.201)

§ 152.041 ZONING DISTRICTS.

(A) The entire town is divided into three basic districts as shown in the amended Comprehensive Master Plan as follows:

- (1) "R" Residential;
- (2) "B" Business; or
- (3) "I" Industrial.

(B) No agricultural use or flood plain districts are provided in the amended Comprehensive Master Plan. Agricultural use is a grandfathered use within the town which may not be expanded or enlarged nor may additional parcels be subjected to such a use. Because the definition of what is or is not a flood plain parcel is subject to definition and redefinition per parcel, the Commission shall make such determination on a case by case basis as it is presented and considered. No building or construction shall be allowed on any ground found in, on, or about a flood plain.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.202)

§ 152.042 DISTRICT BOUNDARIES.

(A) District boundaries shown within the lines of streets, streams and transportation rights-of-way shall be deemed to follow the centerline as depicted on the amended Master Plan. The vacation of streets shall not affect the location of the district boundaries.

(B) When the Commission cannot definitely determine the location of a district boundary by the centerline, by the scale, or dimensions reflected on the zoning map, or by the fact that it clearly coincides with a property line, it shall refuse action, and the Board of Zoning Appeals, upon appeal, shall interpret the location of the district boundary with reference to the scale of the zoning map and the purposes set forth in all relevant provisions of this chapter.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.203)

§ 152.043 DISTRICT REGULATIONS; PERMITTED USES.

(A) *Residential districts.* Districts designated for residential use are limited to single-family dwellings, doubles and multi-family buildings (apartment complexes) which are normally associated with residential neighborhoods. Mobile homes, modular homes and manufactured housing may only be constructed or installed pursuant to the granting of a special use exception by the Commission. The only uses permitted in the residential districts are those which would not detract from the residential character of the neighborhood. The purpose of these districts is to create an attractive, stable and orderly residential environment. Business and industrial uses are prohibited in residential districts except by variance and special exception.

(B) *Business districts.* The districts designated for business are limited to business. By establishing compact districts for business uses, more efficient traffic movement, parking facilities, fire protection, and police protection may be provided. Industrial and residential uses within business districts are excluded in order to reduce the hazards caused by extensive truck and rail movement normally associated with industrial uses. The purpose of these districts is to provide unified shopping districts conveniently located. Residential and industrial uses within the existing business districts may only occur subject to special exception and/or variance.

(C) *Industrial districts.* The districts designated for industrial use provide suitable space for existing industrial use and their expansion as well as for future industrial/manufacturing development. Performance standards, parking specifications and setback (yard) regulations are set forth later in this chapter in order to insure safe industrial/manufacturing development that is compatible with adjacent uses. The locations of the districts are near railroads or highways in order to meet the transportation needs of industry/manufacturing. Light industry shall be allowed in all industrial districts and same shall be presumed not objectionable to adjoining uses. Heavy industry as it shall be identified shall be allowable only as a special exception or variance in industrial districts.

(D) *Permitted uses.* The permitted uses for each defined district (residential, business, industrial) are listed below. The uses that are listed for the various districts shall be according to the common meaning of the term or according to definitions provided in §

(1) *Flood plain.* Such parcels of real estate within the town, which shall be determined to lie within a flood plain, regardless of district within which they may be found, shall only be permitted the following usage:

- (a) Agriculture (if pre-existing);
- (b) Public parks and playgrounds;
- (c) Game services;
- (d) Essential services; and
- (e) Accessory uses.

(2) *Residential districts.*

- (a) Single-family dwellings;
- (b) Two-family dwellings;
- (c) Apartment buildings or structures containing three or more family dwelling units;
- (d) Public and parochial schools;
- (e) Family childcare homes;
- (f) Essential services;
- (g) Accessory uses; and
- (h) Family childcare home.

(i) Two-family and multi-family (three or more family dwelling unit structures), although permitted shall require a special use exception that may, upon application, only be issued by the Town Council after approval by the Commission and/or the BZA. Although recommended, the Town Council shall, in the exercise of its discretionary powers, be fully authorized to deny such permits if it is found that the construction or creation of multi-family residential units will detract from the value of existing neighboring single-family dwellings and the general character of the existing neighborhood. The construction of multi-family residences shall be by special use exception only.

(3) *Business district.*

- (a) Retail business (excluding sexually oriented businesses of any kind);
- (b) Eating and drinking establishments (excluding sexually oriented business activities or entertainment);
- (c) Offices and banks;
- (d) Personal and professional services (excludes medical);
- (e) Fire stations and municipal buildings;
- (f) Public utility structures;
- (g) Parking lots;
- (h) Public parks and playgrounds;
- (i) Accessory uses;
- (j) Automobile sales, service and repair;
- (k) Hotels and motels;
- (l) Cleaning and laundry establishments;
- (m) Private clubs (excludes sexually oriented entertainment or retail sales);

- (n) Drive-in businesses (excludes sexually oriented business outlets);
- (o) Veterinary hospitals and clinics (excludes large animal treatment);
- (p) Group childcare centers (Class A, Class B);
- (q) Bed and breakfast inns;
- (r) Theatres (excludes sexually oriented entertainment);
- (s) Wholesale business - not distribution;
- (t) Printing shops;
- (u) Churches;
- (v) Funeral homes;
- (w) Public and parochial schools; and
- (x) Gas stations and convenience stores.

(y) All other "business" uses or other uses within those districts designated business shall require exceptions or variances. All medical uses shall require exceptions or variances regardless of where situated.

(4) *Industrial districts.*

(a) Any individual or business use as defined "industrial" shall be allowable in those districts designated "industrial". Such uses may include, but not necessarily be limited to the following:

1. Research and testing laboratories;
2. Offices;
3. Warehouses;
4. Parking lots;
5. Essential uses;
6. Accessory uses;
7. Wholesale businesses - distribution;
8. Public utility;
9. Truck and railroad terminals;
10. Supply yards;
11. Boat storage (more than two); and
11. Sexually oriented business.

(b) All "industry" as defined in the definitional portion of this chapter shall be located in an industrial district and require a variance or exception issued by the BZA and also approved by the Town Council by a PZO. All such industry shall be under-roof and within closed buildings.

(c) No business or residential uses shall be permitted in industrial districts except by exception and variance.

(d) No sexually oriented business shall be located within 1,500 feet of any residence regardless of its location within a business zone or an industrial zone.

(5) *Other uses.* All other uses not specifically addressed by this chapter as written shall be by rezoning, variance or exception and only upon petition to the Commission ultimately approved by the Town Council.

§ 152.055 APPLICATION.

Except where explicitly noted, the following general regulations of this subchapter apply in all districts.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.401)

§ 152.056 NONCONFORMING USES OF LAND AND STRUCTURES.

If a lawful use of land, a structure, or of a structure and land in combination exists at the effective date of the adoption or amendment of this chapter that would not be permitted in the district under the terms of this chapter, that use may be continued subject to the following provisions:

(A) No existing land or structure devoted to a use not permitted by this chapter in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the land or structure to a use permitted in the district in which it is located, except as permitted by the Commission.

(B) Any existing nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for the use at the time of adoption or amendment of this chapter, but a nonconforming use shall not be extended to occupy any land outside the existing building structure.

(C) Any nonconforming use of land, a structure, or structure and land together may not be changed to another nonconforming use provided unless the Board, either by general rule or by making findings in the specific case shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting the change, the Board may require appropriate conditions and safeguards in accord with the provisions of this chapter;

(D) Any land, structure, or structure and land in combination in or on which a nonconforming use is superseded by a permitted use shall thereafter conform to the regulations for the district in which the structure is located, and the nonconforming use may not thereafter be resumed.

(E) When a nonconforming use of land, a structure, or structure and premises in combination is discontinued or abandoned for three consecutive months, the structure or structure and premises in combination shall not thereafter be used except in conformance with the regulations of the district in which it is located, except as approved by the Commission, BZA or Town Council by variance or special exception.

(F) Where nonconforming structure use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land.

(G) Any nonconforming structure damaged by fire, flood, explosion or other casualty may be reconstructed and used as before if the reconstruction is completed within three months of the casualty and if the restored structure has no greater coverage and contains no greater cubic content than before the casualty.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.402)

§ 152.057 ACCESSORY USES AND STRUCTURES.

(A) For purposes of this structure, accessory uses and structures shall fall into three categories: agricultural uses and structures, residential uses and structures, and all others including business and industrial uses and structures.

(B) All agricultural use structures (barns, bins, garages, special use facilities and the like) shall not be permitted as they are deemed to be an expansion of existing agricultural use. However, upon application for a variance or special use exception, the Commission has the authority to consider, grant or deny said applications on a case to case basis. In determining to advisability of such a proposed structure, the Commission will first look at the general neighborhood within which said structure shall be located, the use and its intrusion on the general quiet enjoyment of neighboring property owners, and finally the need for said structure. Should the Commission grant an agricultural variance and/or special use, the Commission may place such restrictions on the structure and use as it shall deem reasonable and warranted.

(C) Residential accessory uses and structures:

(1) Fences, hedges, walks, driveways, curbs, retaining walls, latticework, screens, curbs, trees, curbs, flowers, plants, mailboxes, nameplates, lampposts, birdbaths, benches, and landscaping of a life nature are permitted in any required front, side, or rear yard, provided they do not violate the requirements of this section. Such uses, except driveways, retaining walls or fences shall not require location improvement permits.

(2) Fences, retaining walls, storage facilities (includes storage barns, bins, garages and the like) and free standing buildings (pool houses, guest facilities, work rooms, hobby houses, studios and the like) shall all require proper permitting and same shall be built to code and pursuant to the minimum specifications hereinafter provided as the Building Commissioner shall determine reasonably necessary to ensure that said structures are stable, lasting and sightly.

(a) All fences shall be permanent and constructed of recognized building materials and constructed in a manner generally recognized in the fencing industry. All support posts, gates and entryways shall be set in concrete (sakcrete) to ensure lasting stability. No fence shall be in excess of seven feet in height without a variance.

(b) Retaining walls shall be permanent in nature and constructed of recognized building materials recognized in the retaining wall industry. All retaining walls four feet or higher (including terracing) shall be installed using geotech construction and installation methods using recognized backfill and backside drainage. Foundation footers of crushed stone or concrete shall be required of all retaining walls in excess of five feet in height including terracing reasonably necessary to serve their foundational purposes.

(c) Storage facilities (storage bins, storage barns, small garages) shall be allowed and limited to one per property and same shall include pool houses. All such structures shall be constructed of recognized and accepted building materials within the storage structure industry and shall have shingle roofing. All storage facilities in excess of 10' x 12' (single story) shall also require the following:

1. Permanent foundations of concrete. Regular foundations of concrete shall be at least 30" deep and the width of same shall be determined by the size and weight of the structure. To said structure utilizing a regular foundation, a permanent floor shall be installed of concrete (4" pad) as to all structures larger than 10' x 12'. Smaller structures using a traditional foundation may use a solid wood flooring. In the alternative, the owner may elect to utilize a monolithic (slab) foundation on all structures in excess of 10' x 12' with a pad of concrete of at least 4" and sills at least 18" below grade. All structures 10' x 12' and smaller shall be anchored to the ground in a generally accepted manner.

2. All storage facilities to be constructed in excess of 10' x 12' shall require a variance as to size and location on the subject property. All such structures of this size or larger shall be determined to be garages and subject to the applicable codes for building garages which shall include permanent (concrete) foundations, roof support, trusses, and shingled or other recognized roofing materials.

3. All such storage facilities 10' x 12' or larger shall be permanently attached to their permanent foundations and no tie-downs shall be acceptable as are used in the mobile home industry or sometimes recommended by shed manufacturers.

4. No shed or flat roof configurations shall be allowed on any accessory building.

(d) Any structure herein contemplated, regardless of size that shall be plumbed shall require not only a foundation as above specified, but also a permanent concrete floor.

(3) All other residential accessory use free-standing buildings (pool houses, guest facilities, work rooms, studios, hobby houses and the like) shall be subject to the same codes and building requirements of residential construction and require all pertinent permits prior to construction.

(4) Decks and patios shall require building improvement location permits along with such other permits as may be applicable (electric, plumbing and the like). Arbors shall be included in this subsection as well.

(5) A private residential swimming pool shall be permitted as an accessory use if access is controlled by means of a wail or fence or any other means as approved by the state consistent with 675 I.A.C. 20-4-27.

(6) No accessory use or structure shall be permitted except in association with an existing principal structure or use of land and said structures shall be limited to one per lot.

(D) Business and industrial accessory use structures shall only be permitted by special use and variance. Such structures and uses shall be granted or denied on a case by case basis as presented to the Commission and approved by the Council. The Commission and by reference, the Council, may place such restrictions on use as well as building requirements as it shall deem reasonable and necessary. All such petitions for a variance or special use related to a business or industrial use shall be accompanied by plans and specifications certified by an engineer or architect licensed to practice in the state.

(E) Temporary storage units commonly referred to as "PODs" shall be allowed under the following terms and conditions:

(1) The term "PODs" includes any storage unit intended to be temporary in nature utilized by owners who are moving or storing personal belongings during an episode of construction. "PODs" shall also include, but not be limited to specific units designed for on or off site storage and trailers adapted for or used for storage.

(2) Before obtaining a POD, a homeowner will first obtain a permit for a temporary structure prior to locating it on the homeowner's property at a cost of \$10.

(3) Failure to obtain such a permit shall result in a fine of \$50 plus the permit fee. Each day such a unit shall stand on a homeowner's property shall be deemed a separate and single violation.

(4) The utilization of a POD shall be temporary and said utilization shall only be for a period of three months from the date of permit. Each permit holder shall be allowed one automatic extension of three months upon the payment of an extension fee of \$10. All additional extensions shall be for three months each at a cost of \$10 each and shall be at the discretion of the Building Commissioner upon good cause shown.

(5) Failure to remove a POD at the end of the three-month utilization period shall result in a fine of \$25 per day for each day exceeding the six-month utilization period.

(6) "PODs" usage shall be limited to one unit per property.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.403; Ord. 07-03, passed 2-4-2008; Ord. 09-03, passed 7-13-2009)

§ 152.058 VISUAL CLEARANCE ON CORNER LOT.

On a corner lot in any district, nothing shall be erected, placed, planted, or allowed to grow in a manner as to materially impede vision between a height of two and one-half feet and ten feet above the centerline grades of the intersecting streets in the area bounded by the street right-of-way lines of the corner lot and a line joining two points on the street right-of-way lines 35 feet from the point of their intersection.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.404)

§ 152.059 TEMPORARY USES OF LAND OR STRUCTURES.

A permit for a temporary structure or land use such as carnivals, emergencies, revival meetings, construction facilities including use of a mobile home as a temporary office or uses of a similar nature may be issued by the Zoning Administrator, Building Commissioner, provided the following conditions are adhered to:

(A) The use is, in fact, temporary and will terminate at a specific time not to exceed six months (said permit may upon application be extended for six months if approved by the Building Commissioner);

(B) The proposed site is of adequate size to accommodate the use without creating congestion in the streets of inadequate circulation for fire and other emergency vehicles;

(C) Adequate parking, both off-street and on-street, is available to the site;

(D) Outdoor lighting will be shielded or directed away from adjoining residential property and streets;

(E) All sign regulations of shall be observed; and

(F) Neighboring uses are not adversely affected.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.405)

§ 152.060 LOT AND YARD REQUIREMENTS.

(A) The minimum lot area, minimum width of the lot, minimum depth of the front yard, minimum width of each side yard, minimum depth of the rear yard and minimum ground floor area for each district shall be as shown on Table A and subsequent divisions.

Zoning Table A

<i>District</i>	<i>Minimum Lot Area¹</i> (Square Feet)	<i>Minimum Lot Area Per Family</i> (Square Feet)	<i>Minimum Frontage²</i> (Feet)	<i>Minimum Depth Front Yard³</i> (Feet)	<i>Minimum Width Side Yard</i> (Feet)	<i>Minimum Depth Rear Yard</i> (Feet)	<i>Minimum Ground Floor Area⁴</i> (Square Feet)
R ⁶	23,000	23,000	115	50	15	15	1,600 ⁵
B	23,000	N/A	115	50	20	20	1,000
I ⁷	65,340	N/A	150	75	40	40	N/A

Notes:

1 Minimum lot area shall be established by measuring the area encompassed by the side, rear and front lot lines. The front lot line shall be measured from the right-of-way line established in accordance with this chapter or as platted in an approved subdivision plat.

2 Minimum frontage for a lot on a cul-de-sac or curve is 45 feet for single-family and double-family dwellings.

3 Minimum depth of the front yard shall be 70 feet from the center of the road or 50 feet from the road right-of-way, whichever is greater, except that on local subdivision streets, the front yard set-back shall be 35 feet from the road right-of-way and, on cul-de-sac streets, the front yard set-back shall be 40 feet from the road right-of-way.

4 Minimum ground floor area exclusive of enclosed or open porches, attached garages or carports and accessory buildings.

5 Minimum ground floor area shall be 800 square feet if the structure is two or more stories.

6 If the subject lot is utilized for multi-family (doubles or structures containing three or more units), then the minimum lot area shall be 43,560 square feet, minimum lot frontage of 150 feet, minimum depth of 60 feet, minimum width of side yard 20 feet, minimum depth of 30 feet and minimum floor space per living unit of 800 square feet.

7 The provisions here made contemplate "light industry" and not "heavy industry". All requirements for "heavy industry" shall and will be negotiated. "Heavy industry" shall be any industrial endeavor not wholly under roof or contained.

(B) Lots which abut on more than one street or thoroughfare, shall provide the required front yard along each thoroughfare, except alleys.

(C) No portion or any structure, whether open or enclosed, including garages, porches, carports, balconies, roofs, or platforms above normal grade level shall project into any minimum front, side or rear yard.

(D) Any lot of record may be used for the erection of a structure conforming to the use regulations of the district in which it is located even though its area and width are less than the minimum requirements of this chapter. However this provision assumes a pre-existing structure and in no case will re-construction or new construction exceed the pre-existing footprint of the pre-existing structural footprint.

(E) All residential construction (single-family, two-family) shall include an attached or detached two-car garage (20 x 24) and either a paved or asphalt complete driveway from the curb-cut to the entire garage opening.

(F) All business uses shall provide paved or asphalt entry at the curb-cut and parking areas. All parking areas shall be striped to designate and indicate individual parking spaces for all persons to come on the property for business purposes including employees and customers or patients. No gravel will be permitted except by variance.

(G) All industrial uses shall provide paved or asphalt entry and parking for all vehicular traffic and parking. No gravel or similar material shall be permitted except by exception or variance.

(H) All off-street parking requirements for business and industrial use shall meet the provisions of the federal mandates for "handicapped persons".

(I) All new construction (excluding rehabilitation) shall require minimum off-street parking as shown in Table B.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.406)

§ 152.061 OFF-STREET PARKING REGULATIONS AND REQUIREMENTS.

(A) All parking spaces required shall be of regular size reasonable large enough to accommodate full-sized cars, SUVs and pickup trucks.

<i>Off-Street Parking Table B</i>			
<i>District</i>	<i>Use</i>	<i>Employee Spaces</i>	<i>Public</i>
Residential	Single-Family ¹	2 per dwelling	2 per dwelling
	Doubles ¹	2 per dwelling	2 per dwelling
	Multi-family ²	2 per unit	2 per unit
Business	Professional	3 per professional	2 per professional
	Retail	1 per employee	3 per employee
	Restaurant/club	1 per employee	4 per employee
	All other ³	N/A	N/A
Industrial	Light industry	1 per employee	10 per location ⁴
Notes:			
1 Assumes also existence of two-car garage			
2 Excludes requirement of garage or covered parking			
3 Shall be required but subject to approval by the Commission, BZA and Town Council			
4 Subject to approval by the Commission, BZA and Town Council			

(B) Driveways serving residences and residential parking shall be at least ten feet wide with throughways wider to accommodate ingress and egress into angled parking. Driveways serving business shall be at least 12 feet wide and at the option of the Commission, BZA and Town Council, require the provision of two-way traffic requiring wider driveways. Throughways within business parking to accommodate angled parking will be wider to accommodate vehicular parking. Driveways serving industry, without exception granted

by the Commission, shall be at least 14 feet wide and, where deemed appropriate, provide for both ingress and egress traffic. Depending on the types of parking to be provided industry, the Commission, BZA, and Town Council may require such space as is reasonably adequate to handle said parking.

(C) Two or more nonresidential uses may jointly provide and use parking spaces when their hours of operation do not normally overlap, provided that a written agreement between users approved by the Commission shall be filed with the application for a permit.

(D) The required off-street parking spaces for any number of separate buildings, structures, or uses may be provided collectively on one lot provided the total number of spaces shall not be less than the sum of the requirements for the various individual buildings, structures or uses.

(E) When two or more uses are located within the same building or structure, off-street parking spaces equal in number to the sum of the separate requirements for each use shall be provided.

(F) All off-street parking areas required by this chapter (except industrial) shall be used only for the parking of vehicles of occupants, patrons, visitors or employees, and shall not be used for any kind of loading, sales, servicing, or continuous storage of a vehicle for more than 24 hours.

(G) Every parcel of land hereafter used as a public or private off-street parking area capable of accommodating five or more vehicles shall be developed and maintained in accordance with the following requirements:

(1) Each required off-street parking space shall have direct access to an alley or driveway and all required off-street parking areas shall have vehicular access to a street or alley so designed to minimize interference with pedestrian and traffic movement;

(2) All required off-street parking shall be paved with bituminous, concrete, or other all-weather, dust-proof surfacing, and shall be provided with bumper guards or barrier curbs where needed;

(3) Any lighting used to illuminate a required off-street parking area shall be shielded from residential properties; and

(4) All open off-street parking areas shall be effectively screened on each side adjoining or fronting on any property in a residential district or any institutional premises by a wall, fence or densely planted compact hedge, not less than five feet nor more than eight feet in height.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.407)

§ 152.062 HEIGHT REGULATIONS.

(A) Except in industrial districts, no principal structure shall exceed 50 feet in height. No accessory building shall exceed 26 feet in height outside industrial districts. Heights are measured from average ground level.

(B) Variances may be granted by the BZA if all front and side yard depths are increased two feet per additional foot of height.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.408)

§ 152.063 VARIANCES.

Generally, there are two kinds of variances:

(A) Use variances are a request for permission to operate or permit a use on a parcel of property not permitted under the terms of the zoning ordinance.

(B) Development standards variances are typically a request for leniency in order to avoid the strict application of the design standards of the zoning ordinance. Examples of development standards may include, but are not limited to front, side and rear yard setbacks.

(C) Building limitations may also be modified by exception when applicable. Variances and exceptions require action by both the Commission and the Town Council.

(D) Once granted, variances are permanent and run with the land not only for the benefit of the current owners, but all successor owners.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.409)

§ 152.064 EXCEPTIONS.

Exceptions shall, in common parlance, mean special exceptions, special uses, contingent uses and conditional uses identified within this chapter or omitted as possessing characteristics that require special attention and consideration. An example might be a hospital or a motel within any given zone. Here it is recognized that "conditional use" zoning may very well become the prevalent zoning approach as planning and zoning issue in land use become more complicated. Exceptions shall not be permanent or shall they run with the land for the benefit of subsequent owners. Exceptions, without rezoning of the grant of a variance, shall dissolve as a matter of law upon a change of ownership. Exceptions require actions by both the Commission and the Town Council.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.410)

§ 152.065 PERMITS.

No building or construction permit shall be issued by the Building Commissioner unless said construction or building shall be consistent with all the provisions of this chapter as written or amended in the future. State and county regulations may also apply and these must also be complied.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.411)

USES

§ 152.080 BASIC GENERAL PROVISIONS.

All uses established or placed into operation after the effective date of this chapter shall comply with the following performance standards in the interests of protecting the public health, safety and welfare, and lessen injury to property. No use in existence on the effective date of this chapter shall be altered, modified or created to conflict with these standards.

(A) Fire fighting equipment and prevention measures acceptable to the local fire department shall be readily available and apparent when any activity involves the handling or storage of flammable or explosive materials is conducted.

(B) No use shall cause electrical disturbance adversely affecting radio, television or other equipment in the vicinity.

(C) No use shall produce noise in a manner that is objectionable because of volume frequency, intermittence, beat, shrillness or vibration. The noises shall be muffled or otherwise controlled so as not to become detrimental to the quiet enjoyment of neighbors, although public safety sirens and related apparatus used solely for public purposes shall be exempt from this standard.

(D) No use shall cause vibrations or concussions detectable beyond the lot lines without the aid of instruments.

(E) No use shall emit across the lot line malodorous gas or matter in a quantity that is readily detectable at any point along the lot lines.

(F) No use shall discharge across the lot lines fly ash, dust, smoke, vapors, noxious, toxic or corrosive matter, or other air pollutants in a concentration that is detrimental to health, animals, vegetation, or property.

(G) No use shall produce heat or glare in a manner that creates a nuisance perceptible from any point beyond the lot lines.

(H) No use shall produce erosion or other pollutants in a quantity that is detrimental to adjacent properties or conflicts with water pollution standards established by the public agencies.

(I) No use shall accumulate within the lot or discharge beyond the lot lines any waste matter, whether liquid or solid, in violation of applicable public health, safety, and welfare standards and regulations.

(J) No motor vehicles shall be stored on any property within the town, unless authorized in conjunction with an approved business, such as service stations, garages, or junk yards, existing in accordance with current zoning and parking regulations. Motor vehicles may only be stored in completely enclosed buildings upon property. No motor vehicles may be stored or maintained in the town on

property unless the vehicle or vehicles meet the following requirements:

- (1) The vehicle(s) must have current license plates affixed;
- (2) The vehicle(s) must belong to the residents of the property where stored or to the title holders of the real property; and
- (3) The vehicle(s) must meet all legal state requirements to drive on public highways during both daytime and nighttime hours as well as current auto specific registrations.

(K) Motor vehicles not complying with the above requirements shall be removed within ten days after the landowner and/or resident have been notified to remove the same. Failure to comply with a removal notice within the set time may result in any or all of the following actions:

- (1) Imposition and collection of a fine for each day the violation continues after notification; and
- (2) Institution of a suit by the Commission seeking a permanent and mandatory injunction to enforce this section and for all costs and/or fees associated with the suit.

(L) It shall be a violation of this chapter, under any circumstances, for any semi-tractor trailer, truck bed whether located on or off a truck chassis, and/or mobile home structure to be used for the purposes of storage in any district.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.801)

§ 152.081 BUSINESS AND INDUSTRIAL USES.

The purpose of this section, among other things, is to provide reasonable design flexibility in the development of land designated and reserved for business and industrial uses. No business or industrial use construction shall occur without the submission of architect/engineer certified plans or specifications having been first submitted to the Commission by and through its Building Inspector. No business or industrial construction shall commence without IDEM (Indiana Department of Environmental Management) review and approval. Further, all business and/or industrial construction shall be performed and comply with all relevant codes including those of the Indiana State Fire Marshall's Office along with all building site requirements of this chapter and off-street parking requirements.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.901)

§ 152.082 LOADING DOCKS.

(A) A loading space shall have minimum dimensions of not less than 15 feet in width, 50 feet in length, exclusive of driveways, aisles, and other circulation areas, and a clearance height of not less than 15 feet. One off-street loading space shall be provided and maintained on the same lot for every separate occupancy requiring delivery of goods and having a gross floor area of up to 5,000 square feet. One loading space shall be provided for each additional ten thousand 10,000 square feet or fraction thereof.

(B) All required loading berths shall be located on the same lot as the use served. No permitted or required loading berth shall be located within 40 feet of the nearest point of intersection of any two streets. No loading berth shall be located in a required front yard.

(C) All open off-street loading berths shall be improved with a cement concrete pavement or a comparable hard surface pavement.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.902)

OTHER SPECIFIC REGULATIONS

§ 152.095 MOBILE HOMES; MOBILE HOME PARKS.

(A) *General provisions.* Generally, mobile homes shall not be permitted within the town limits as a dwelling use, business use or industrial use except as specifically provided elsewhere.

(B) *Special exceptions.* The Board of Zoning Appeals may, by special exception and approval of the BZA and the Town Council, allow the placement of a "double-wide" trailer within the town limits if the following conditions are met:

(1) An architect or engineer certified set of plans and specifications are submitted with the petition for a special exception with the Commission. Manufacturer's plans and specifications may be accepted if certified.

(2) The "double-wide" is placed on a concrete footer foundation, as certified, at least 24" x 12" x 36" with three rows of No. 4 rebar.

(3) The "double-wide", as installed, shall have an asphalt roof and said roof shall be at least 4:12 pitch.

(4) The "double-wide", once permanently located shall meet all other residential requirements including, but not necessarily limited to, the inclusion of a two-car attached or detached garage on a normal residential lot.

(5) The Commission, Board of Zoning Appeals and Town Council shall determine, upon hearing, that no citizen objections exist nor that the construction/location of said "double-wide" will in any way be detrimental economically to neighboring structures or dwellings.

(C) *Replacement.* Should any mobile home, whether on foundation or not, become the victim of casualty (fire, flood and the like) or uninhabitable, it may only be replaced if it meets the requirements of division (B) and completion is completed within three months of the casualty or determined uninhabitability.

(D) *Mobile home parks.* No mobile home park(s) shall be permitted within the town limits. No exception or variance shall be allowed. A mobile home park shall be any lot where more than one trailer shall be found.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, §§ 2.501 - 2.504)

§ 152.096 RECREATIONAL VEHICLES.

Recreational vehicles shall not be occupied for more than 24 hours in any town location nor used as a dwelling.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.601)

§ 152.097 HOME OCCUPATIONS.

A home occupation may be permitted as a special exception granted by the Commission, BZA and approved by the Town Council if it complies with the requirements of this section. A home occupation may be permitted as a special exception granted by the Board and approved by the BZA and the Town Council so long as the following requirements are met:

(A) The home occupation shall be carried on by a member of the family residing full-time in the dwelling unit with not more than one employee who is not part of the family.

(B) The home occupation shall be carried on wholly within the residence or an accessory building.

(C) Exterior displays, signs, exterior storage of materials, and exterior indication of the home occupation or variation from the residential character of the principal structure shall not be permitted except by exception.

(D) Objectionable noise, vibration, smoke, dust, electrical disturbance, odors, heat or glare shall not be produced.

(E) The home occupation shall not create any traffic or parking problems.

(F) Any home occupation engaged in any on site sales or transfer of goods or products shall be required to comply with all business district off-street parking requirements as elsewhere set out in this chapter.

(G) Upon any cessation of home occupation business for any period beyond six months shall by operation of this chapter revoke the special exception granted to conduct a home occupation on site and within the boundaries of the subject real estate parcel. Any attempt to restart said home business shall be subject to a "cease and desist order" issued by the Commission without notice.

(H) The issuance of a special exception shall not change the primary use or zoning of the specific parcel of real estate which shall remain residential.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.701)

§ 152.098 COMMUNICATIONS TOWERS.

Communications towers, by special exception, may be allowed within the town limits so long as they are no greater in height than 75 feet. Here it should be noted that communications towers in the town are not favored.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1103)

§ 152.099 YARD, RUMMAGE, FLEA MARKET, EVENT SALES.

(A) *Purpose.* The purpose of this section is to regulate for the public good any sale by a person, individual, group of individuals, or organization who desires to conduct a sale of used or new clothing, furniture, housewares or any other personal items within a very short period of time and said sale is to occur at a non-business location.

(B) *Event vendor.* By definition, an event vendor shall be any person, individual, group of individuals or organization who is, within the context of an event, festival or other promotion, public or private, engaged in the very short term selling food, candy, drinks, merchandise or other items as well as providing services, including rides or games of chance in any form.

(C) *Short term.* Short term shall be any sale or the provisions of services in excess of 24 hours, but less than 92 hours. No yard, rummage, flea market or vendor sales shall extend beyond 72 hours in any non-business property.

(D) *Registration requirement.* All persons, individuals, or groups of individuals, at least ten days prior to any sale of goods or services shall register their intent to hold said sale or provide the contemplated services in the Office of the Clerk-Treasurer stating the form of sale to be conducted or services to be rendered. Said registration will be necessary and limited to one participating individual operator or vendor. The issuance of a permit shall be a condition precedent to any yard sale, rummage sale, flea market sale or event sale by the owner operator. Said registration shall be at least ten days prior to the first day of sale.

(E) *Limitations.* No person, individuals, organization or event vendor shall be entitled to more than two permits within any annual period running from January 1 to December 31 of any year. Sales may only occur over four days commencing Thursday at 8:00 a.m. and closing Sunday at 5:00 p.m.

(F) *Public safety.* Any location for which a permit is sought must have adequate off-street parking for business invitees as none shall be allowed in any street or other public roadway within the town. The determination of the existence of adequate parking shall be made by the Building Inspector and his or her decision shall be enforceable and grounds to withhold issuance of a permit.

(G) *Sale inventory.* Sale inventory, rummage, unless under roof (no tents), may be displayed within a yard or other location so long as said inventory shall not encroach on a 25-foot all property set back. All sale inventory shall be removed from public view during nighttime hours.

(H) *Sale advertisement.* All locations of advertisements, notices, and directional signs must be registered by the applicant and all such advertisements, notices, and directional signs must be removed by 5:00 p.m. on the last day of the sale. All signs, advertisements and notices, must have the name of the rummage sale permit holder clearly identified on the sale notice or advertising sign/poster.

(I) *Cleanup.* All sale inventory, rummage, shall be removed from sight by 7:00 p.m., on Sunday, or 7:00 p.m. of the last day of the sale the last day of the sale.

(J) *Violations and enforcement.* The individual, individuals or organizations who are the property owners of the locations upon which the sale or services are provided shall be liable in the enforcement of this section. This section shall be enforced by the Commission by its Building Inspector. The parcel owner or owners shall be subject to a fine of \$100 per day for each day of non-compliance and said fines shall become a lien on the owner's real estate. The Building Inspector shall also be empowered to issue "cease and desist" orders. Once a "cease and desist" order is issued, the property owner will be subject to a \$200 per day fine for non-compliance and continued violation(s) of this order.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, §§ 4.101 - 4.110)

SIGN REGULATIONS

§ 152.110 PURPOSE.

(A) The purpose of this section is to promote and protect the public health, welfare and safety of the community and its people by regulating existing, proposed and subsequent outdoor advertising and outdoor signs of all types. As a general rule, signs of all sorts are not favored nor encouraged within the town.

(B) This scheme of regulation is also intended to protect property values, create a more attractive and economically vital business climate, provide for and promote the historic preservation of existing and new structures in designated districts, enhance and protect the physical appearance of the community, preserve scenic and natural beauty, and to provide more enjoyable and pleasant living conditions. The intent of this section is also to reduce the incidence of signs or advertising distractions which may contribute to traffic accidents by their placement and generally enhance the quality of life in the town.

(C) The location and maintenance of signs within the town shall be consistent with the land usage and neighborhood wherein same shall be found.

(D) Because signs are generally detrimental except those for public service, the sections in this section relative to signage shall be narrowly constructed.

(E) No sign will be permitted without the issuance of a valid permit issued by the Building Commissioner. Except for portable signs, in addition to a sign permit, the property owner will also need a location improvement permit as well to place a sign.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1001; Ord. 2014-07, passed 10-20-2014)

§ 152.111 DEFINITION.

A sign is any structure or device designed or intended to attract attention and convey information to the public in pointed, written or pictorial form. Signs include, but are not limited to, billboards, business, free standing, advertising, real estate and portable temporary signs.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1002)

§ 152.112 EXEMPT SIGNS.

The following types of signs shall be exempt from the requirements of this subchapter:

(A) Signs not exceeding one square foot in area and bearing only property numbers, post box numbers, names of occupants of premises or home service;

(B) Flags and insignia of any government;

(C) Legal notices, identification, or directional signs erected by or by order of local governmental bodies; and

(D) Signs directing and guiding traffic and parking on private property, but bearing no advertising matter, including logos.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1003)

§ 152.113 PROHIBITED SIGNS.

Along the I-69 Corridor running through and sometimes parallel to the east borders of the town, no outdoor advertising sign, billboard (regardless of construction) shall be permitted within 1,500 feet of the federal right-of-way centerline except by grant of a special exception.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1004)

§ 152.114 OFF-PREMISE SIGNS.

No off-premise signs shall be allowed in any zoning district within the town limits, except by special exception. No outdoor advertising signs ("billboards") shall be allowed regardless of size, location or manner of construction. For purposes of this chapter, rental parcels shall be considered off-premises unless said rental property also houses the business benefitted from the sign.

§ 152.115 ON-PREMISE SIGNS.

(A) In any district, except as noted, the provisions of this section shall be applied to effect the safety of motorists and facilitate traffic movement.

(1) No sign shall be erected or maintained at any location where, by reason of its position, wording, illumination, size, shape, or color, it may obstruct, impair, obscure, interfere with the view of, or be confused with any authorized traffic control sign, signal, or device.

(2) No sign shall contain or make use of any phrase, symbol, shape, form, or character in a manner that interferes with, misleads or confuses moving traffic.

(3) No exterior sign shall be permitted to display flashing, intermittent, revolving, rotating or animated lighting or illumination, nor any illumination which simulates or displays motion.

(4) All signs not expressly permitted by this chapter are prohibited.

(B) In business and industrial districts, the provisions of this subchapter shall apply.

(1) No part of any sign which is attached to the exterior wall of a building or roof shall be erected to a height in excess of six feet above the roof or parapet line of the building.

(2) No illuminated sign shall be permitted within 500 feet of any neighboring residential district.

(3) No part of any free standing sign shall be erected to a height greater than the roof line of any building located on site and served by the sign, and rooftop sign structures shall not extend more than six feet above the roof line, nor shall sign structures extend beyond or overhang any exterior wall of the building upon which they are secured.

(4) The minimum setback of freestanding signs from street rights-of-way shall not be less than those given below. Setbacks shall be measured from the nearest point of the sign to the edge of the right-of-way.

(5) The minimum sign setbacks shall be as follows:

<i>Minimum Area of Sign Per Face (Square Feet)</i>	<i>Setback (Feet)</i>
5 or less	10
5 to 14.9	15
15 to 49.9	30
50 to 99.9	40
100 or more	60

(6) The area of a sign shall be determined by the smallest circle, triangle, or rectangle that can be used to enclose the sign, exclusive, or supporting members that bear no message.

(7) No free standing sign shall be erected or maintained on or within any easement or right-of-way, public or private, without special permission in writing from that person or persons entitled to give permission.

(C) In residential districts, the provisions of this division shall apply as follows:

(1) Multi-family developments may display identification signs indicating nothing other than the name and/or address of the premises and/or the name of the management. The sign shall not exceed 20 square feet in area.

(2) Where home occupation uses are permitted, one bulletin board or identification sign, indicating nothing other than the name

and/or address of the premises, and a schedule of services or other information relevant to the operation of the premises shall be allowed. The signs shall not exceed 15 square feet in area.

(3) For each use listed in subsections (1) and (2) above eligible to display a sign, only one sign per street frontage shall be permitted.

(D) In any business district, except as herein provided, the provisions of this division shall apply.

(1) Multi-family developments shall be subject to the provisions of division (C) above.

(2) Business signs shall be permitted in connection with any legal business or industry when located on the same premises, and if they meet the following requirements:

(a) Signs shall not contain information or advertising for any product not sold or produced on the premises;

(b) Signs shall not have an aggregate surface size greater than 30 square feet for each business on the premises;

(c) Signs shall not project over public rights-of-way;

(d) Any sign over 24 square feet shall not be located closer than 200 feet to any residential use, school, church, park, playground or similar use; and

(e) Each legal business shall be entitled to one wall mounted sign subject to the foregoing requirements, except that uses occupying extended common frontages shall be limited to one free standing sign per each 200 linear feet of frontage.

(E) In any industrial district, each user/owner shall be permitted identification signs as incidental uses, not to exceed two of these type of signs for a total net area of 300 square feet. Any sign over 24 square feet shall not be located closer than 200 feet from any residential use, school, church, park, playground or similar use.

(F) The signs permitted by this division shall be allowed and/or limited in any district.

(1) All real estate "for sale" or "for rent" signs shall be no more than 432 square inches in size. No "directional" signs or "rider" shall be permitted. However, "open house" riders will be tolerated only for a period of seven days prior to the open house and same must be removed one hour after the conclusion of the open house.

(2) One sign, not more than 12 square feet in area, for construction and development, giving the name of the contractors, engineers, or architects, shall be permitted but only during the time that construction or development is actively underway.

(3) For an event of public interest sponsored by a church, governmental agency, school, political organization, or charitable organization, one temporary sign not over 100 square feet in area on the premises on which the event will take place shall be permitted, but the sign shall not be erected more than 30 days before the event in question and shall be removed immediately after the event. Also, directional signs may be permitted not more than three square feet in area, showing only a directional arrow and the name of the event of public interest. These signs shall not be erected more than 14 days before the event in question and shall be removed immediately after the event.

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

(5) Political advertisement signs on private property may be erected no more than 30 days prior to the election and are to be removed within five days after the election. No political sign may exceed 25 square feet in size.

(6) For each major entrance to a real estate subdivision, one sign containing the name of the subdivision shall be permitted on each side of the entrance. The sign shall not exceed 20 square feet and shall have a maximum height of six feet.

(G) Portable signs.

(1) **PORTABLE SIGN** shall be defined as any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported from place to place, including, but not limited to, signs transported by means of wheels; signs attached to A-or T-frames; menu and sandwich board signs; balloons used as signs; umbrellas used for advertising; and signs attached to or

painted on vehicles parked and visible from the public right-of-way, unless such vehicle is used in the normal day-to-day operation of the business.

(2) Portable sign shall be permitted under the following conditions:

(a) Only one portable sign shall be displayed per property at any one time.

(b) Portable signs shall not exceed 32 square feet.

(c) Portable signs shall be secured to the ground and provided with sufficient weight to ensure wind stability in inclement weather conditions.

(d) Portable signs shall be subject to all of the conditions as to off-site signs as set forth in this section, except for conditions addressing the size of the sign.

(e) In the event that a portable sign is illuminated, no above ground power source is permitted.

(f) Portable signs shall be subject to permit revocation if the Zoning Administration determines that a portable sign is unsafe.

(g) All property owners who have portable signs that are located on their property on the date that this chapter becomes effective are exempt from the regulations of this chapter until said portable sign is removed from property.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1006; Ord. 2014-07, passed 10-20-2014)

§ 152.116 ALL OTHER SIGNS.

Except as specifically provided in this subchapter, all other signs or signage shall be by exception only approved by the Commission, BZA and the Town Council.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1007)

ADMINISTRATION AND ENFORCEMENT

§ 152.130 ADMINISTRATIVE RESPONSIBILITY.

The Planning Commission (the Planning and Zoning Board) and Planning Director, same may also be the Building Inspector, shall establish the procedures and responsibilities for the administration and enforcement of this chapter in accordance with the following provisions and state legislation. The Commission shall consist of seven members appointed by the Town Council.

(A) For the purposes of this chapter, the Plan Commission shall have the following duties:

(1) To initiate proposed amendments to this chapter;

(2) To review all proposed amendments to this chapter and make recommendations to the Town Council;

(3) To review and make findings on development plans for subdivisions, commercial structures, industrial structures and other similar plans for all proposed developments within the Commission's jurisdiction;

(4) To review and revise the zoning regulations, subdivision regulations and other land use regulations to keep them up-to-date;

(5) Render interpretations of this chapter as may be necessary from time to time; and

(6) To make all decisions affecting or effectuating the rezoning of real estate within the town limits which shall not only cover rezoning, but the issuance of variances and exceptions as well as this entire chapter.

(B) The Plan Commission shall adopt rules necessary for the conduct of its affairs in keeping with the provisions of this chapter.

(1) At the first meeting of each year, the Commission shall elect a Chairman and a Secretary from its members.

(2) Meetings shall be held at the call of the Chairman or at other times which the Commission deems necessary.

(3) All meetings shall be open to the public, all petitions for rezoning, exceptions or variances shall not only be filed with the Commission, but the petitioner must also notify all property owners within 200 feet of the subject property of the proposed variance, exception and request for zoning change along with the date and time of the Commission's public hearing on the matter. No specific rezoning, variance or exception shall be considered at any meeting of the Commission, BZA, unless notice of said proposal shall be notices in a newspaper of general publication in the county as least ten days prior to the meeting.

(4) The Commission shall keep minutes of its proceedings showing the vote of each member for each question, or indicating if absent, or failing to vote.

(5) The Commission shall also keep records of its deliberations and other official actions, all of which shall be of public record and be immediately filed in the office of the Plan Commission.

(C) A member of the Plan Commission may not participate in a hearing or decision of the Board concerning a zoning matter in which he or she has a direct or indirect financial interest. For the purpose of this chapter, the term "zoning matter" does not include the preparation or adoption of a comprehensive plan. The Plan Commission shall enter in its records:

- (1) The fact that a regular member has a disqualification; and
- (2) The name of the alternate member, if any, who participated in the hearing or decision in place of the regular member

(D) A Plan Director and/or Building Inspector employed and designated by the Plan Commission shall administer and enforce this chapter. For the purpose of this chapter, the term "Plan Director" shall be synonymous with the term "Zoning Inspector" and/or "Building Inspector". He or she may be provided with the assistance of other persons as the Town Council directs.

(E) For the purpose of this chapter, the Plan Director shall have the following duties:

- (1) To issue improvement location permits, building permits and/or other related permits, conduct inspections to assure compliance with this chapter and issue certificates of occupancy;
- (2) To notify in writing persons responsible for violations of the provisions of this chapter and order the action necessary to correct the violations;
- (3) To order discontinuance of illegal or nonconforming uses of land, buildings, or structures;
- (4) To order removal of illegal buildings, structures, or illegal additions or alterations;
- (5) To order discontinuance of any illegal work being done;
- (6) To assume responsibilities as the Plan Commission directs;
- (7) To take any other action authorized by this chapter to ensure compliance with or to prevent violations of this chapter; and
- (8) To generally enforce the provisions of this chapter as written as well as any restrictive covenants that may be created after the passage of this chapter as they may pertain to or impact specific parcels of real estate and improvements found within the town limits.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1201)

§ 152.131 PERMIT REQUIREMENTS.

(A) No improvement location/occupancy permit shall be issued unless the proposed structure or use of structure or land is in complete conformity with the provisions of this chapter, or unless a written order is received from the Board of Zoning Appeals, the Plan Commission, Town Council or a court in accordance with this chapter and state legislation. All construction resulting in the disturbance of one acre or more shall also require the approval of the owners sediment and erosion control plan as required by the Indiana Storm Water Quality Act.

(1) An improvement location permit shall be obtained before any structure may be constructed, reconstructed, moved, enlarged or structurally altered. This covers both new construction as well as rehabilitation. If an improvement location permit is issued, the applicant shall apply for an occupancy permit, which permit shall not be issued until the structure is complete and compliance with this chapter is in evidence and approved by the Building Inspector.

(2) It is unlawful to use or occupy any building or premises without a certificate of occupancy. An application for an

improvement location permit shall without an additional fee, include, and be deemed an application for a certificate of occupancy. A certificate of occupancy shall be obtained before any person may:

- (a) Occupy or use any vacant land;
- (b) Occupy or use any structure hereafter constructed, reconstructed, moved, enlarged or structurally altered;
- (c) Change the use of a structure or land to any different use;
- (d) Renew, change or extend a nonconforming use; and
- (e) Work is completed and inspected.

(B) A temporary occupancy permit may be issued for a period not exceeding six months during alterations or partial occupancy of land or structures, provided that the temporary permit may include any conditions and safeguards as necessary to protect the safety of the occupants and the public.

(C) A location improvement permit shall be required for:

- (1) All new construction;
- (2) Non-routine maintenance, repair, or remodeling of existing structures not involving any change of use, additional lot coverage, or increase in structure size;
- (3) Essential services;
- (4) Lot and yard improvements such as fences, drives, sidewalks, patios, decks exceeding 100 square feet, retaining walls, permanent/affixed play equipment, gazebos more than 100 square feet, above ground pools, in-ground pools and structural landscaping;
- (5) Signs with a surface area of more than one square foot;
- (6) Mini-barns and storage containers that are portable or non-portable;
- (7) Plumbing, electrical and HVAC repairs requiring systemic replacements of any component; and
- (8) Sign installments.

(D) All applications for permits shall be accompanied by a plot plan which is drawn to scale where reasonably applicable. The Plan Director may, at his or her discretion, require that the plot plan be prepared by a qualified professional. The plot plan shall show clearly and completely:

- (1) The location, dimensions and nature of the property;
- (2) The location and dimensions of any existing or proposed improvements to the property;
- (3) All adjoining thoroughfares and any existing or proposed access to these thoroughfares;
- (4) The existing and proposed use of all structures and land;
- (5) The location and type of sewerage system, water system and drainage facilities;
- (6) Any other information as may be necessary to determine conformance with this chapter; and
- (7) A written description of the work to be done.

(E) If the work described in any permit application has not begun within 180 days from the date of issuance thereof, the permit shall expire as a matter of law and no notice of expiration need be issued.

(F) If the work described in any location improvement permit has not been substantially completed within one year of the date of issuance thereof, the permit shall expire as a matter of law and no notice of expiration shall be provided to the owner. Further work shall not proceed unless a new permit is obtained.

(G) Depending on the scope of construction, the Building Inspector shall also require other permits be obtained along with a building improvement location/occupancy permit. Failure to obtain said other required permits shall constitute a violation of this chapter prior to the commencement of construction.

§ 152.132 FEES.

Fees shall be charged for all applications for permits or related petitions in accordance with Appendix A of this chapter. Until all applicable fees, charges and expenses have been paid in full, no final account shall be taken on any permit application, appeal or petition. Any person or owner who initiates construction of a structure (includes rehabilitation) prior to obtaining an improvement location permit or any other required permit shall not pay a double permit fee, but be liable to all enforcement costs to the town including attorneys fees. A fee of \$50 shall be required for appealing any decision of the Commission, BZA or Building Inspector.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1301; Ord. 2012-08, passed 7-9-2012)

§ 152.133 METHOD OF APPEAL.

Any person aggrieved or affected by any provision of this chapter or by any decision of the Building Inspector or the Commission may appeal to the Board of Zoning Appeals, as provided by this chapter, by filing a written notice of appeal with the Office of the Clerk-Treasurer specifying the grounds thereof. The grounds for appeal will be specific and delineate the actual provisions of this chapter upon which the appeal is based. Appeals must be perfected by written filing within ten days of the decision appealed from. Every decision of the Board shall be subject to review by certiorari to the BZA and ultimately to the Town Council. The appeal fee shall be \$100 payable to the Clerk-Treasurer.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1401)

BOARD OF ZONING APPEALS

§ 152.145 GENERAL PROVISIONS.

(A) In accordance with state law, a Board of Zoning Appeals shall be appointed by the Town Council, which Board may adopt rules to govern its procedures. The BZA shall consist of three members of which one shall also be a member of the Planning Commission. The Board of Zoning Appeals shall hold meetings, keep minutes, and, pursuant to notice, shall conduct hearings, compel the attendance of witnesses, take testimony, and render decisions in writing, all as required by law on a "need" basis.

(B) When reviewing any appeal, variance, special exception, change of a nonconforming use, or zoning change the Board may impose any conditions and requirements as it deems necessary for the protection of adjacent property and the public interest.

(1) For the purpose of this chapter, the Board of Zoning Appeals has the following specific duties:

(a) To hear and to determine appeals from and review any decision or determination made by the Planning Commission or the Building Inspector;

(b) To hear and to determine special exceptions or variances to the terms of this chapter; and

(c) To authorize variances or exceptions from this chapter in cases where a literal enforcement would result in undue hardship provided that the public interest is not injured by granting the variance at the discretion of the members.

(2) The BZA shall adopt rules necessary for the conduct of its affairs in keeping with the provisions of this chapter.

(a) At the first meeting of each year, the BZA shall elect a Chairman from its members.

(b) Meetings shall be at the call of the Chairman and at other times as the BZA may determine.

(c) The Chairman may administer oaths and compel the attendance of witnesses.

(d) All meetings shall be open to the public.

(e) The BZA shall keep minutes of its proceedings, showing the vote of each member, or if absent, or failing to vote.

(f) The BZA shall keep record of its deliberations and other official actions, all of which shall be public record and be immediately filed in the office of the Planning and Zoning Board.

(g) A majority of BZA members shall constitute a quorum.

(h) The concurring vote of two members of the BZA shall be necessary to decide in favor of the applicant any matter upon which the Board is required to pass under the provisions of this chapter.

(3) A member of the Board of Zoning Appeals may not participate in a hearing or decision of the Board concerning a zoning matter in which he or she has a direct or indirect financial interest.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1501)

§ 152.146 APPEALS.

It is the intent of this chapter that all questions of interpretation and enforcement shall be first presented to the Commission, Planning Director or Building Inspector. Questions shall be presented to the Board of Zoning Appeals only on appeal from the decisions of the Commission or when otherwise required by this chapter by written petition either to the Commission, BZA or Town Council. Recourse from decisions of the Board of Zoning Appeals shall be to the Town Council. Appeals to the Board of Zoning Appeals concerning interpretation or administration of this chapter may be taken by any persons aggrieved by any officer or bureau of the legislative authority of the town affected by any decision of the Plan Director. The appeal shall be taken within a time as established by the Board of Zoning Appeals by general rule but same shall not exceed ten days from the complained of decision. The Plan Director shall transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from was taken.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1502)

§ 152.147 VARIANCES.

(A) The Board of Zoning Appeals, upon petition appealing a decision of the Commission, shall have the power to authorize variances from the requirements of this chapter except that the Board of Zoning Appeals may recommend a variance from a use district or classification under this chapter. In approving variances, the Board of Zoning Appeals may attach any conditions to the variances as it deems necessary to assure compliance with the purposes of this chapter. Following approval, the variance so granted shall be passed on to the Town Council for final approval by the passage of a planning and zoning ordinance. If the conditions of the variance are not completely and continuously adhered to after the granting of the variance, the variance shall automatically become null and void upon notice to the property owner from the Planning and Zoning Board.

(B) A variance may be permitted if all the following requirements are met:

(1) The approval will not be injurious to the public health, safety, morals, and general welfare of the county or impact individual enjoyment and neighborhood property values;

(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; and

(3) The strict application of the terms of this chapter will result in unreasonable practical difficulties in the use of the property.

(C) The terms of any variance shall, as promulgated by the Commission, BZA or Town Council, be fully enforceable not only under the terms of this chapter, but shall also have the same force and effect of restrictive covenants encumbering the use of the specific real estate encumbered by the variance.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1503)

§ 152.148 SPECIAL EXCEPTIONS.

(A) The Board of Zoning Appeals, upon petition from the Commission, shall have the power to recommend special exceptions if ultimately approved by the Town Council. In approving special exceptions, the Board of Zoning Appeals may attach any conditions to the special exception, as it deems necessary to assure compliance with the purpose of this subchapter. Following approval, the special exception so granted shall be passed on to the Town Council for final approval by the passage of a planning and zoning ordinance. If the conditions of the special exception are not completely and continuously adhered to after the granting of the special exception, the special exception shall become null and void upon notice to the property owner from the Planning and Zoning Board.

(B) The following requirements shall be met:

- (1) The special exception sought shall be listed;
- (2) The special exception can be served with adequate utilities, access roads, drainage and other necessary facilities;
- (3) The special exception shall not involve any element or cause any condition that may be dangerous, injurious, or noxious to any other property or persons, and shall comply with all applicable performance standards of this chapter;
- (4) The special exception shall be sorted, oriented, and landscaped to produce a harmonious relationship of buildings and grounds to adjacent buildings and properties;
- (5) The special exception shall produce a total visual impression and environment which is consistent with the environment of the neighborhood;
- (6) The special exception shall organize vehicular access and parking to minimize traffic congestion in the neighborhood; and
- (7) The special exception shall preserve the purpose of this chapter.

(C) The terms of any exception shall, as promulgated by the Commission, BZA or Town Council, be fully enforceable not only under the terms of this chapter, but shall also have the same force and effect of restrictive covenants encumbering the use of the specific real estate encumbered by the exception.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1504)

§ 152.149 PUBLIC HEARINGS.

The Board of Zoning Appeals shall hold a public hearing within a reasonable length of time after the receipt of an application for an appeal, variance, special exception, or revocation from the applicant, initiator or holder. However, the public hearing shall not be held sooner than ten days after its receipt. However, no appeal shall be filed after more than ten days of the decision appealed from whether it be an administrative or legislative issue.

(A) The notice requirements for publication in a newspaper are as follows:

- (1) Before holding the public hearing, notice of the hearing shall be given in one or more newspapers of general circulation in the county at least ten days before the date of the hearing;
- (2) The notice shall set forth the time and place of the hearing, and the nature of the proposed appeal, variance, special exception or revocation;
- (3) All cost for the notice of public hearing shall be borne by the applicant or initiator and a proof of publication shall be required from the applicant or initiator prior to final action being taken on account of the petition.

(B) Notice shall be given to parties of interest as follows:

- (1) Before holding the public hearing, written notice of the hearing shall be mailed by the applicant(s) or initiator(s) by certified mail, return receipt requested, in a form which meets the Board's requirements at least ten days prior to the day of the hearing to the owners of all adjoining parcels of land to a depth of two ownerships or 300 feet, whichever is less, of the exterior boundaries of the subject property. For the purpose of notification of parties in interest, where any adjacent parcels of land are owned by the applicant(s), the subject property shall be deemed to include adjacent land owned by the applicants; and
- (2) A verified written statement that all interested parties have been mailed a written notice as set out in division (B)(1) above shall be submitted by the applicant prior to final action being taken on the petition.

(C) The Board shall keep records of its examinations, findings, and other official actions, all of which shall be public record and be immediately filed in the office of the recording Planning and Zoning Board.

(D) Should no appeal be taken, the BZA shall have no reason to meet. The BZA shall have no reason to meet when the Commission shall recommend passage of a variance or exception to be passed or rejected by the Town Council.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1505)

§ 152.160 JURISDICTION.

(A) The Commission or the town may institute a suit for injunctive and monetary relief in the Delaware Circuit Court, and the suit is to be brought in the name of and captioned as "Town of Daleville, Indiana" versus the person, persons, or entity charged with violating the provisions of any of the provisions of this chapter or land use regulations of the county.

(B) The town may also institute a suit for mandatory injunction directing a person, persons, or entity to remove a structure erected in violation of any zoning ordinances or land use regulations of the county or to cease any nonconforming use.

(C) A structure erected, raised, or converted, or land or premises used in violation of any zoning and land use ordinance of the county shall and hereby is declared to be a common nuisance and civil zoning violation, and the owner or possessor of the structure, land, or premises shall be liable for maintaining a common nuisance pursuant to I.C. 36-7-4-1012 and 36-7-4-1014.

(D) The owner(s) shall be responsible for any cost to the town of enforcement including, but not limited to attorneys fees paid by the town.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1601)

§ 152.161 INSPECTION OF PROPERTY; RIGHT OF ENTRY.

(A) The Director and empowered inspectors are authorized to make inspections of all lands and structures located within the town limits in order to enforce all zoning ordinances and land use regulations of the town.

(B) In order to execute inspections, the Director or inspectors shall have the right to enter upon any premises at any reasonable time for the purpose of carrying out his or her or their duties in the enforcement of this chapter, unless the owner or occupant of the premises refuses to permit entry to the Director or inspectors when entry is sought pursuant to this section. In the event of this refusal, the Director may make application to the Judge of the Delaware Circuit Court for the issuance of an administrative search warrant. The application shall identify the premises upon which entry is sought and the purpose for which entry is desired. The application shall state the facts giving rise to the belief that a condition which is in violation of this chapter or a land use regulation of the town exists on the premises, or that a violation in fact exists and must be abated, and that the condition or violation is not a lawful conforming use to the best of the affiant's belief. Any warrant issued pursuant to the application shall order the owner or occupant to permit entry to the Director or inspectors for the purposes stated therein.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1602)

§ 152.162 STOP WORK ORDER.

The Director or his or her duly authorized designee including the Building Inspector is empowered to issue an order requiring the suspension of land improvement of any kind when any of the following circumstances exist:

(A) Site improvement is occurring without an improvement location permit or any other permit required by this chapter having first been obtained.

(B) Site improvement is occurring in violation of the terms or conditions of any special exception or variance granted under this chapter as contemplated by I.C. 36-7-4, or in violation of conditions imposed by the Board of Zoning Appeals or Planning Commission, or in violation of commitments made in accordance with I.C. 36-7-4-607 or 36-7-4-921, or in violation of any of the terms, conditions, or provisions of this chapter.

(C) The stop work order shall be posted on the property in a conspicuous place, or shall be personally delivered to the owner, possessor or person in charge, and state the conditions under which construction or other activities may be resumed.

(D) The designated enforcement entity may institute a suit in Delaware Circuit Court to enforce the provisions of a stop work order.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1603)

§ 152.163 CIVIL ZONING VIOLATIONS.

(A) Any person who uses property in violation of this chapter is deemed to have committed a civil zoning violation and may be issued a citation by the designated enforcement entity pursuant to § 152.164.

(B) Each day a violation remains uncorrected is a distinct and separate civil zoning violation subject to an additional citation and fine, provided a warning citation has first been issued pursuant to § 152.164(B).

(C) All fines provided for in this chapter for civil zoning violations shall be paid to the Director, who shall render to the person making the payment a receipt stating the amount and purpose for which the fine has been paid, a duplicate of which shall be made a part of the records of the Commission. All fines thus received shall be deposited with the Clerk-Treasurer. The Commission may levy such fines as it shall deem reasonable and as are permitted by law.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1604)

§ 152.164 CITATION FOR CIVIL ZONING VIOLATIONS.

(A) The Director or his or her duly authorized designees may issue a civil citation to a person who commits a civil zoning violation or to the legal owner, the contract vendee, or any person or entity with a possessory interest in the real estate upon which the violation occurs. The citation may be served by personal service, by certified mail, by first class U.S. mail, or by placement in a conspicuous place on the property where the violation occurs, and shall serve as notice to a person that he or she has committed a civil zoning violation.

(B) No citation shall be issued unless the person who commits a civil zoning violation or the legal owner, the contract vendee, or any person or entity with a possessory interest in the real estate upon which the violation occurs has been issued a warning notice not less than 14 days before the issuance of the citation to allow the person to correct the violation to come into compliance with the prescribed zoning regulation.

(C) If a person who receives a warning notice elects to file a land use petition, then the person must file same in writing with the Commission within ten days of receipt of the warning notice. A person shall have 14 days following the issuance of the warning notice to file the petition, and additional monetary fines as prescribed in § 152.163 shall be stayed upon filing the land use petition until same is finally determined. A person who files the petition within the prescribed time period must pursue the land use petition in an expeditious fashion. If the land use petition is denied, withdrawn, or dismissed for lack of prosecution and the civil zoning violation continues at the real estate, then a lawsuit will be commenced by the designated enforcement entity in the County Circuit Court.

(D) The warning notice shall include:

- (1) The date;
- (2) The name and address;
- (3) The section number in violation and the name of the code;
- (4) The nature of the violation;
- (5) The place and date of the violation;
- (6) Specific time allowed to bring the violative activity into compliance;
- (7) The name, business address, and phone number of the person issuing the warning notice; and
- (8) A statement to the violator of the option to appear before the Commission or to file a land use petition.

(E) The citation shall appear on a serialized, designated form, and include:

- (1) The date;
- (2) The name and address;
- (3) The section number of the code in violation and name of the code;
- (4) The nature of the violation;
- (5) The place and date the violation was observed;

- (6) The amount of fine assessed;
- (7) The time, manner, and location to pay the fine;
- (8) Notice that each day is a new violation;
- (9) The name, business address and phone number of the person issuing the citation; and
- (10) A statement to the violator of the right to a hearing.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1605)

§ 152.165 HEARING FOR CIVIL ZONING VIOLATIONS.

(A) A person who receives a citation may request a hearing for the offense before the Commission by indicating in writing on the citation his or her request for a hearing, and returning a copy of the citation to the Clerk-Treasurer. The returned copy of the citation shall serve as notice of the offending person's request for a hearing and additional monetary fines pursuant to § 152.163 shall be stayed upon receipt of the notice. The notice shall be given at least seven days before the date of payment set forth in the citation. On receipt of the notice of demand for a hearing, a lawsuit may be commenced by the designated enforcement entity in the County Circuit Court. The matter shall be scheduled for hearing before the Planning and Zoning Commission, and a notice to appear shall be served upon the defendant.

(B) If a person who receives a citation fails to pay the assessed fine by the date of payment set forth in the citation and fails to give notice of his or her intention to pursue a hearing as prescribed in division (A) above, the designated enforcement entity may file a civil lawsuit as provided by applicable laws and seek penalties as prescribed in § 152.163. A person adjudged to have committed a civil zoning violation is liable for the court costs and fees including attorneys' fees. No cost shall be assessed against the designated enforcement entity in this type of action.

(C) Seeking a civil penalty as authorized in this subchapter does not preclude the designated enforcement entity from seeking alternate relief as appropriate and prescribed in law from the court in the same action, or from seeking injunctive relief or any other remedy in a separate action for the enforcement of I.C. 36-7-4 or any ordinance adopted or action taken under I.C. 36-7-4.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1606)

§ 152.166 FINES; ATTORNEY'S FEES.

(A) Whenever in this chapter, as amended, or in any ordinance amendatory thereof or supplemental thereto, the doing of any act, or the omission to do any act or to perform any duty is a violation, any person held liable by a court of competent jurisdiction for the violation shall be fined for each violation, act, or omission as provided by law, but same shall not exceed \$100 per day.

(B) For violations continued or renewed after the imposition of a fine in division (A) above, each day's violation shall constitute a separate offense.

(C) In addition to the foregoing penalty prescribed in divisions (A) and (B) above, the designated enforcement entity may enjoin or abate any violation of this chapter and land use regulations of the county by appropriate action.

(D) Attorney's fees may be assessed and collected from the offending party/parties in addition to prescribed fines and costs.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1607)

§ 152.167 INCLUDED USES.

Uses designated in defined zoning areas (residential, business, industrial) shall be exclusive to those districts only except for grandfathered uses. Business shall not include residential uses nor will industrial uses include business. To place nonconforming uses in districts defined by the then current Master Plan, the user(s)/owner(s) shall obtain either an exception or a variance.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1701)

§ 152.168 NECESSARY PERMITS.

(A) No structure shall be built, remodeled, rehabilitated or repaired without the following permits issued by the Building Commissioner:

- (1) Basic improvement permit;
- (2) Electrical permit;
- (3) HVAC permit;
- (4) Plumbing permit; and
- (5) Occupancy permit.

(B) No sign shall be placed within the town without the following permits issued by the Building Commissioner:

- (1) Basic improvement permit; and
- (2) Sign permit.

(C) No permits shall be necessary for the maintenance of existing buildings, building systems unless structural change occurs or systemic replacement occurs.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1702)

§ 152.169 PROCEDURES FOR PLANNING, REZONING, EXCEPTIONS AND VARIANCES.

The basic procedures for planning, rezoning, exceptions and variances shall be as follows:

(A) All petitions for rezoning, exceptions and variances shall, by necessity, be filed in the Office of the Clerk-Treasurer or with the Building Commissioner at least 20 days prior to consideration at any meeting of the Commission by the record title owner(s) of the affected real estate unless this requirement is waived by the Commission as an emergency.

(B) No hearing on zoning, exception or variance shall be heard unless notice of said meeting shall be published at least ten days prior to the meeting of the Commission. This notice provision may not be waived.

(C) No hearing on zoning, exception or variance shall be held until mail notice is perfected to all abutting property owner(s) of the affected property. This provision may be waived in an emergency if there is actual evidence that personal notice to neighboring land owner has in fact occurred.

(D) All appeals of decisions to the BZA shall by necessity be in writing and filed in the Office of the Town Clerk-Treasurer no later than ten days following the decision appealed.

(E) All recommendations of the Commission and the BZA shall be referred to the Town Council for final approval or denial.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 2.1703)

SUBDIVISION CONTROL

§ 152.180 ESTABLISHMENT OF CONTROL.

No plat or replat of a subdivision of land located within the territorial jurisdiction of the town shall be recorded until it has been approved by the Town Council, and such approval shall have been entered in writing on the plat by the President and Secretary of the Planning and Zoning Board. Approval or denial of petitions to develop subdivisions in the town is discretionary as provided by law must clearly be determined to be in the best interest of all of town citizens.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 3.101)

§ 152.181 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Unless the context clearly indicates to the contrary, words used in present tense include the future tense; words used in the plural number include the singular; the word "herein" means in this chapter. A "person" includes a corporation, a partnership and an incorporated association of persons; "shall" is always mandatory; "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged, or designed to be used or occupied".

ALLEY. A permanent public service way providing a secondary means of access to abutting lands, which is primarily used for vehicle access to the rear or sides of properties otherwise abutting on a street.

APPLICANT. The owner of land proposed to be subdivided or his or her documented agent or his or her documented legal representative.

BLOCK. Property abutting on one side of a street, and lying between the two nearest intersecting or intercepting streets, or between the nearest intersecting or intercepting street and railroad right-of-way, waterway, or other definite barrier.

BOARD. The Planning and Zoning Board of Daleville.

BUILDING COMMISSIONER. That person appointed by the Town Council responsible for the implementation and control of this chapter.

BUILDING SETBACK LINE. The line nearest the front or side of and across a lot establishing the minimum yard to be provided between the principal building, or structure, and the lot line.

COMMISSION. The Daleville Planning and Zoning Board.

COMMON COUNCIL. The Common Council of the Daleville, Indiana.

CUL DE SAC (COURT OR DEAD END STREET). A short street having one end open to traffic and being permanently terminated by a vehicle turnaround.

DEPARTMENT. The Daleville Building Commissioner and staff should any staff be so appointed.

DIRECTOR. The Building Commissioner.

DITCH-OPEN. A relatively deep drainage channel, which may have a continuous water flow. Open ditches are outlets for both surface, subsurface or storm sewer drainage systems.

DITCH-LEGAL. Any drainage system over which the County Drainage Board has legal control.

DRAINAGE EASEMENT. The land required for the installation of storm water sewers or drainage ditches, or required along a natural stream or watercourse for preserving the channel and providing for the flow of water therein to safeguard the public against flood damage.

DRAINAGE-SUBSURFACE. A system of pipes, tile, conduit or tubing installed beneath the ground surface used to collect underground water from individual parcels, lots, building footings or pavements.

DRAINAGE-SURFACE. A system by which the storm water runoff is conducted to an outlet. This would include the proper grading of parking lots, streets, driveways and yards so that storm runoff is removed without ponding and flows to a drainage swale, open ditch or a storm sewer.

DRAINAGE-SWALE. A natural or constructed waterway, usually broad and shallow, covered with erosion-resistant grasses, used to conduct surface water from a field, diversion or other site feature.

EASEMENT. A grant by the property owner of the use of a strip of land by the public, a corporation, or persons, for specified purposes.

FINAL APPROVAL. The final approval of subdivision granted by the Town Council. This approval authorizes the owner to record the plat.

LOT. A parcel, tract, or area of land intended as a unit for transfer of ownership or for development, and accessible by means of a street or place. For residential uses as set forth in this subchapter, the lot shall abut upon a street or place at least 100% of the lot

width prescribed for the district in which the lot is located. It may be a single parcel separately described in a deed or plat which is recorded in the Office of the County Recorder, or it may include parts of, or a combination of, such parcels when adjacent to one another and used as one. In determining lot area and boundary lines no part thereof within the limits of a street or alley shall be included.

LOT AREA. The area contained within the property lines of the individual parcels of land as shown on a subdivision plan, excluding space within any street but including the area of any easement.

MASTER PLAN or COMPREHENSIVE PLAN. The complete plan or any of its parts for the development of the town prepared by Planning and Zoning Board accordance with I.C. Title 36, Article 7, and all acts of the General Assembly of the state, as is now or may hereafter be in effect.

MINOR SUBDIVISION. A division of land into four lots or less fronting upon an existing street and which does not require provision of any new streets, alleys or roads nor the extension of municipal facilities thereto; and further with respect to said division of land, the commission must determine that:

- (1) The subdivision will not impede the normal and orderly development of improvements of the parcel or surrounding properties;
- (2) Necessary and adequate utilities, drainage, and sanitary facilities have been or are being provided;
- (3) Adequate measures will be taken to provide ingress and egress to the remainder of the parcel and surrounding properties; and
- (4) The subdivision will not be detrimental to or endanger public health, safety or the general welfare.

PERSON. A corporation, firm partnership, association, organization or any group acting as a unit, as well as a natural person or persons.

PLACE. An open, unoccupied, officially designated space, other than a street or alley permanently reserved for use as a principal means of access to abutting property.

PLAT. A map or chart indicating the subdivision or re-subdivision of land platted or subdivided with lots or parcels of land intended to be filed for record. It may include all or any part of a previous subdivision or plat.

PLAT, FINAL. A drawing, in final form, showing the applicant's plan of subdivision containing all information or detail required by these regulations to be presented to the Commission for approval, and which if approved, may be duly filed or recorded by the applicant in the Office of the County Recorder.

PLAT, PRELIMINARY. A tentative map and supporting information indicating the subdivision of land prepared in accordance with the requirements of this subchapter as a basis of consideration prior to the final plat.

PLAT REVIEW COMMITTEE. The advisory person or committee designated by the Planning and Zoning Board that will have the responsibility for reviewing a proposed subdivision application and providing a report to the Commission of its findings. The applicant is encouraged to meet with the person or committee prior to the submission of an application for primary approval of a plat of a subdivision. The committee members may be the Building Commissioner, an Engineer determined by the town, a member of the Planning and Zoning Board and other public officials as deemed necessary on a case by case basis.

PRIMARY APPROVAL. Approval granted by the Commission to a preliminary plat. The preliminary approval may include conditions, which will bring the plat into conformance with existing land use regulations or such terms as the parties and the town deem appropriate. All subsequent final plats of any or all sections of the preliminary plat shall be in substantial conformance with the preliminary plat. No primary approval shall be granted if it is determined that the proposed division violates this subchapter or completion of same is not in the best interests of the town.

RIGHT-OF-WAY. A strip of land appropriated for public use as a street, highway, driveway, alley or walkway or for any drainage or public utility purposes or other similar uses.

SECONDARY APPROVAL. The final approval granted to a subdivision by the Board of Zoning Appeals and confirmed by the Town Council.

STREETS. A right-of-way dedicated to public use other than an alley of place, which affords the principal means of access to abutting property. A street may be designated as a highway, thoroughfare, parkway, boulevard, road, avenue, lane, drive or other appropriate name.

SUBDIVISION. The division of any parcel of land preceding transfer to other property owners into two or more parcels, sites, or

lots, any one of which is less than five acres in area for any purpose, whether immediate or future, or transfer of ownership, provided, however, that the division or partition of land into parcels of more than five acres not involving any new streets or easements of access, and the sale or exchange of parcels between adjoining lot owners, where such sale or exchange does not create additional building sites, shall not be considered a subdivision; or the improvements of one or more parcels of land for residential, commercial or industrial structures or groups of structures involving the division and allocation of and as streets or other open spaces for common use by owners, occupants or lease holders or as easement for the extension and maintenance of public sewer, water, storm drainage, or other public facilities.

TERRITORIAL JURISDICTION. For the purpose of this subchapter, territorial jurisdiction of the Planning and Zoning Board, Board of Zoning Appeals and Town Council shall include the land within the corporate limits of the town.

YARD. A space on the same lot with a principal building, open, unoccupied and unobstructed by structures, except as otherwise provided in this subchapter.

YARD, FRONT. A yard extending across the full width of the lot, occupied other than by steps, walks, terraces, driveways, lampposts and similar structures, the depth of which is the least distance between the front lot line and the building line.

YARD, REAR. A yard extending across the full width of the lot between the rear and the principal and the rear lot line occupied other than by accessory buildings which do not occupy more than 30% of the required space, and steps, walks, terraces, driveways, lampposts and similar structures, the depth of which is the least distance between the rear lot line and the rear of such principal building.

YARD, SIDE. A yard between the principal building and the side lot line, extending from the front yard or from the front lot line where no front line is required, to the rear yard. The width of the required side yard is measured horizontally, at 90° with the side lot line, from the nearest part of the principal building.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 3.102)

§ 152.182 PRELIMINARY CONSIDERATIONS.

In order to make the most of the opportunities related to the subdivision of land and to conserve time, effort and expense, the owner or subdivider should consult with the Building Commissioner prior to the preparation of the primary plan of the subdivision. School and recreational sites; shopping centers; community facilities; sanitation, water supply and drainage; and relationship to other developments, existing and proposed, in the vicinity, should be determined in advance of the preparation of the subdivision plan. Consultation should also be held with those familiar with the economic factors affecting the subdivision. A review of the overall situation will result in sound decisions with respect to the form, character and extent of the proposed subdivision. No land shall be subdivided for residential use unless adequate access to the land over improved streets or thoroughfare exists or will be provided by subdivider, or if such land is considered by the Commission to be unsuitable for such use by reason of flooding or improper drainage, objectionable earth and rock formation, topography or any other feature harmful to the health and safety of possible residents and the community as a whole. The same shall apply to the utilities commonly provided within the town limits.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 3.103)

§ 152.183 APPLICATION FOR PRIMARY APPROVAL.

A person desiring primary approval of a plat of a subdivision, not a minor subdivision as heretofore defined, of any land lying within the territorial jurisdiction area of the Commission shall submit a written application therefore to the Planning and Zoning Board. Each application for a primary plan shall be accompanied by a certified check or money order payable to the Clerk-Treasurer in the amount of \$100 per lot in a minor subdivision, the sum of \$125 per lot for each subdivision from five to ten lots, \$175 per lot in each lot in the subdivision from 11 to 25 lots but not to exceed \$1,000, \$200 per lot in all residential subdivision in excess of 25 lots within the proposed residential subdivision not to exceed \$1,500 to cover the costs of checking and verifying the primary plan, and such amount shall be deposited in the General Fund of the town. All commercial or industrial subdivisions shall pay a fee of \$2,500 upon application. Should any new construction or subdivision development fall within the provision of 327 I.A.C. 15-13 (Rule 13) relevant to storm water runoff, each petition for primary approval shall, in addition to the following, contain a construction plan and an additional fee of \$500 per application for compliance with Rule 13. Such application shall be accompanied by the following information and plans:

(A) (1) A location map showing:

- (a) Subdivision name and location;
- (b) All streets related to the subdivision;
- (c) Elementary and high schools;
- (d) Parks and playgrounds;
- (e) Other community features; and
- (f) Title, scale, north point and date.

(2) The location map need not be a special drawing. The date may be shown by notation on available city or county maps.

(B) A site map showing:

(1) (a) Topographical data in one of the following forms, which shall be determined by the Department during preliminary consideration of the plan.

(b) A contour map with contours at vertical intervals of one foot if the general slope of the site is less than 5% at vertical intervals of two feet if the general slope of the site is less than 10% and at vertical intervals of five feet if the general slope is greater than 10%.

(2) Tract boundary lines, showing dimensions, bearings, angles, and references to section, township and range lines or corners;

(3) Streets and rights-of-way, adjoining the site, including dedicated widths, roadway widths, approximate gradients, types and widths of pavements, curbs, sidewalks, tree planting and other pertinent data;

(4) Easements, locations, widths and purposes;

(5) Utilities; including existing and proposed sanitary and storm sewer systems, legally constituted court drains or regulated drains and all other drainage facilities; water lines; gas mains; electric utilities and other facilities. Size and capacity of each should be shown and the location of or distance to each utility indicated;

(6) Zoning of the site and adjoining property;

(7) Existing or proposed platting of adjacent land;

(8) Other conditions on the tract: water courses, marshes, rock outcrop, wooded areas, isolated preservable trees one foot or more in diameter, houses, barns, shacks, and other significant features;

(9) Other conditions on adjacent land:

(a) Approximate direction and gradient of ground slope, including any embankments or retaining walls;

(b) Character and location of buildings, railroads, power lines, towers, and other nearby non-residential land uses or adverse influences;

(c) Approximate area of off-site watershed drainage into the tract or tracts; and

(d) For adjacent platted land refer to subdivision plat by name, recording date and number, and show approximate percent buildup, typical lot size and dwelling type.

(10) Proposed public improvements; highways or other major improvements planned by public authorities or the applicant for future construction on or near the tract; and

(11) Title and certifications; name of tract or development, location, scale, north arrow, datum, benchmarks, certification of registered surveyor, date of survey.

(C) A primary plan of the subdivision, drawn to the scale of 50 feet to one-inch, provided, however, that of the resulting drawing would be over 24" x 36". The primary plan shall show:

(1) Proposed name of the subdivision;

(2) Names and addresses of owner and subdivider and the town planner, land planning consultant, engineer or surveyor, who prepared the plan;

- (3) Street pattern, showing the names (which shall not duplicate other names of streets in the town) and widths of right-of-way of streets, and widths of cross-walks, sidewalks, easements, or alleys;
 - (4) Layout of lots, showing approximate dimensions and numbers;
 - (5) Parcels of land proposed to be dedicated or reserved for schools, parks, playgrounds or other public, semi-public or community purposes;
 - (6) Building setback or front yard lines;
 - (7) Key plan, legend and notes; and
 - (8) Scale, north point and date.
- (D) Preliminary streets, storm drainage and utility plans:
- (1) Drainage analysis to be shown on a reproducible preliminary plan with area and runoff information including off-site. Off-site drainage areas to be shown on reproducible topographical maps. Outlet for system with indication of available capacity and treatment to be identified;
 - (2) Storm drainage system with plan, analysis and computations by a professional engineer or registered land surveyor; provided however, that the registered land surveyor may only provide said system for and within the subdivision; and
 - (3) Spot elevations and slope ratios for any heavy grading.
- (E) Information as to any agreements which have been entered into with the owners of other property within the neighborhood in which the proposed subdivider is located, as to general plans for the entire neighborhood.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 3.104)

§ 152.184 PRIMARY APPROVAL.

After an application for primary approval of a primary plan of a subdivision, together with six copies of all maps and data has been filed, the Commission shall review the primary plan and give its preliminary authorization to proceed, or return the plan to the applicant with suggestions for changes. The Commission may schedule a review meeting with the applicant on the primary plan prior to actually holding a hearing on it for passage or rejection. After the Commission has completed its review and report and a period of 30 days has elapsed from the filing date of the application, whichever occurs first, the Building Commissioner shall announce a date for the hearing before the Planning and Zoning Board and it shall notify the applicant in writing. The date of the hearing must not be earlier than 28 days or later than 90 days after the date the application was filed. The Planning and Zoning Board shall give notice of the hearing in accordance with I.C. 5-3-1 with the cost of the notice to be paid by the applicant. The applicant shall be required to give written notice of such hearing at his or her expense by certified mail, at least ten days prior to such hearing to all property owners within 600 feet of the proposed plan. At, or after, the hearing the Planning and Zoning Board shall approve, reject, or table the application within 65 days after the initial hearing before the Board. Upon tabling of an application, the Board shall notify the applicant in writing what revisions, changes or further changes in the primary plan are needed for primary approval. Upon approval or rejection of an application, the Board shall make written findings that set forth its reasons and a decision granting or denying primary approval and shall provide the applicant with a copy thereof. The decision shall be signed by the President or Secretary of the Planning and Zoning Board. The Board will not review a primary plan which has been rejected by the Board until two months have elapsed from the date of rejection. The primary approval of a primary plan by the Planning and Zoning Board does not constitute final approval of any or all of the subdivision, but is merely an authorization to proceed with preparations of the secondary plat. The primary approval or rejection of a primary plan by the Board or the imposition of a condition on primary approval is a final decision of the Board that may be reviewed by the Board of Zoning Appeals. The President and Secretary of the Board shall sign the original and a photo reproducible copy of the approved primary plan. One copy shall be retained by the Board and the original shall be sent to the applicant. A primary approval of the primary plan shall be effective for a period of one year, unless upon request of the applicant, the Board grants an extension of time which shall be discretionary with the Board. If an application for a secondary plat is not received within the period of time above specified or any extension of time granted by the Planning and Zoning Board, all previous actions by the Planning and Zoning Board with respect to the primary plan shall be deemed null and void.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 3.105)

§ 152.185 APPLICATION FOR SECONDARY APPROVAL.

A person desiring secondary approval of a final plat for a subdivision within the town shall submit a written application to the Board. Each application for a secondary approval of final plat shall be accompanied by a certified check or money order payable to the Clerk-Treasurer in the amount of \$25 for each lot in the proposed residential subdivision or \$50 for each lot in the proposed non-residential subdivision to cover the cost of checking and verifying the proposed plat, and such amount shall be deposited in the General Fund of the town.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 3.106)

§ 152.186 SECONDARY APPROVAL OF THE FINAL PLAT.

(A) After an application for secondary approval of the final plat of a subdivision, together with six copies of all maps and data has been filed, the Planning and Zoning Board shall review the proposed final plat and may schedule a review meeting with the applicant at its discretion or upon the request of an applicant. The Planning and Zoning Board may give its preliminary authorization to proceed, or return the proposed final plat to the applicant with suggestions for changes. No application will be considered at a hearing of the Board unless it has been filed with the Planning and Zoning Board at least 14 days before the date of such hearing. The Board shall give notice of the hearing in accordance with I.C. 5-3-1, with the cost of the notice to be paid by the applicant. Secondary approval of a final plat shall not be granted until a minimum of 30 days has elapsed from the date of primary approval granted by the Board and same shall be reviewed and approved by the Board of Zoning Appeals. However, the 30 days waiting period may be waived should the Board determine an emergency exists.

(B) The final plat shall meet the following specifications:

(1) (a) The final plat shall conform to and may include all or only a part of the primary plan submitted for primary approval. The original drawing of the final plat of the subdivision shall be drawn to a scale of 50 feet to one inch, provided that if the resulting drawing would be over 24 inches by 36 inches, a scale of up to 100 feet to one inch may be used. In no case should the drawing exceed 24' x 36".

(b) The following basic information shall be shown:

1. Accurate boundary lines, with dimensions and angles, which provide a survey of the tract, closing with an error of not more than one foot in 10,000 feet;
2. Accurate distances and direction to nearest established street corners or official monuments; reference corners shall be accurately described on the plat;
3. Accurate locations of all existing and recorded streets intersecting the boundaries of the tract;
4. Accurate metes and bounds description of the boundary;
5. Recorded holder of the title to the land as shown by the books of the County Recorder;
6. Street names;
7. Complete curve notes for all curves included on the plat including curve data for centerline and right-of-way of streets;
8. Street names with accurate dimensions in feet and hundredths of feet with angles to street, alley and lot line;
9. Lot numbers and all lot dimensions including all lengths and curve segment data;
10. Easements for utilities and any limitations on such easements;
11. Accurate dimensions for any property to be dedicated or reserved for public, semi-public and community use;
12. Building setback for front yard lines and dimensions;
13. Location, type, material and size of all monuments and lot markers;
14. Names of record owners of adjoining unplatted land;
15. Reference to recorded subdivision plats of adjoining platted land by record name, date and number;

16. Restrictions of all types which will run with the land and become covenants in the deeds for lots;
17. Name of the subdivision;
18. North point, scale and date;
19. Certification by a Registered Land Surveyor;
20. Certificate of dedication of streets and other public property; and
21. Certificate for approval by the Commission.

(2) A performance bond or certified check in the amount of \$25 for each monument that has not been installed prior to the filing of the final plat will be required to be submitted with the final plat.

(3) The final plat submission shall include final development plans which have been approved by the affected public agencies. A State Board of Health WPCF facility permit shall be required for any sanitary facilities.

(4) Neighborhood grading plan:

(a) Subdivision layout: data from the accepted preliminary subdivision plan, including existing topography, street names, and lot numbers.

(b) Proposed grading by contours or by spot elevations.

(5) Neighborhood drainage plan:

(a) Subdivision data as provided above.

(b) Storm sewer plans, profiles, design criteria and specifications.

(c) Plans for disposal of surface water as needed.

(d) Details and specifications for inlets, manholes, catch basins, headwalls and surface drainage channels as may be required.

(e) Adjacent contributory drainage area: If adjacent land drains into, or is diverted around the development, show data on size of adjacent drainage area, and slope of land. For any proposed diversion system, show design flow computations and details.

(f) Plans, profiles, cross-sections and details of off-site outfall drainage to a point where backwater will not affect subdivision.

(g) Data on necessary easements.

(6) Utility plans:

(a) Water supply and sewage disposals per State Board of Health requirements.

(b) Street lighting: type and location if applicable.

(7) Street plans:

(a) Plan and profile of each street.

(b) Cross-section of each street type.

(c) Details and specifications for pavement base and surfacing, curbs and the like.

(8) Other neighborhood improvement plans:

(a) Protective screening. Fences and walls: plan, details and specifications. Planting: plan for atypical 100-foot length of screen planting; quantities, sizes, species and specifications.

(b) Alleys, crosswalks, entranceways, parks and the like: plans, details and specifications.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 3.107)

§ 152.187 PRINCIPLES AND STANDARDS FOR FINAL PLATS.

The final plat of the subdivision shall conform to the following principles and standards of the design:

(A) *General.* The subdivision plan shall conform to the principles and standards relevant to use which are generally exhibited in the Comprehensive Master Plan as approved.

(B) *Streets.*

(1) The street or alley layout shall provide access to all lots and parcels of land within the subdivision, and where streets cross other streets, jogs shall not be created.

(2) Proposed streets shall be adjusted to the contour of land so as to produce usable lots and streets of reasonable gradient.

(3) Certain proposed streets, where appropriate, shall be extended to the boundary lines of the tract to be subdivided so as to provide for normal circulation of traffic within the vicinity.

(4) Wherever there exists a dedicated or platted portion of a street, or alley adjacent to the proposed subdivision, the remainder of the street or alley to the prescribed width should be platted within the proposed subdivision.

(5) The minimum right-of-way of streets shall be 50 feet. All cul-de-sacs shall terminate in a circular right-of-way with a minimum diameter of 100 feet and not nearer than 50 feet to the subdivision or block boundary, or as same shall be dictated by the relevant town regulatory authorities (Planning and Zoning Board, Board of Zoning Appeals, and Town Council).

(6) Alleys shall be discouraged in residential districts but should be included in commercial and industrial areas where needed for loading and unloading or access purposes and shall have a minimum width of 30 feet.

(7) The centerlines of streets should intersect as nearly at right angles as possible.

(8) At intersections of streets and alleys, property line corners shall be rounded by arcs of at least 15 feet radii or by cords of such arcs.

(9) If the smaller angle of intersection of two streets is less than 60 degrees, the radius of the arc at the intersection of property lines shall be increased as deemed advisable by the Board.

(10) Intersections of more than two streets at one point shall be avoided.

(11) Where special types of streets are involved, the Commission may apply special standards to be followed in their design.

(12) Whenever the proposed subdivision contains or is adjacent to a railroad right-of-way, provision shall be made for a parallel street at a distance acceptable for the appropriate use of the land between the street or railroad and such streets.

(C) *Blocks.*

(1) Blocks shall not exceed 1,500 feet in length.

(2) Blocks shall be sufficient width to permit two tiers of lots of appropriate depth except where an interior street parallels a limited access highway or arterial streets.

(D) *Lots.*

(1) All lots shall abut on a street, cul-de-sac or place.

(2) Sidelines of lots shall be at approximate right angles to straight streets and on radial lines on curved streets. Some variations from this rule are permissible at the discretion of the Commission but pointed or very irregular lots should be avoided.

(3) Double frontage lots should not be platted, except that where desired highways or streets, lots may face on an interior street and back on such thoroughfares. In that event a planting strip at least 20 feet in width for a screen shall be provided along the back of the lot.

(4) Widths and areas of residential lots shall be not less than provided in the zoning ordinance for single-family dwellings (R) for the district in which the subdivision is located.

(E) *Easements.* Where alleys are not provided, easements for utilities shall be provided. Such easements shall have minimum widths of 20 feet, and where located along lot lines, one-half the width shall be taken from each lot. When such easements are to be located along the boundary of the plat, the full width of the easement may be required within the plat at the discretion of the town. Before preparing the final plat, the plan of easements shall be discussed with the local public utilities to assure their proper placing for

the installation of such services.

(F) *Building setback lines.* Such lines shall be as provided in the zoning ordinance or as the Commission may determine.

(G) *Public open spaces.* Where proposed sites for parks, schools, playgrounds, or other public uses are located within the subdivision area, or where such sites appear to be desirable, the Board may request their reservation for a period of five years following the date of this final approval of the plat. In the event a governmental agency concerned passes a resolution expressing its intent to acquire the land so reserved, the reservation period shall be extended for an additional one year.

(H) *Drainage right-of-way.*

(1) Whenever a subdivision is traversed by a watercourse, drainage way, channel or stream, there shall be provided a drainage right-of-way, notwithstanding the provisions or the relevant county authorities, which shall be for the purpose of widening, improving or protecting the stream. The width of the drainage right-of-way shall be adequate for any necessary channel relocations and straightening. Parallel streets may be required in connection therewith.

(2) Flood prone areas. All subdivisions development plans shall indicate flooding and floodway fringe limits and shall have the elevation of the base flood shown thereon.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 3.108)

§ 152.188 FINAL PLAT.

The final plat of the subdivision shall conform to the following standards of improvements:

(A) *Monuments and markers.*

(1) Shall be so placed so that the scored or marked point shall coincide exactly with the intersection of lines to be marked, and shall be set so that the top of the monument is level with the surface of the surrounding ground after final grading.

(2) Monuments shall be set:

- (a) At the intersection of all lines forming angles in the boundary of the subdivision; and
- (b) At the intersection of street centerlines and at the beginning and ending of all curves or angles along the street centerline.

(3) Markers shall be set:

- (a) At the beginning and ending of all curves along street property lines;
- (b) At all points where lot lines intersect curves, either front or rear;
- (c) At all angles in property lines of lots;
- (d) At all other lot corners;
- (e) At a given distance from the lot corner on the property line where the lot corner falls in a stream or other accessible place.

(4) Monuments shall be or concrete or stone with a minimum size of four inches by four inches by three feet, and shall be marked on top with a five-eighths inch iron dowel embedded within and set flush with the top of the monument. It shall be permissible when set in a concrete street to the cement an iron dowel in a drilled hole. Monuments in asphalt streets shall be a driven (or drilled-in five-eighths 5/8 inch steel rod two feet in length.

(5) Markers shall consist of iron pipes or iron steel bars at least two feet long, and not less than five-eighths inches in outside diameter.

(B) *Other improvements.*

(1) The improvements which shall be required to be installed by the subdivider will vary with the location of the subdivision in relation to the corporate boundary of the town and the number of families to be accommodated per acre of gross area included in the subdivision.

(2) (a) Streets shall be completed to grades shown on plans, profiles and cross sections approved by the relevant town regulatory authorities (Planning and Zoning Board, Board of Zoning Appeals and Town Council).

(b) Streets shall be surfaced to a minimum width, according to the type of street, as follows:

1. Local streets - 26 feet where no street parking is to be permitted; the minimum setback line is 40 feet and a driveway of sufficient size to permit the off-street parking of three cars is provided; in all other cases the minimum surfaced width shall be 32 feet.

2. Curb and gutter shall be required to be installed along the edges of all streets and the widths required above shall include the curb and gutter.

(C) *Sidewalks.* Sidewalks shall be provided as follows:

(1) Sidewalks on each side of the street within a subdivision shall be provided by the subdivider unless otherwise agreed to.

(2) Sidewalks shall be constructed of portland cement concrete with a minimum thickness of four inches and a minimum width of four feet. A minimum thickness of six inches shall be required where used as a part of a driveway.

(3) When sidewalks are required, ramps suitable to the safe movement of mobility impaired persons shall be provided by the subdivider. A ramp shall not have a slope greater than one foot rise in 12 feet, or 8.33%, or four degrees 50 minutes. The specific design of such ramps shall be approved by the Commission and shall conform to the recognized standards of the Indiana Department of Highways, the American National Standards Institute, Inc. and the U.S. Department of Health, Education and Welfare, or any other applicable agency.

(D) *Sewage disposal.* The subdivider shall provide for the disposal of sewage in the subdivision by one of the following methods:

(1) Sewerage system.

(a) A complete sanitary sewer system which shall connect with a sanitary sewer outlet approved by the relevant local, county and state authorities.

(b) A complete sanitary sewer system which shall be plugged and capped when a sanitary sewer outlet is not available within a reasonable distance from the subdivision site.

(2) In this division (D), the next division (E) the phrase "the subdivider shall provide" shall be interpreted to mean that the subdivider shall install the facilities referred to or, that the subdivider shall require as a condition of the sale of each lot or parcel in the subdivision, that the facilities referred to in these divisions shall be installed by the developer of the lots in accordance with these regulations. In all instances, the subdivider shall provide a complete sanitary sewer system as specified within the boundaries of the subdivision.

(E) *Water supply.* The subdivider shall provide the subdivision with a source of water for domestic use water main system, a complete water main supply system which shall be connected to the water utility system serving the town.

(F) *Storm drainage and sediment control.*

(1) *General requirements.* The sub-divider shall provide the subdivision with a storm drainage system adequate to convey expected rainfall as follows: The storm water drainage system shall be separate and independent of any sanitary sewer system. The relevant regulatory authorities (Planning and Zoning Board, Board of Zoning Appeals and Town Council) shall not recommend for approval any subdivision plat which does not make adequate provision for storm or floodwater runoff through properly designed conduits, channels, or basins or connections to existing systems within the town as shall be approved.

(2) *Design criteria.*

(a) The plans for the construction of the required drainage facilities shall be based upon a report, which includes an evaluation of the proposed development, tributary drainage areas, outfall conditions and impact upon the overall drainage systems of the general area. The principal criteria to be observed is the release rate of storm water from the developments may not exceed the storm water runoff from the land area in its present state of development, or the present capacity of the receiving channel.

(b) The subdivider shall be required to carry away water by either conduit or open channel from either storm or high ground water conditions that may exist either previously to, or as a result of the proposed subdivision. The drainage facilities provided shall be located in the street right-of-way where feasible, or in perpetual, unobstructed easements of appropriate width. Maintenance covenants or agreements shall be provided by the subdivider or subsequent lot owners in the case of easements for the perpetual maintenance of the drainage facilities.

(c) Outflow discharge rates from the subdivision drainage system shall be based upon the runoff standards of the IDEM on the existing undeveloped property. The outflow discharge rates may be further restricted if the town determines the receiving facility is inadequate to handle the flow.

(d) Inlets and catch basins shall be provided so that surface water is not carried across or around any intersection, nor for a distance of more than 600 feet in the gutters of when the encroachment of storm water into the streets impede traffic. When calculations indicate that curb capacities are exceeded at a point, no further flow shall be permitted beyond that point and inlets of catch basins shall be used to intercept flow at that point. The grading plan shall include surface water drainage patterns for each and every lot and block for the entire proposed area to be drained.

(e) Subsurface drains shall be constructed at all street grade low points to a minimum distance of 100 feet either side of the low point parallel to and one foot outside the back of each curb line. These subsurface drains shall be connected to the drainage structures located at the street low points. The placement of additional subsurface drains may be required by the Town Engineer in areas affected by high ground water tables.

(f) Design accommodations shall be provided with the drainage system for all upstream drainage areas whether inside or outside the proposed subdivisions.

(g) Areas of poor drainage - areas which are not in the floodway but contain soils which are subject to flooding may be approved for subdivision by the town, provided that the subdivider fills the affected areas of said subdivision in an acceptable manner to an elevation sufficient to place building sites and streets two feet above ponding levels.

(h) Areas of high seasonal water tables - in areas characterized by soils having a high seasonal water table lots shall be limited to slab type constructions unless the Commission determines that appropriate engineering techniques will be applied to alleviate the subsurface problem.

(i) Street signs - standard city street signs shall be installed by the subdivider at all street intersections at the developers costs.

(j) Street lights - a street lighting system shall be provided by the subdivider in accordance with the recommendations of the Planning and Zoning Board.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 3.109)

§ 152.189 NON-RESIDENTIAL SUBDIVISIONS.

(A) (1) If a proposed subdivision includes land that is zoned for commercial or industrial purposes, the layout of the subdivision with respect to such land shall make such provision as the Planning and Zoning Board, Board of Zoning Appeals and Town Council may require.

(2) A nonresidential subdivision shall be subject to all the requirements of site plan approval set forth elsewhere in this chapter. Site plan approval and non-residential subdivision plat approval may proceed simultaneously at the discretion of the Planning and Zoning Board. A nonresidential subdivision shall also be subject to all the requirements of these regulations, as well as such additional standards as may be required by the Planning and Zoning Board, and shall conform to the proposed land use and standards established in the Comprehensive Master Plan.

(B) In addition to the principles and standards in these regulations, which are appropriate to the planning of all subdivisions, the applicant shall demonstrate to the satisfaction of the relevant regulatory authorities that the street - parcel - block pattern proposed is specifically adapted to the uses anticipated and takes into account other uses in the vicinity. The following principles and standards shall be observed:

(1) Each nonresidential area or parcel shall be shown and marked on the plat as to its intended use.

(2) Proposed parcels shall be suitable in area and dimensions to the types of development anticipated.

(3) Special requirements may be imposed by the relevant town authorities with respect to street, curb, driveway, and sidewalk design and construction.

(4) The Town Council shall, prior to final plat approval, approve a provision that the proposed nonresidential development will not conflict with traffic circulation patterns, and the requirements for driveway location and design can reasonably be implemented at no cost to the city and/or state.

(5) Special requirements may be imposed by the town with respect to the installation of public utilities, including water, sewer, street lighting, electrical service and storm water facilities.

(6) Every effort shall be made to protect adjacent residential areas from potential nuisance from a proposed nonresidential

subdivision, including the provision of extra depth in parcels backing up on existing or potential residential development and provisions for a permanently landscaped buffer strip when necessary.

(7) Truck routes shall be established so as to prevent industrial traffic from encroaching into adjacent residential areas.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 3.110)

§ 152.190 PLAT APPROVAL ASSURANCES.

(A) *Certified report on improvements.* At the time of submission for approval of the final plat by the Town Council, the applicant's professional engineer or registered land surveyor shall provide a detailed report on all improvements and installations planned for and within the subdivision.

(B) *Inspection of improvements.* During the time of construction of the improvements and installations, periodic inspections of the site may be made by the Building Inspector. If the Building Inspector finds upon inspection that any of the required improvements and installations have not been constructed and/or completed in accordance with this chapter and as specified in the approved construction plans on the final plat as approved by the Board, then and in that event the applicant shall be responsible for correcting any errors in construction and completing the improvements and installations as required. Whenever the cost of improvements is covered by a performance bond, the applicant and the surety shall be jointly and severally liable for completing said improvements.

(C) *Completion of improvements.* In submitting the final plat to the Town Council, it shall be accompanied by a certificate from the governmental units exercising jurisdiction over physical improvements that all improvements within their jurisdiction will be installed in accordance with approved plans and specifications; and that a three-year maintenance bond in an amount not less than 25% of the total cost of the improvements has been provided for any street, sanitary and storm sewer improvements, as is executed to the town. Or the applicant shall post a bond, which shall:

- (1) Run to the town;
- (2) Be in an amount equivalent to 125% of the estimated cost of improvements;
- (3) Be with a surety satisfying to the Town Council;
- (4) Specifies a time of completion of the improvements and installation based upon the approval by the town; and

(5) Requires the posting of a three-year maintenance bond covering street, sanitary, and storm sewer improvements in an amount not less than 25% of the bond. The maintenance bond shall run to the town and be effective as of the date of acceptance by the Board of such street, sanitary and storm sewer improvements.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 3.111)

§ 152.191 VARIANCE.

Where the subdivider can show that a provision of this subchapter would cause unnecessary hardship if strictly adhered to, or where strict adherence to the ordinance would not substantially serve the public health, safety, and welfare, or be otherwise be a substantial public utility, and where, in the opinion of the relevant town regulatory authorities (Planning and Zoning Board, Board of Zoning Appeals and Town Council), because of topographical or other conditions peculiar to the site, a departure may be made without destroying the intent of such provision, the Town Council may authorize a variance upon recommendation of the BZA. Any variance thus authorized is required to be entered in writing in the minutes of the Town Council and the findings of fact on which the departure was justified shall be set forth.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 3.112)

§ 152.192 FINAL APPROVAL.

Final plat approval may only be granted by the Town Council which shall evidence same by the passage of a PZO which shall be recorded in the permanent records of the town (the PZO book kept by the Clerk-Treasurer) and the recording thereafter of said final plat in the records of the Clerk's Office.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 3.113)

§ 152.193 PLANNED UNIT DEVELOPMENTS.

All planned unit developments within the town shall generally follow the same procedures and require the same provisions as the foregoing. The town may, upon review, set reasonable requirements for density housing, commercial and even industrial building requirements.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 3.201)

TRADE LICENSING; PERMIT REQUIREMENTS AND ENFORCEMENT

§ 152.205 TRADE LICENSING PROCEDURES AND REQUIREMENTS.

(A) *Purpose.* The purpose of this section is to provide that construction, maintenance, repair, rehabilitation work performed within the town limits shall and will be done by legitimate and responsible contractors, firms, business concerns and persons responsible to the citizens of the town. This section is also intended to insure that all construction work performed in the town will promote and stabilize property values.

(B) *Scope of coverage.* It is the intent of the town that this licensing/registration section shall impact all construction, rehabilitation and maintenance work performed on all structures and accessory uses within the town limits except that work performed by the owner-occupier of a residential structure actually occupied by the owner of the real estate and improvements. Any person, firm, company or other form of business organization involved in any form of construction shall and is subject to this section.

(C) *Trades recognized.* This section recognizes four trades commonly described as carpentry, electrical, plumbing, and HVAC as they are generally recognized and defined. In addition to that, shall be added landscapes, land improvement contractors, roofers, concrete applicators and finishers, painters masonry contractors and metal workers whether licensed or not.

(D) *Licenses required.* Construction trades licenses issued by Muncie and Anderson, Indiana, will be recognized for qualification. Any license issued by the state will be recognized as well. The town recognizes that all trades do not have licensing, but where licensing exists within a trade, the contractor must be licensed.

(E) *Testing requirements.* Electricians must, without a recognized license as provided elsewhere in this section, have satisfactorily passed the Experior Test (70% - Experior, a division of Capstar, 2100 NW 53rd Avenue, Gainesville, FL 32653, 1-800-280-3926). HVAC contractors, without a recognized license as otherwise provided for in this subchapter, shall have passed the NAI-BLOCK test (70% - also Experior).

(F) *Town license required.* No construction person, company or other business form of business association shall provide any construction work or services without a license to do business within the town limits duly issued trades license by the Building Inspector. The cost of said license is \$25 per year payable to the Clerk-Treasurer.

(G) *Bond, certificate of insurance.* No trades license to do business shall be issued by the Building Inspector without the applicant's posting of a surety bond in the sum of \$10,000 and a certificate of insurance in the minimum amount of \$100,000 acceptable to the Building Inspector. The expiration of said bond and certificate of insurance should be dated December 31, of each year.

(H) *Procedure for town trades license.*

- (1) \$25 application fee good for one year and annually renewable.
- (2) Proof of licensing or test scores where mandated.
- (3) \$10,000 surety bond.
- (4) \$100,000 certificate of insurance (liability) and workman's compensation coverage.

(I) *License required.* No construction work of any nature shall be performed by any non-licensed tradesman or any unlicensed construction person without licensed supervision. The issuance of a town trades license shall be mandatory before any construction work may be commenced.

(J) *Regulation and enforcement.* This chapter shall be enforced by the Building Inspector who shall have the power to issue a cease and desist order on any job wherein unlicensed tradesman shall work without supervision of licensed tradesman. Should work persist, the Building Inspector is authorized to issue a \$50 per day fine versus the owner of the building construction site, payable to the town. Further, the Building Inspector is authorized to deny a certificate of occupancy on any job not performed by town trades licensed persons, companies or other business forms of association. The Building Commissioner is hereby empowered and directed to issue a "cease work order" on all jobs where unregistered/non-licensed tradesmen shall be found.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, §§ 5.101 - 5.110)

§ 152.206 PERMIT PROCEDURES IN GENERAL.

(A) No person or persons shall, as owners of real estate and improvements of real estate found within the town limits construct, repair or rehabilitate any structure without first obtaining an improvement location permit and such other relevant permits as are necessary to provide for proper, safe, and workmanlike construction, repair, rehabilitation or construction of any structures to protect the general safety and well-being of its citizens along with maintaining the property values of the real estate as a whole within the town. All permits shall be issued in the names of the real property owners who, as a matter of law, shall be responsible for compliance with the provisions of this chapter. Except for emergencies, all such permits shall be obtained prior to any work performance.

(B) Said permits shall be issued by the Building Commissioner's office, under the name of the Building Commissioner on behalf of the town for the benefit of the owner(s) only.

(C) Except for new construction, owners who actually occupy the effected premises on a full-time basis and do 100% of the repair and rehabilitation work themselves (excludes supervision) shall be exempt from the provisions of this chapter as a whole. This chapter shall apply to residential maintenance and rehabilitation only. It shall not apply to any commercial or industrial work. All commercial and industrial work must be permitted regardless of who performs the work.

(D) The provisions of this chapter will be narrowly and strictly construed.

(E) Emergency work may be begun without relevant permits, but must, as same is reasonably possible be completed pursuant to permits and final inspection.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 6.101)

§ 152.207 IMPROVEMENT LOCATION PERMIT COST.

The basic improvement location permit fee for residential properties shall be the sum of \$50 payable to the town. The basic improvement location permit fee for industrial and commercial properties shall be the sum of \$200 payable to the town. A written application for the improvement location permit must be filed with the Building Inspector. The basic improvement location permit shall be mandatory along with any other relevant permits provided for elsewhere in this section. The basic improvement location permit shall expire six months following its date of issuance and the cost shall be nonrefundable.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 6.102; Ord. 2012-08, passed 7-9-2012; Ord. 2013-20, passed 12-29-2013)

§ 152.208 ELECTRICAL PERMITS.

(A) *Generally.* An electrical permit shall be required and obtained from the Building Inspector before any electrical work may be installed or replaced on any building or structure or any premises found within the town limits.

(B) *Permit issuance.* All electrical permits shall be issued in the name or names of the property owners pursuant to signed application and written plans setting forth the specifics of the job in such specificity as the Building Inspector may require to inspire code compliance.

(C) *Electrical work performance.* All electrical work done, except where specifically exempted, shall be performed by duly licensed (town) electricians who hold a town license, have posted a bond with the town and a certificate of insurance.

(D) *Code compliance.* Except as specifically provided otherwise, all electrical work shall be done in compliance with such generally recognized electrical code standards as the Building Inspector shall deem appropriate to the specifics of the job or jobs.

(E) *Electrical permits.* Electrical permits shall be issued pursuant to Building Inspector approval of written applications and, in addition to other permit costs, shall cost the sum of \$35 per inspection. Multiple inspections may need to take place in the event that Building Inspector determines that applicant has not complied with all requirements. All permit fees shall be nonrefundable.

(F) *Electrical permit term.* Electrical permits, once issued, shall remain good for six months or completion of the work and final approval by the Building Inspector, whichever occurs first. Electrical permits may be extended upon written application and approval of the building inspection for an additional three-month term or terms.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, §§ 6.201 - 6.206; Ord. 2012-08, passed 7-9-2012)

§ 152.209 HVAC PERMITS.

(A) *Generally.* No replacement or new installation of HVAC (heating, ventilating and air conditioning) equipment shall be installed in any structure (residential, commercial or industrial) without first obtaining a required permit. No repair of existing HVAC equipment shall require a permit so long as the existing system so repaired remains in tact. Any repair requiring redesign, expansion, contraction or systemic changes will be done only pursuant to permit. All HVAC work done within the town will be done by licensed tradesmen duly registered to work within the town. Owner repairs only will be allowed on residential repairs if no systemic change occurs or equipment replacement.

(B) *Permit issuance.* All HVAC permits shall be issued in the name or names of the property owners pursuant to signed application and written plans setting forth the specifics of the job in such specificity as the Building Inspector may require to insure code compliance.

(C) *HVAC work performance.* All HVAC work done, except where specifically exempted, shall be performed by duly licensed (town) HVAC contractors who hold a town license, have posted a bond with the town and a certificate of insurance.

(D) *Code compliance.* Except as specifically provided otherwise, all HVAC work shall be done in compliance with such generally recognized HVAC code standards as the Building Inspector shall deem appropriate to the specifics of the job or jobs.

(E) *HVAC permits.* HVAC permits shall be issued pursuant to Building Inspector approval of written applications and, in addition to other permit costs, shall cost the sum of \$35 per inspection. Multiple inspections may need to take place in the event that Building Inspector determines that applicant has not complied with all requirements. All permit fees shall be nonrefundable.

(F) *HVAC permit term.* HVAC permits, once issued, shall remain good for six months or completion of the work and final approval by the Building Inspector, whichever occurs first. HVAC permits may be extended upon written application and approval of the Building Inspection for an additional three month term(s).

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, §§ 6.301 - 6.306; Ord. 2012-08, passed 7-9-2012)

§ 152.210 PLUMBING PERMITS.

(A) *Generally.* A plumbing permit shall be required and obtained from the Building Inspector before any plumbing work may be commenced on any building or structure or any premises found within the town limits.

(B) *Permit issuance.* All plumbing permits shall be issued in the name or names of the property owners pursuant to signed application and written plans setting forth the specifics of the job in such specificity as the Building Inspector may require to ensure code compliance.

(C) *Plumbing work performance.* All plumbing work done, except where specifically exempted, shall be performed by duly licensed (town) plumbers who hold a town license, have posted a bond with the town and a certificate of insurance.

(D) *Code compliance.* Except as specifically provided otherwise, all plumbing work shall be done in compliance with such generally recognized plumbing code standards as the Building Inspector shall deem appropriate to the specifics of the job or jobs.

(E) *Plumbing permits.* Plumbing permits shall be issued pursuant to Building Inspector approval of written applications and, in addition to other permit costs, shall cost the sum of \$35 per inspection. Multiple inspections may need to take place in the event that Building Inspector determines that applicant has not complied with all requirements. All permit fees shall be nonrefundable.

(F) *Plumbing permit term.* Plumbing permits, once issued, shall remain good for six months or completion of the work and final approval by the Building Inspector, whichever occurs first. Plumbing permits may be extended upon written application and approval of

the Building Inspection for an additional three-month term or terms.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, §§ 6.401 - 6.406; Ord. 2012-08, passed 7-9-2012)

§ 152.211 ROOFING PERMITS.

(A) *Generally.* A roofing permit shall be required and obtained before a roof shall be constructed, overlaid or rehabilitated on any building or structure found within the town except those roofing repairs or replacements done by the owner without any outside assistance and only to residential real estate. Routine maintenance (patching) shall not require a permit.

(B) *Permit issuance.* All roofing permits shall be issued in the name or names of the property owners pursuant to signed application and written plans setting forth the specifics of the job in such specificity as the Building Inspector may require to insure code compliance.

(C) *Roofing work performance.* All roofing work done, except where specifically exempted, shall be performed by duly registered (town) tradesmen have posted a bond with the town and a certificate of insurance.

(D) *Code compliance.* Except as specifically provided otherwise, all roofing work shall be done in compliance with such generally recognized roofing code standards as the Building Inspector shall deem appropriate to the specifics of the job or jobs.

(E) *Roofing permits.* Roofing permits shall be issued pursuant to Building Inspector approval of written applications and, in addition to other permit costs, shall cost the sum of \$35 per inspection. Multiple inspections may need to take place in the event that Building Inspector determines that applicant has not complied with all requirements. All permit fees shall be nonrefundable.

(F) *Inspections.* All roofing jobs must at least be finally inspected. Replacement roofing will also be inspected at the point of "tear off". Shingles and felt paper must be removed to complete a "tear off" inspection. All roofs that "sag" need to be braced before inspection or it will not pass. Broken or split sheathing along with delaminated or rotten plywood must be replaced along with proper nailing.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, §§ 6.501 - 6.506; Ord. 2012-08, passed 7-9-2012)

§ 152.212 SIGN PERMITS.

(A) *Generally.* No permanent or temporary external (residential, commercial, industrial) signage shall be installed, mounted, or placed within the town without first obtaining a location improvement permit and a sign permit. These permits may be in addition to any county, state or federal permitting. The provisions herein contained shall also apply to repair and rehabilitation of signs with or without modifications. Repair and modification shall also mean, beyond structural work, message changes and amendment.

(B) *Permit issuance.* All sign permits shall be issued in the name or names of the property owners where the sign shall be located pursuant to a written, signed application setting forth the proposed location of the sign, general construction standards and materials and size is such specificity as the Building Inspector may require to assure that the sign meets the requirements of this chapter as a whole.

(C) *Permit costs.*

(1) Sign permit costs, once a location improvement permit is obtained except for portable signs, shall cost:

(a) Rehabilitation and repair of existing sign: \$75;

(b) New sign construction: \$75; and

(c) Portable signs: \$25.

(2) All permit fees shall be nonrefundable.

(D) *Sign permit term.* Once issued, a sign permit shall remain in full force and effect until the sign is removed, becomes unused (six months) or becomes dilapidated.

(E) *Dilapidation, disrepair.* Once a sign becomes dilapidated and in disrepair, the Building Inspector shall place the owner of the sign and/or property owner where the sign is located, of said dilapidation and disrepair and upon said notice the owner must begin rehabilitation of the sign within 30 days of said notice.

(F) *Failure to restore.* Should the sign owner fail to restore the dilapidated or sign in disrepair as provided in division (E) of this section, the property owner(s) wherein said sign is located must remove and/or deconstruct the sign within 60 days of the original notice of dilapidation and disrepair. Failure to remove or deconstruct said sign shall constitute a violation of this chapter.

(G) *Fines and attorneys fees.* Any person or business organization, same also including any non-profit business, who shall install a business or industrial sign without a permit shall be subject to a fine of \$25 per day that the sign remains beyond notice of non-compliance in addition to the payment of all costs of collection plus attorneys fees.

(H) *Failure to repair.* Any sign not repaired or rehabilitated beyond 60 days' notice of dilapidation and disrepair may be subject to deconstruction and removal by the town at the owner's costs which shall also include attorneys fees in collection. Owners who fail to repair or deconstruct a sign as herein provided shall be subject to a fine equal to \$25 per day for said infractions.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, §§ 6.601 - 6.608; Ord. 2012-08, passed 7-9-2012; Ord. 2014-07, passed 10-20-2014)

§ 152.213 PUBLIC INTEREST IN PERMIT ENFORCEMENT.

The Town Council has determined that construction, repair and rehabilitation must be done in a workmanlike manner and pursuant to acceptable codes to protect not only the owners of said real estate, but all the citizens of the town. It has further been determined by the Council that permit enforcement is a point of emphasis to the Building Commissioner of the town. It is the policy of the town that the building shall reasonably and aggressively pursue permit enforcement.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 6.701)

UNSAFE, ABANDONED BUILDINGS

§ 152.230 AMENDMENT.

The passage of this subchapter effectively repeals Section 7 Unsafe, Abandoned Buildings of Daleville's Comprehensive Land Use Ordinance adopted March 5, 2007, Ordinance 07-01.

(Ord. 2010-03, passed 7-12-2010)

§ 152.231 DEFINITIONS.

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

CONTINUOUS ENFORCEMENT ORDER. An order that:

(1) Is issued for compliance or abatement and that remains in full force and effect on a property without requirements to seek additional:

- (a) Compliance and abatement authority; or
- (b) Orders for the same or similar violations

(2) Authorizes specific ongoing compliance and enforcement activities if a property requires reinspection or additional periodic abatement;

(3) Can be enforced, including assessment of fees and costs, without the need of additional notice or hearing; and

(4) Authorizes the enforcement authority to assess and collect ongoing costs for/of continuous enforcement order activities from any party that is subject to the enforcement authority's order.

DEPARTMENT. The executive department authorized by ordinance to administer this subchapter which in this instant is the Planning and Zoning Board.

ENFORCEMENT AUTHORITY. The chief administrative officer of the department which here means the Building

Commissioner.

HEARING AUTHORITY. The person or persons designated as such by the Town Council which here means the Planning and Zoning Board.

KNOWN OR RECORDED FEE INTEREST, LIFE ESTATE INTEREST OR EQUITABLE INTEREST OF A CONTRACT PURCHASER. Any fee interest, life interest, or equitable interest of a contract purchaser held by a person whose identity and address may be determined from:

- (1) An instrument recorded in the Recorder's Office of the County (Delaware or Madison) where the unsafe premises is located;
- (2) Written information or actual knowledge received by the department; or
- (3) A review of department records that is sufficient to identify information that is reasonably ascertainable.

KNOWN OR RECORDED SUBSTANTIAL PROPERTY INTEREST. Any right in real property, including a fee interest, a life interest, a future interest, a mortgage interest, or an equitable interest of a contract purchaser, that:

- (1) May be affected in a substantial way by actions authorized by this chapter; and
- (2) Is held by a person whose identity and address may be determined from:
 - (a) An instrument recorded in the County Recorder's Office where the unsafe premises is located;
 - (b) Written information or actual knowledge received by the Department; or
 - (c) A review of department records that is sufficient to identify information that is reasonably ascertainable.

SUBSTANTIAL PROPERTY INTEREST. Any right in real property that may be affected in a substantial way by actions authorized by this chapter, including a fee interest, a life estate interest, a future interest, a mortgage interest or equitable interest of a contract purchaser.

(Ord. 2010-03, passed 7-12-2010)

§ 152.232 UNSAFE BUILDINGS AND UNSAFE PREMISES.

(A) For purposes of this subchapter, a building or structure, or any part of a building or structure, that is:

- (1) In an impaired structural condition that makes it unsafe to a person or property;
- (2) A fire hazard;
- (3) A hazard to public health;
- (4) A public nuisance;
- (5) Dangerous to a person or property because of a violation of a statute or ordinance concerning building condition of maintenance; or

(6) Vacant and not maintained in a manner that would allow human habitation, occupancy, or use under the requirements of a statute or an ordinance is considered an unsafe building. For purposes of this subchapter, an unsafe building and the tract of real property on which the unsafe building is located are considered unsafe premises.

(B) For purposes of this subchapter, a tract of real property that does not contain a building or structure, not including land used for production agriculture, is considered an unsafe premises if the tract of real property is:

- (1) A fire hazard;
- (2) A hazard to public health;
- (3) A public nuisance; or
- (4) Dangerous to a person or property because of a violation of a statute or an ordinance.

(C) For purposes of this section, determinations by the Building Commissioner shall be presumed correct as to his/her findings and

determinations of unsafe/nuisance and the party objecting to the decisions of the Building Commissioner has the burden of going forward and disproving the decisions of the Commissioner are wrong as a matter of law by clear and convincing evidence.

(Ord. 2010-03, passed 7-12-2010)

§ 152.233 ORDERS ISSUED; CONTENTS, NOTICE, EXPIRATION.

(A) The Building Commissioner may issue an order requiring action relative to any unsafe premises, including, but not necessarily limited to:

- (1) Vacating of an unsafe building;
- (2) Sealing an unsafe building against intrusion;
- (3) Extermination of vermin in and about the unsafe premises;
- (4) Removal of trash, debris, fire hazard material or a public health hazard in and about the unsafe premises;
- (5) Repair or rehabilitation of an unsafe building to bring it into compliance with standards for building condition or maintenance required for human habitation, occupancy, or use by a statute or ordinance;
- (6) Demolition and removal of an unsafe building if:
 - (a) The general condition of the building warrants removal; or
 - (b) The building continues to require inspection and additional abatement action after the initial abatement action was taken pursuant to notice and an order; and
- (7) Requiring, for an unsafe building that will be sealed for a period of more than 90 days:
 - (a) Sealing against intrusion by unauthorized persons and the effects of weather;
 - (b) Exterior improvements to make the building compatible in appearance with other buildings in the area; and
 - (c) Continuing maintenance and upkeep of the building and premises in accordance with standards established by ordinance or custom and usage within the town.

(B) Notice of the order must be given by the Building Commissioner as follows:

- (1) Sending a copy of the order or statement by registered or certified mail to the residence or place of business or employment of the person to be notified with return receipt requested;
- (2) Delivering a copy of the order or statement in writing personally to the person to be notified;
- (3) Leaving a copy of the order or statement at the dwelling or usual place of abode of the person to be notified and sending by first class mail a copy of the order or statement to the last known address of the person to be notified; or
- (4) Sending a copy of the order or statement by first class mail to the last known address of the person to be notified.

(C) If notice described above is returned undeliverable, notice may be obtained by publication pursuant to I.C. 5-3-1 in the county where the unsafe premises are located in keeping with I.C. 36-7-9-5 and 36-7-9-25.

(D) All orders and/or statements issued by the Building Commissioner shall contain:

- (1) The name(s) of the person(s) to whom the order is issued;
- (2) The legal description or common street address of the unsafe premises that are the subject of the order;
- (3) The action that the order requires;
- (4) The period of time in which the action is required to be accomplished, measured from the time when the notice or order is given;
- (5) If a hearing is required, a statement indicating the exact time and place of the hearing, and stating that person(s) to whom the order was issued is entitled to appear at the hearing with or without legal counsel, present evidence, cross-examine opposing witnesses

and present arguments;

(6) If a hearing is not required (orders issued pursuant to subsections (2) through (5) above) an order becomes final ten days after notice is given unless a hearing is requested in writing by a holder of a substantial property interest in the unsafe building or premises; and

(7) A statement briefly indicating what action can be taken by the enforcement authority if the order is not complied with.

(Ord. 2010-03, passed 7-12-2010)

§ 152.234 HEARING PROCEDURES AND REQUIREMENTS; CIVIL PENALTIES.

(A) A hearing must be held relative to each order of the Building Commissioner except for an order issued pursuant to § 152.233. An order issued pursuant to § 152.233 becomes final ten days after notice is given unless a hearing is requested by a person holding a substantial interest in the subject property within said ten days of notice in writing, received by the Clerk-Treasurer, by a person holding a substantial property interest in the subject property.

(B) A hearing upon notice will be held for each order issued pursuant to § 152.233. Said hearing shall be held at such time and place as the parties shall agree upon or at the regularly held meeting of the Planning and Zoning Board as same shall be provided by notice as elsewhere provided herein.

(C) The person to whom the order was issued, any person having a substantial property interest in the unsafe premises that are the subject of the order, or any other person with an interest in the proceedings may appear in person or by counsel at the hearing. Each person appearing at the hearing is entitled to present evidence, cross-examine opposing witnesses and present arguments.

(D) At the conclusion of any hearing, unless the proceedings are continued, the Planning and Zoning Board may make the following findings:

(1) Affirm the order;

(2) Rescind the order; or

(3) Modify the order, but unless the person to whom the order was issued, or counsel for that person was present at the hearing, the hearing authority may only modify the order in a manner that makes the terms less stringent.

(E) In addition to affirming the Building Commissioner's orders, in those cases in which the hearing authority finds that there has been a willful failure to comply with the order(s), the hearing authority may impose a civil penalty in an amount not to exceed \$5,000 pursuant to the terms of I.C. 36-7-9-7(e). In addition the hearing authority, in the exercise of continuing jurisdiction, in addition to reducing or striking the civil penalty, it may impose an additional penalty in an amount not to exceed another \$5,000.00 if:

(1) Significant work on the premises to comply with the affirmed order has not been accomplished; and

(2) The premises have a negative effect on property values or the quality of life of the surrounding area or the premises require the provision of services by local government in excess of the services required by ordinary properties.

(F) If, at a hearing, a person to whom an order has been issued requests an additional period to accomplish action required by the order, and shows good cause for the request to be granted, the hearing authority may grant the request. However, as a condition for allowing the additional period, the hearing authority may require that person post a performance bond to be forfeited if the action required by the order is not completed within the additional period.

(G) The record of the findings made and action taken by the hearing authority at the hearing shall be available to the public upon request and same may be kept in the usual and common minutes of each hearing authority's meeting minutes. However, neither the enforcement authority nor the hearing authority is required to give any person notice of the findings and action.

(H) If a civil penalty under this section is unpaid for more than 15 days after same is due, the civil penalty may be collected by the Clerk-Treasurer from any person against whom the hearing authority assessed the civil penalty or fine pursuant to I.C. 36-7-9-13 or 36-7-9-13.5. Any fine or civil penalty so collected shall be paid into the unsafe building fund kept and maintained by the Clerk-Treasurer.

(Ord. 2010-03, passed 7-12-2010)

§ 152.235 APPEALS.

All appeals taken pursuant to actions of the Building Commissioner and the enforcement authority shall be pursuant to I.C. 36-7-9-8 requiring the filing of a writ of certiorari in the County Circuit Court system. All actions under this subchapter shall be de novo.

(Ord. 2010-03, passed 7-12-2010)

§ 152.236 EMERGENCY ACTION; RECOVERY OF COSTS.

(A) If the Building Commissioner or the executive of the town finds it necessary to take emergency action concerning unsafe premises in order to protect life, safety, or property, it may take that action without an order or giving notice. However, this emergency action must be limited to removing any immediate danger.

(B) The town, acting through the enforcement authority in taking emergency action, may recover the costs incurred by the town by filing a civil action in the County Circuit Court system against the persons who held a fee interest, life estate interest or equitable interest of a contract purchaser in the unsafe premises at the time the enforcement authority found it necessary to take emergency action. The town shall not be liable for costs of this civil action and may recoup all costs of said litigation including reasonable attorneys fees.

(C) If an unsafe premise poses an immediate danger to the life or safety of persons occupying or using nearby property, the enforcement authority may, without following this chapter's requirements for issuing an order and giving notice, take emergency action to require persons to vacate and not use the nearby property until the danger has passed.

(D) This section shall be broadly interpreted to insure the safety of the residents of the town.

(Ord. 2010-03, passed 7-12-2010)

§ 152.237 ACTION TO ENFORCE ORDERS.

The Building Commissioner may cause the action required by its orders or those of the enforcement authority issued pursuant to order by a contractor or by town employees as provided by to I.C. 36-7-9-10 and 36-7-9-11.

(Ord. 2010-03, passed 7-12-2010)

§ 152.238 LIABILITY FOR COSTS FOR WORK PERFORMANCE REQUIRED BY ORDERS.

When action required by an order is performed by the enforcement authority or by a contractor as provided by this subchapter whether emergency or not, each person who held a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises from the time when the order requiring the work be performed was recorded to the time that the work was completed is jointly and severally responsible for the costs which are provided under I.C. 36-1-9-12. Collection of the remedial costs may be collected pursuant to I.C. 36-7-9-13 and 36-7-9-13.5.

(Ord. 2010-03, passed 7-12-2010)

§ 152.239 UNSAFE BUILDING FUND, DEPOSITS AND EXPENDITURES.

(A) The town shall establish in its operating budget a fund designated as the Unsafe Building Fund. Any balance remaining at the end of a fiscal year shall be carried over in the Fund for the following year and does not revert to the General Fund.

(B) Money from the Unsafe Building Fund may be received from any source, including appropriations of local, state or federal governments.

(C) Money in the Unsafe Building Fund may be used for the expenses incurred in carrying out the purposes of this subchapter.

(D) See generally, I.C. 36-7-9-14.

(Ord. 2010-03, passed 7-12-2010)

§ 152.240 INSPECTION WARRANTS.

If the owners or those in possession of a building refuse inspection, the Building Commissioner may obtain an inspection warrant from any court of record in the county in which the building is located in order to determine if the building is an unsafe building pursuant to I.C. 36-7-9-16. All costs of obtaining inspection warrants shall be born by those who shall be found to have a substantial property in the offending structure or premises and said costs shall include reasonable attorney's fees to procure the warrant and report to the court of jurisdiction. The costs here provided for may be collected against all persons holding a substantial interest in said offending premises jointly and severally.

(Ord. 2010-03, passed 7-12-2010)

§ 152.241 CIVIL ACTIONS.

(A) The Planning and Zoning Board, by and through the Building Commissioner may bring a civil action regarding unsafe premises pursuant to I.C. 36-7-9-17 seeking relief pursuant to I.C. 36-7-9-18 through 36-7-9-22.

(B) Pursuant to this section, a court may impose a civil penalty not to exceed \$5,000.

(C) On request of the Building Commissioner, the court shall enter a judgment in the amount of the penalty. If there is more than one party defendant, the penalty is separately applicable to each defendant.

(Ord. 2010-03, passed 7-12-2010)

§ 152.242 RECORDING OF ORDERS, STATEMENTS, PUBLIC BIDS, AND ACTIONS BY HEARING AUTHORITY.

(A) The Building Commissioner, upon his or her certificate, shall record in the office of the County Recorder orders issued pursuant to I.C. 37-7-9-5 or § 152.233. If the Building Commissioner records an order as provided for, statements that public bids are to be let under I.C. 36-7-9-11, the records of action in which the order is affirmed, modified, or rescinded taken by the Planning and Zoning Board shall be recorded. The County Recorder shall charge the fee required pursuant to I.C. 36-2-7-10 for recording these documents.

(B) A person who takes an interest in unsafe premises that are the subject of a recorded order takes that interest whether or not a hearing has been held, subject to the terms of the order and other documents recorded.

(Ord. 2010-03, passed 7-12-2010)

§ 152.243 TRANSFERS OF PROPERTY BY PERSONS NOT COMPLYING WITH ORDERS.

A person has been issued and has received notice of an order relative to unsafe premises and has not complied with that order:

(A) Must supply full information regarding the order to a person who takes or agrees to take a substantial interest in the unsafe premises before transferring or agreeing to transfer that interest; and

(B) Must, within five days after transferring or agreeing to transfer a substantial property interest in the unsafe premises, supply the Building Commissioner with copies of:

(1) The full name, address and telephone number of the person taking a substantial property interest in the unsafe premises; and

(2) The legal instrument under which the transfer or agreement to transfer the substantial property interest is accomplished.

(Ord. 2010-03, passed 7-12-2010)

§ 152.244 SAVINGS CLAUSE.

Should any section of this subchapter fail upon judicial review, the court may turn to I.C. 36-7-9 for guidance and application, said I.C. 36-7-9 here included by reference, and application and enforcement. Failure of one section of this subchapter shall not preclude

the enforcement of the entire or other sections of this subchapter.

(Ord. 2010-03, passed 7-12-2010)

UNKEPT PREMISES/BUILDINGS

§ 152.260 REFRIGERATORS.

It shall be unlawful for any person to store, place, or permit any discarded, abandoned, or unused icebox, refrigerator, or similar container of an airtight character, in any place where the same is accessible to children or other citizens of the town as well as any other persons who may encounter such an attractive nuisance, without first removing all doors, locks, and automatic catches thereto so as to prevent any person or child from becoming imprisoned in the container. These provisions shall not apply to the delivery, transfer, or removal of any such icebox, refrigerator, or container from one location to another while in transit, provided the icebox, refrigerator, or container shall not be left unattended for longer than 15 minutes at any one time, and shall be checked for the presence of persons or children therein.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 8.101)

§ 152.261 WEEDS.

It shall be unlawful for the owner, contract purchaser, lessee, or occupant of any premises within the corporate limits of the town, to allow, suffer, or permit any grass, weeds, or random vegetation of any kind, to grow or mature 12 inches or higher on any part of the premises. The foregoing standard shall apply to any and all parts of the premises, including area along sidewalks, alleys, streets, fences, around structures, and any other areas that must be cut and maintained by hand. The foregoing standard shall not apply to bushes or shrubs that are trimmed and maintained as such.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 8.201)

§ 152.262 INSPECTION; NOTICE TO CUT GRASS, WEEDS OR RANDOM VEGETATION.

It shall be the duty of the Building Inspector to inspect the various lots, parts of lots and parcels of ground lying within the corporate limits of the town. When grass, weeds or random vegetation are permitted to grow or mature 12 inches or higher on any part of the premises, it shall be the Building Commissioner's duty to determine the names of the owners, contract purchasers, lessees or occupants of the premises. Then, it shall be his or her duty to notify the owners, contract purchasers, lessees or occupants in writing to cut and remove the grass, weeds or random vegetation growing on said premises within ten days from the date of the written notice.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 8.202)

§ 152.263 FAILURE TO COMPLY WITH NOTICE.

(A) The Street Manager for the town is responsible for the administration and enforcement of this section. The Clerk-Treasurer and his or her deputy shall assist the Street Manager in his or her administration and enforcement of this section.

(B) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning. In interpreting this definition, and in applying the requirements of this section, it is the declared purpose of this section to achieve the cleanup of unsightly properties in the city, and this section shall be broadly construed to accomplish that purpose:

WEEDS, RANK VEGETATION, OR RANDOM VEGETATION. Any grass or other uncultivated vegetation of any kind that is allowed to grow or mature 12 inches or higher on any part of the premises.

(C) It shall be unlawful for the owner of real property to fail or to refuse to cut or remove from the property grass, weeds, or random vegetation, or to fail or refuse to trim and maintain bushes or shrubs on the property as required within ten days from the date of the Street Manager's written notice mailed by certified mail to the last known address of the property of record and placed upon the property.

(D) If any owner of real property should fail to cut or remove random vegetation or fail to trim or maintain bushes or shrubs such as required after receiving notice as provided, the Street Manager, may acting though the Town Council, cause the premises to be brought into compliance with applicable standards in the following manner:

(1) Property owner shall be notified in writing by first class mail to the last known address of the property owner and such notice shall state the following information:

(a) The nature of the violation found on the owner's property;

(b) Unless the violation is abated within ten days received of such notice then the town or its contractors may enter onto the property to abate the violation and that the cost occurred in abating the violation, including any administrative cost in attorney fees, will be assessed against the property owner;

(c) The property owner may appeal a finding of violation by appearing before the Town Council at the time, date and place set forth in the notice; and

(d) The notice is a continuance abatement informing the property owner that each subsequent violation during the same year though which the initial notice of the violation was provided shall be abated by the town.

(2) Upon finding that the property owner has not abated the violation within the prescribed time, the Town Council may issue an order authorizing the Street Manager, its agents or contractors to enter onto the real property to abate the violation.

(3) (a) After the Street Manager has caused the violation to be abated, the Street Manager shall determine the costs incurred for abating the violation, including any administrative costs and attorneys fees, and shall be written notice issue a bill to the property owner. The amount to be charged by the town for abating the violation shall be a fine of \$250 and the sum of \$250 per hour per employee.

(b) If the costs neither are paid within 30 days, the Street Manager may certify to the County Auditor the amount of the bill, plus any additional certification costs, which then may be collected as delinquent taxes pursuant to I.C. 36-7-10.1-4.

(E) If the owner of real property fails to pay a bill issued under this section within the time specified, the Building Inspector shall certify to the County Auditor the amount of the bill, with any additional administrative costs and attorneys fees incurred for certification. The Auditor shall place the total amount certified on the tax duplicate for the property affected, and the total amount shall be collected as delinquent taxes are collected and shall be disbursed to special non-reverting fund for the Building Inspector.

(F) All fees/bills so collected shall be paid to the Clerk-Treasurer and deposited in the General Fund.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 8.203; Ord. 2012-07, passed 7-9-2012; Ord. 2013-08, passed 6-10-2013)

§ 152.264 BUSHES, SHRUBS AND TREES MAINTAINED.

Bushes, shrubs and trees shall be trimmed and maintained so as not to obstruct or impede vehicle or pedestrian traffic on any sidewalks, alleys, streets or other public rights-of-way.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 8.301)

§ 152.265 TRASH; ABANDONED VEHICLES.

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning. In interpreting these definitions, and in applying the requirements of this section, it is the declared purpose of this section to achieve the cleanup of unsightly properties in the town and this section shall be broadly construed to accomplish that purpose.

ABANDONED VEHICLE. Any motor vehicle which is found upon property which vehicle is not in the possession of any person, or, if in the possession of any person, the person having possession is not the legal title owner, cannot establish his or her right to legal title possession of and the vehicle is not found wholly within a building on the premises.

BUILDING. Includes "structure" and shall be construed as if followed by the words "or part thereof".

INOPERABLE VEHICLE. Any vehicle found, stored, or located on property which meets either of the following criteria, and is

not contained within a garage or other building:

(a) *Mechanically inoperable.* A vehicle is mechanically inoperable if it cannot be started and driven upon request of the Building Commissioner or his or her authorized representative.

(b) *Unlicensed or unregistered.* A vehicle is unlicensed or unregistered if it does not have a current, valid license plate and registration.

LITTER. Odds and ends left lying about the premises.

PREMISES or PROPERTY. Any real property within the corporate limits of the city which is not a street, highway, alley or other public right-of-way.

TRASH. Refuse, rubbish, tree branches, limbs, leaves, paper, cardboard, tin cans, vegetable matter, garbage, ashes, wood shavings, straw, boxes, discarded furniture, discarded appliances, discarded auto parts, discarded or unusable tires, and any other item or objects that fits within the general definition of **TRASH**.

UNSTACKED FIREWOOD. Firewood which is either unstacked or not cut to uniform length and which is not stored within a building or structure on the premises.

(B) *Prohibited acts and defenses.*

(1) It shall be unlawful for the owner, contract purchaser, lessee, or occupant of any premises within the corporate limits of the city to allow, suffer, or permit any abandoned vehicle, inoperable vehicle, litter, trash, or unstacked firewood to be upon the premises.

(2) The foregoing provisions about abandoned or inoperable vehicles shall not apply to a junkyard or licensed storage facility within a properly zoned location or grandfathered use. Also, the foregoing provisions concerning abandoned or inoperable vehicles shall not apply to commercial garages or repair for short and limited periods of time or shops wherein vehicles are undergoing ordinary repair on property legally zoned for such use under the ordinance, zoning code, and Master Plan of the city.

(3) It shall be unlawful for any person to knowingly or intentionally place or leave litter, refuse or trash on any real property within the corporate limits of the city, except in a container provided for refuse, litter or trash.

(C) *Inspections; notice of violation.*

(1) It shall be the duty of the Building Inspector of the town to conduct periodic inspections of all property and premises within the corporate limits of the town. If violations are found, it shall be the Building Inspector's duty to ascertain the names of the owners, contract purchasers, lessees, or occupants of the property or premises, and to provide notification in writing to remove any and all items that constitute a violation of this subchapter, providing ten days from the date of notice to correct the violation. If the violation concerns a failure to remove the locks and doors of any discarded, abandoned, or unused icebox, refrigerator, or similar container of an airtight character, such notice shall provide five days from the date of the violation to correct the problem.

(2) It shall be unlawful for any such owners, contract purchasers, lessees, or occupants to fail or refuse to remove any and all items that are set forth upon the notice from the Building Inspector within ten days from the date of notice.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, §§ 8.401 - 8.403)

§ 152.266 ABATEMENT LIEN.

(A) On the failure, neglect or refusal of the owner, occupant, or person in control of the property to comply with the provisions of this subchapter and to correct the violation, the town may cause this condition to be abated. All authorized officers, employees and contracting agents of the town, are hereby expressly authorized to enter into and upon private property for the purpose of removing and disposing of any trash and litter. No person shall interfere with, hinder or refuse to allow any person so authorized to enter upon private property for this purpose.

(B) The costs and expenses of abatement of violations of this subchapter shall become a lien on the premises in the same manner as mechanic's liens become liens against real estate, and the liens shall be enforced and foreclosed in the same manner as mechanic's liens are enforced and foreclosed. Notice shall be provided to the property owner as to the amount of the costs and expenses of abatement to be paid by the property owner.

(C) In all cases where the full amount due to the town is not paid to the Clerk-Treasurer within 30 days after the removal and disposal of the trash and litter, the costs shall thereupon become and are hereby declared to be delinquent. A penalty of 10% of the

costs shall thereupon attach thereto and shall be included in the lien and shall be collectible in addition to the costs.

(D) Whenever a delinquency occurs for nonpayment of the cost, the Clerk-Treasurer shall file with the County Recorder's office a notice of lien setting forth the name or names of the owner or owners of each property on which the cost has become delinquent, the description of each property as shown by the records of the Auditor's office, and the amount of delinquent cost and the penalty thereon. The lien shall attach to the property described in the notice of lien from the time of the recording of the notice of lien. The Clerk-Treasurer is further authorized and directed to certify to the County Auditor a true copy of the notice of lien and the amount of the delinquent cost and penalty thereon, which shall be charged to the property on the tax duplicate and shall be collected in the same manner that taxes are collected by law.

(Ord. 2014-08, passed 10-20-2014)

§ 152.267 NOISE.

(A) *Generally.* The provisions of this section shall apply to the control of all noise within the town limits, as it now exists or may hereafter be established.

(B) *Loud and unnecessary noise prohibited.*

(1) It shall be a violation of this subchapter for a person to make, create, or maintain or to permit a person to make, create, or maintain in or about his/her house or premises any loud, raucous, improper, unreasonable, offensive or unusual noise, disorder or tumult, which disturbs, injures, or endangers the comfort, repose, health, peace or safety of others within the town or obstructs the free use of another's property within the town and the same is hereby declared to be a public nuisance.

(2) Further, it shall be a violation of this subchapter for any person to allow any animal to make disturbing noises, including but not limited to, continued and repeated howling, barking, whining, or other utterances, which disturbs, injures, or endangers the comfort, repose, health, peace or safety of others within the town or obstructs the free use of another's property within the town and the same is hereby declared to be a public nuisance.

(3) It shall be the duty of every owner, occupant, manager, agent or operator of any property, structure, vehicle, or business in the city, to prevent persons using property under their control from violating this subchapter.

(C) *Prohibited noise.*

(1) The following acts, uses or noises, among others, are declared to be loud, raucous, improper, unreasonable, offensive, unusual, disorderly or tumultuous:

(a) Using or operating any machine or device for the producing or reproducing of sound, including, but not limited to, loudspeakers, radios, CD players, television sets, musical instruments, phonographs, cassette players or any other machine designed or intended to produce or reproduce sound between the hours of 10:00 p.m. and 7:00 a.m., if such machine or device is located in or on any of the following:

1. Any public property, including any public right-of-way, highway, building, sidewalk, public space, park or thoroughfare and the sound generated therefrom is clearly audible 30 feet or more from its source.

2. Any private property and the sound generated therefrom is clearly audible 30 feet or more from its source.

(b) Operating any motor vehicle that contains a modified or defective exhaust system, if such machine, device or vehicle is located in or on any of the following:

1. Any public property, including any public right-of-way, highway, building, sidewalk, public space, park or thoroughfare and the sound generated therefrom is clearly audible 30 feet or more from its source.

2. Any private property and the sound generated therefrom is clearly audible 30 feet or more from its source.

(2) The following acts are not prohibited under this section:

(a) Noise or sounds emitted from any authorized emergency vehicle.

(b) Parades, festivals, carnivals, fairs, celebrations, concerts, artistic performances or any other event authorized by the town.

(c) Lawn mowers, garden tractors, construction equipment, and power tools, when properly muffled, between the hours of 7:00

a.m. and 10:00 p.m. only.

(d) Burglar alarms and other warning devices when properly installed, providing the cause for such alarm or warning device sound is investigated and turned off within a reasonable period of time.

(e) Noise that arises from or is created by athletic or sporting practices or events..

(f) Sounds associated with the normal conduct of legally established non-transient businesses when such sounds are customary, incidental, and within the normal range appropriate for such use and that do not constitute prohibited noise.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, §§ 8.501 - 8.504; Ord. 08-02, passed 7-7-2008)

§ 152.268 PENALTY.

Whoever violates any provision of this subchapter for which no penalty is otherwise provided shall be fined not more than \$500. A separate offense shall be deemed committed on each day that a violation occurs or continues.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 8.601)

§ 152.269 EXISTING TOWN ORDINANCES PERSERVED.

This subchapter shall not supercede or amend Ordinance 96-3 but same shall be in addition thereto.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 8.701)

DEMOLITION/MOVING OF BUILDINGS

§ 152.280 PERMIT REQUIRED FOR DEMOLITION/MOVING BUILDINGS.

(A) *Demolition.* No building or structure found within the town limits shall be demolished without a demolition permit issued by the Building Inspector. The permit applicant shall submit a plan of demolition satisfactory to the Building Inspector. The permit fee shall be the sum of \$250. Said permit shall expire three months after issuance or upon completion of demolition, whichever occurs first.

(B) *Moving.* It shall be unlawful for any person, firm, or corporation, to move any brick, frame, or other building from one location to another, unless the same shall be altered or reconstructed so as to conform to the class of construction required in its new location. No building shall be moved to a new location over any street, place, bridge, or waterway within the town limits unless a permit therefore is first obtained from the Building Inspector as hereinafter provided. Such moving shall be subject to the supervision and approval of the Town Engineer. The permit fee shall be the sum of \$250. Said permit shall expire three months after issuance or moving completion, whichever occurs first.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, §§ 9.101, 9.201)

§ 152.281 DEMOLITION WORK.

The contractor or person or persons engaged in the demolition of any structure within the town limits shall furnish all supervision, technical personnel, labor, materials, machinery, tools, and equipment necessary for demolition and site clearance of any structure in an efficient and workmanlike manner by town trades licensed contractors exercising proper precautions at all times for the protection of persons and property. All work shall be performed in strict accordance with the following specifications:

(A) Removal of building as listed on permit;

(B) Removal of all exterior foundation walls to a level of three feet below the grade of the adjoining ground;

(C) Removal of all other walls, including foundation walls, partition walls, columns, piers, beams, or other projections, to the level of three feet below grade of the adjoining ground;

(D) Removal of all slabs, drives, steps and underground tanks;

(E) Removal from the basements of all piping, boilers or other fixtures and all wood, furniture, rubbish or other debris;

(F) Breaking up concrete basement floors so that water cannot collect; and

(G) Removal and disposal of all debris not specifically permitted to be used as fill.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 9.301)

§ 152.282 FILL MATERIAL.

Backfill material in the basement areas shall be finely broken rubble bank-run gravel or well-graded clean earth as may be approved by the Building Commissioner. It is specifically required that the material to be used for backfill be approved by the Building Commissioner prior to placement. Fill material under all conditions shall be free of debris, perishable or combustible material, sod, vegetation, roots, frozen earth, or stones larger than six inches in maximum dimension.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 9.302)

§ 152.283 PLACEMENT OF FILL AND GRADING.

(A) Fill shall be placed to a grade level with and conforming generally to the respective surface levels of the sidewalk, alley and lots immediately adjacent to the basements or basement. Fill shall be placed into the basement in approximately one foot lifts and spread by means of mechanical equipment to obtain the maximum amount of compaction. It will be required that the equipment distribute the fill and make two passes over all fill placed for each successive layer. Care shall be taken in placing the fill to prevent the formulation of large voids, so as to avoid undue settlement after fill has been placed.

(B) The contractor shall notify the Building Commissioner when the backfill of basements is scheduled and obtain prior approval of the backfill material which has been stockpiled adjacent to the basement.

(C) Rubble shall be well distributed with the earth and other fine material with interstices filled and shall not be placed within two feet of the finished grade. Under all conditions, clean earth fill will be required for the top two feet of backfill area. Fill shall be compacted at an optimum moisture content so as to obtain the maximum amount of compaction and moisture should be added during the backfilling operation if necessary. The contractor or person or persons performing the grading shall rough grade the site of the demolished structures to provide a clean, safe condition, free from ponding to permit the future mowing of grass on the site.

(D) A final inspection will be required upon completion of the work and all work must be completed within 30 days after the issuance of the permit.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 9.303)

§ 152.284 APPLICATION; ISSUANCE OF MOVING PERMIT.

Any person desiring such removal shall file with the office of the Clerk-Treasurer a written application for such permit accompanied by a non-refundable application fee of \$100, setting forth the kind of building intended to be removed, its estimated original cost, its dimensions and extreme length, width, and height, its present location, and the particular lot or site to which it is proposed to be moved. The Building Inspector shall thereupon examine the building and refer such application to the Planning and Zoning Board, together with his or her opinion, accompanying or endorsed in writing on the application, whether the proposed removal can be made without serious injury to person or property. However, no such building shall be moved to a new location, if it has been damaged by wear and tear or other cause to an extent which, in the opinion of the Building Inspector, would render the building to be of little or no value. If the Planning and Zoning Board finds that such removal and relocation can be made without serious injury to pavements, curbs and other public improvements of public highways, street, and alleys and other public or private property, it shall issue a preliminary approval therefore, designating therein the particular highways, streets, boulevards, or public places along which the removal shall be made and the time within which such removal shall be completed and shall deliver a copy of such preliminary approval to the Building Inspector, whereupon the Building Inspector may issue a permit for such removal on the filing of a bond and certificate of insurance as hereinafter provided subject to all conditions herein prescribed for such work.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 9.401)

§ 152.285 PERMIT BOND AND LIABILITY INSURANCE CERTIFICATE.

(A) The applicant for such permit to move a building shall execute and file with the Planning and Zoning Board, an annual bond payable to the town, in a penal sum of not less than \$10,000 as shall be prescribed by the Board with a surety approved by the Board, conditioned on the strict compliance with the terms of the permits to the route to be taken and the time within which the moving and relocation shall be completed.

(B) The applicant for such permit to move a building shall also execute and file with the Board of Public Works a liability insurance certificate issued to the town in the sum of not less than \$100,000 with a company approved by the Board, that such applicant will repair or compensate and reimburse the town or any other person for the cost and expense of repair of any pavement, curb, or other improvement of any highway, street, boulevard or other public improvement damaged by such removal.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 9.402)

§ 152.286 BUILDING INSPECTOR TO GIVE NOTICE TO FIRE CHIEF AND UTILITIES.

With the issuance of the permit, the Building Inspector shall cause written notice thereof to be given to the Chief of the Police and Fire Department, the telephone and gas utilities, the light and power providers and the cable TV franchise operator for the town and any other utilities and to any other person whose property may be affected by such removal. The notices must be completed prior to the commencement of moving.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 9.403)

§ 152.287 UNLAWFUL TO MOVE BUILDINGS WITHOUT PERMIT.

It shall be unlawful to move any building over any street, boulevard, or public way or across any bridge or over any waterway in the town, unless expressly so authorized by the Building Inspector and the Planning and Zoning Board and such work is done under the supervision and subject to the control of the Civil Engineer.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 9.404)

§ 152.288 PENALTY.

Whoever violates any provision of this subchapter for which no penalty is otherwise provided shall be fined not more than \$500 per offense. A separate offense shall be deemed committed on each day that a violation occurs or continues.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, § 13)

APPENDIX A: SCHEDULE OF COSTS AND FEES

Comprehensive land use ordinance copy	\$20
Planning and zoning petition (rezoning, exception or variance)	\$100
Petition, appeal, BZA	\$100
Subdivisions, petitions	
Primary plan, minor subdivision (per lot)	\$100
5 to 10 lots (per lot)	\$125
11 to 25 lots (per lot)	\$175
12 and more lots (per lot)	\$200
Nonresidential	\$1,000

Rule 13	\$500
Registration - yard, rummage, flea market	\$0
Trades licensing (registration)	\$50
Basic improvement location permit	\$50
Electrical permits	
Basic residential repair	\$100
Residential replacement	\$150
New residential to 2,000 square feet	\$150
Plus \$.10 each added square foot	
Commercial repairs, rehab to 2,000 square feet	\$200
Plus \$.10 each added square foot	
New commercial to 2,000 square feet	\$500
Plus \$.10 each added square foot	
Industrial repairs, rehab to 2,000 square feet	\$500
Plus \$.10 each added square foot	
New industrial construction to 2,000 square feet	\$500
Plus \$.10 each added square foot	
HVAC permits	
Basic residential repair	\$50
Residential replacement	\$100
New residential to 2,000 square feet	\$150
Plus \$.10 each added square foot	
Commercial repairs, rehab to 2,000 square feet	\$500
Plus \$.10 each added square foot	
New commercial to 2,000 square feet	\$500
Plus \$.10 each added square foot	
Industrial repairs, rehab to 2,000 square feet	\$750
Plus \$.10 each added square foot	
New industrial construction to 2,000 square feet	\$1,000
Plus \$.10 each added square foot	
Plumbing permits	
Basic residential repair	\$50
Residential replacement	\$50
New residential to 2,000 square feet	\$100
Plus \$.10 each added square foot	
Commercial repairs, rehab to 2,000 square feet	\$150
Plus \$.10 each added square foot	
New commercial to 2,000 square feet	\$200

Plus \$.10 each added square foot	
Industrial repairs, rehab to 2,000 square feet	\$500
Plus \$.10 each added square foot	
New industrial construction to 2,000 square feet	\$750
Plus \$.10 each added square foot	
Roofing permits	
Residential	\$50
Commercial (business)	\$150
Industrial up to 2,000 square feet	\$300
Plus \$.10 each added square foot	
Sign permits	
Rehab, repair	\$100
New sign	\$100
Demolition/moving permits	\$250

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, Appendix)

APPENDIX B: PLAN COMMISSION PROCEDURES

APPLICANTS/OWNERS ARE REQUIRED TO FOLLOW THE PROCEDURES OUTLINED BELOW TO ENSURE THE PROCESSING OF ALL APPLICATIONS.

FAILURE TO COMPLY WITH ALL REQUIREMENTS INCLUDING BUT NOT LIMITED TO NOTARIZED SIGNATURES OF OWNERS AND APPLICANTS WILL RESULT IN THE PETITION BEING RETURNED TO THE PETITIONER AND WILL NOT BE PLACED ON THE MEETING AGENDA. WHEN ALL COMPLETED DOCUMENTATION IS IN ORDER, THE PETITION CAN BE RESUBMITTED FOR THE NEXT REGULAR MEETING DATE. ALL FEES MUST BE PAID AT TIME OF FILING WITH THE CLERK-TREASURER.

1. CONFER WITH THE DALEVILLE BUILDING INSPECTOR

A. It is helpful to discuss the proposed application with staff to ensure that proper procedures are followed.

2. SUBMIT APPLICATION AND NON-REFUNDABLE FILING FEE OF \$150.

B. Follow and return the completed checklist with all information as required.

1. Three completed applications with original signatures
2. One copy of the recorded deed for the premises affected
3. Filing fee
4. Completed check list

3. NOTIFY PROPERTY OWNERS AND SUBMISSION OF LIST OF NOTIFIED OWNERS

C. Notification by the petitioner is required to the owners of all parcels of land within a 300 feet perimeter of the premises affected.

1. Format of letter must be similar to sample enclosed in packet.
2. Notification must be sent certified mail (white receipts only) at least 10 days before the meeting, but not more than 20 days. The letters must be postmarked at the post office.

3. A list of names of the surrounding property owners can be obtained from the Township Assessor's Office including the key number, then proceed to the Treasurer's Office, using the computers, key in the key number and obtain the mailing addresses of the property owners. These offices are located in the Delaware County Building, Muncie, Indiana.
4. A list of the property owners names and addresses, copy of the notice sent to those property owners, the postmarked certified mail receipts, and a signed affidavit must be submitted no later than 10 days prior to the meeting date.

4. PLACE NOTIFICATION IN THE MUNCIE STAR

D. Legal advertisement is required to be submitted to the newspaper for publication.

1. Format of legal advertisement must be similar to sample enclosed in packet.
2. Legal advertisement must be published at least 10 days before the meeting date, but not more than 20 days before the meeting date.
3. Submit proof of publication to Planning Department.

5. APPEAR AT THE PUBLIC HEARING BEFORE THE PLAN COMMISSION

A. The applicant and/or his designated representative are asked to present their petition to the Commission.

1. Meeting is held at Town Hall at 6:30 p.m. on the fourth Monday of each month unless otherwise specifically changed.

6. OTHER PROVISIONS:

- A. The prior provisions of Section 2.1703 are here incorporated by reference.
- B. The Commission and/or the BZA shall, as provided by law, after deliberations, make written findings and conclusions.

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, Appendix)

APPENDIX C: PETITION FOR ZONING CHANGES, VARIATION OF EXCEPTION

Dated: _____

Petition # _____ Ordinance # _____

Name(s) of Applicant(s): _____

Address of Applicant(s): _____

City: _____ State: _____ Zip Code: _____

Name(s) of Owner(s): _____

Address of (Owner(s): _____

City: _____ State: _____ Zip Code: _____

Contact Person: _____ Phone #: _____

Legal Address or Address Range: _____

Present Zoning: _____ Requested Zoning: _____

Present Use: _____ Requested Variance: _____

Present Restriction: _____ Requested Exception: _____

Reason for the Requested Zoning, Use or Construction Exception: _____

Narrative Description of Requested Changes Sought By This Petition (additional sheets may be attached):

ATTACH A COPY OF RECORDED DEED WITH CURRENT AND CORRECT LEGAL DESCRIPTION

I/We affirm under the law and the penalties of perjury that the foregoing is true to the best of our own knowledge and understanding this ____ day of _____, 20__:

Signature of Applicant Signature of Owner
Printed Name of Applicant Printed Name of Owner
Signature of Owner Printed Name of Owner

Owner(s) affirm, acknowledge and agree that should the requested change of zoning, variance or exception be granted that he/she shall be bound by the terms of said zoning change, variance or exception as same may be granted.

Dated: _____
Signature of Owner

Dated: _____
Signature of Owner

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, Appendix)

APPENDIX D: NOTICE OF PUBLIC HEARING

LEGAL ADVERTISEMENT

PLAN COMMISSION

DALEVILLE, INDIANA

NOTICE OF PUBLIC HEARING

Notice is hereby given that the Planning and Zoning Board of Daleville, Indiana, on the ____ day of _____, 20__, at 6:30 p.m., local time, in the Town Hall at 8019 Walnut Street, Daleville, Indiana, a part of the Comprehensive Master Plan for the Town of Daleville.

The proposed change is from _____ to _____ (*insert present zoning to requested zoning i.w. R to B*).

(*Insert Legal Description*)

Generally the change sought is as follows zoning, variance, or exception (*insert brief description of change sought*):

This property is located at __

Written suggestions or objections to said proposed Amendments, either in writing or verbally, will be given the opportunity to be heard at the above mentioned time and place.

DALEVILLE PLANNING AND ZONING

DALEVILLE, INDIANA

BY: KAY GIPSON

CLERK-TREASURER

MUNCIE STAR PRESS PUBLISH DATE: __

LETTER

NOTICE OF PUBLIC HEARING

To Whom It May Concern:

Notice is hereby given that the Planning and Zoning Board (Commission) of the Town of Daleville, Indiana on the ____ day of _____, 20__, at 6:30 p.m. (Local time) in the

Town Hall located in Daleville, Indiana, will hold a public hearing on a proposed Zoning change, variance or exception, a part of the

The proposed zone change involves consideration of a change of a zone classification from _____

to _____ for the following described property or a use variance or a special exception to the various construction requirements now in effect:

Insert Legal Description:

The requested change is as follows: __

This property is located at __

Written suggestions or objections to the provisions of said proposed change may be filed with the Daleville Building Inspector before such meeting and will be heard by the Commission at the time and place specified.

Interested person desiring to present their views, pro or con, upon the proposed change, either in writing or verbally, will be given the opportunity to be heard at the above mentioned time and place.

This petition may be continued on the Plan Commission agenda from time to time as may be necessary.

Daleville Planning and Zoning Board

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, Appendix)

APPENDIX E: PETITIONER CHECK LIST

Location Address: _____

CHECKLIST

The petitioner should place a check mark next to the items being submitted:

Petitioner Staff Necessary Information

___ ___ Applicant information (name, mailing address, phone number with area code)

___ ___ Owner information (name, mailing address, phone number with area code)

___ ___ Contact person

___ ___ Legal address or address range

___ ___ Affirmed signature and printed name of owner

___ ___ Affirmed signature and printed name of applicant

OTHER INFORMATION:

___ ___ Three (3) copies of petition with original signatures

___ ___ Recorded deed with current and correct legal description

___ ___ Power of Attorney documents (for all interested parties), if necessary

___ ___ Filing fee

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, Appendix)

APPENDIX F: FINDINGS, CONCLUSIONS, RECOMMENDATIONS

STATE OF INDIANA)

COUNTY OF DELAWARE)SS:

TOWN OF DALEVILLE)

COMES NOW the (Daleville Planning and Zoning Board/Daleville Board of Zoning Appeals), who, pursuant to meeting held on the ___ day of _____, 20___, pursuant to the petition of _____, who are the Owners of that real estate commonly known as: _____, Daleville, Indiana 47334, FOR:

- (a) Rezoning
- (b) Variance
- (c) Exception
- (d) Appeal

Generally, the Petitioners propose the following: __

Following a full and complete discussion of Petitioner's Petition in this public forum the (Daleville Planning and Zoning Board / Daleville Board of Zoning Appeals) finds:

- 1. That the Petitioner(s) is the Owner(s) of the subject real estate. **(Yes) (No)**
- 2. That the proposed Rezoning, Exception or Variance **(is) (is not)** consistent with the neighborhood where the proposed change of use is to occur. **(Yes) (No)**
- 3. That the Petitioner(s) have met all the procedural requirements mandated by PZO-2007-1.

(Yes) (No)

4. That the proposed use changes **(will) (will not)** impact the following:

- (a) Traffic Flow: **(Yes) (No)**
- (b) Fire Protection: **(Yes) (No)**
- (c) Noise: **(Yes) (No)**
- (d) Vibrations: **(Yes) (No)**
- (e) Odors: **(Yes) (No)**
- (f) Air Pollution: **(Yes) (No)**
- (g) Glare: **(Yes) (No)**
- (h) Erosion: **(Yes) (No)**
- (i) Water Pollution: **(Yes) (No)**

5. That the Petitioners will carry out the proposed changes of use and that those changes will benefit the Town. **(Yes) (No)**

6. That the (Board of Planning and Zoning/Board of Zoning Appeals) recommends that the Town Council of Daleville **(Grant) (Deny)** Petitioners' Petition for Rezoning/Variance/Exception.

(Yes) (No)

7. That the proposed use is (appropriate) (inappropriate). **(Yes) (No)**

8. That the following members of the (Board of Planning and Zoning / Board of Zoning Appeals) were present and a quorum present:

(Yes) (No) _____

(Yes) (No) _____

(Yes) (No) _____

(Yes) (No) _____

(Yes) (No) _____

(Yes) (No) _____

(Yes) (No) _____

9. Other: __

Dated: _____

Secretary, (Daleville Planning & Zoning Board/

Board of Zoning Appeals)

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, Appendix)

APPENDIX G: APPLICATIONS

TRADES LICENSE REGISTRATION APPLICATION

FEE: \$50.00

___ Builder ___ Electrician ___ Plumber ___ HVAC

___ Other Specify: __

License Number: _____ Date: __

Name: _____ Phone: __

Address: __

Number of Years at Present Address: _____

Former Places of Residence and Length of Time (Last Two Years): __

Number of Years in Business: _____ Number of Employees: __

List all current licenses held and expiration dates: __

Bond: \$10,000.00 (License and Permit Bond payable to the Town of Daleville, Indiana):

Company and Agent: __

Insurance: \$ 100,000.00 (Certificate of Insurance to be kept on file)

Company and Agent: __

Workman's Compensation:

Company and Agent: __

A Certificate of Insurance and Bond must be on file in the office of the Town of Daleville Building Commission before a registration can be issued to the applicant.

Date Registration Issued: _____ Fee: __

I hereby certify the above information given on this application is true and accurate to the best of my knowledge.

Applicant Signature: _____ Date: __

APPLICATION FOR BASIC IMPROVEMENT LOCATION PERMIT

FEE: \$50.00

Permit No. _____ Date: _____

Owner's Name: __

Address of Work: _____ Daleville, Indiana 47334

General Description of Work: __

Circle one: Residential Business Industrial

Name of contractors or tradesmen who will do the work:

1. __

2. __

3. __

Attach all written plans and specifications, if any, of the work to be performed.

Estimated Start Date: _____

Estimated Finish Date: _____

Was a "Stop work" Order issued: (Yes) (No)

All permit fees paid are nonrefundable.

Owner(s):

APPLICATION FOR ELECTRICAL PERMIT

A BASIC LOCATION IMPROVEMENT PERMIT IS ALSO REQUIRED

DO YOU HAVE AN IMPROVEMENT LOCATION PERMIT?

__ Yes __ No If So, Permit Number: _____

Permit Number: _____ Date: __

Owner's Name: __

Address: _____ Phone Number: __

Electrician's Name: __

Address: _____ Phone Number: __

Address of Job: __

Residential: _____ Commercial: _____ State Release #: __

Change of service: __ New service: _____ Existing service: __

New Structure: _____ Existing Structure: __

Service Size: Amps _____ Feed: O.H. _____ U.G. __

3 Wire 120/240 1Ø _____ 3 Wire 240 3Ø _____ 4 Wire 120/240 3 Ø __

4 Wire 277/480 3ØY _____ 4 Wire 120/208 3Y _____

Main Disconnect Size: _____ Wire Size: Conductor _____ Neutral: __

Consuming Openings:(15/20 Amp) _____ (30 Amp or higher) __

Panel: _____ Number of Inspections: _____

Remarks: __

Estimated start date: _____ Estimated completion date: __

Ready: _____ Will call: __

Fair Market Value of work being done: __

Application: ___ Approved ___ Denied ___ Initials Date: __

Was there a stop work order issued: ___ Yes ___ No

Permit Costs:

1. Basic Residential Repair: \$100.00
2. Basic Residential Electrical System Replacement: \$150.00
3. New Residential construction up to 2000 sq. ft. of living space: \$150.00 above 2000 sq. ft. of living space add 10¢ per sq. ft.
4. Commercial (Business, excludes Industrial) repairs and rehabilitation \$200.00 up to 2000 sq. ft. of usable space and 10¢ per sq. ft. beyond 2000 sq. ft.
5. New Commercial Construction (Business, excludes Industrial) \$500.00 up to 2000 sq. ft. of usable space and 10¢ per sq. ft. beyond 2000 sq. ft.
6. Industrial repairs and rehabilitation \$500.00 up to 2000 sq. ft. of usable space and 10¢ per sq. ft. beyond 2000 sq. ft.
7. New Industrial Construction \$500.00 up to 2000 sq. ft. of usable space and 100 per sq. ft. beyond 2000 sq. ft.

All permit fees shall be nonrefundable.

MUST BE APPROVED BY LOCAL UTILITY COMPANY

Applicant's Signature _____ Date _____

APPLICATION FOR HVAC PERMIT

A BASIC LOCATION IMPROVEMENT PERMIT IS ALSO REQUIRED

DO YOU HAVE AN IMPROVEMENT LOCATION PERMIT?

___ Yes ___ No If So, Permit Number: _____

Permit Number: _____ Date: __

Owner's Name: __

Address: _____

Phone Number: _____

Contractor's Name: _____ License #: __

Address: _____

Phone Number: _____

Address of Job: __

Circle one: Residential Business

Type of Installation: New ___ Replacement ___ Add-on ___ Exhaust hood ___

Heating: _____ Number of BTU's: __

Cooling: _____ Number of BTU's: __

Ventilating: Ami CFM _____ Number of outlets: __

Plans and specifications: __

Do you have a state release: _____ If so, state release number: __

Number of inspections: _____

Fair Market Value: _____

Estimated start date: _____ Estimated completion date: __

Was there a stop work issued: Yes ___ No ___

Application: ___ Approved ___ Denied ___ Initials ___ Date: __

Applicant's Signature _____ Date _____

Costs:

1. Basic Residential repair: \$ 50.00
2. Basic Residential Electrical System Replacement: \$100.00
3. New Residential construction up to 2000 sq. ft. of living space: \$150.00 above 2000 sq. ft. of living space add 10¢ per sq. ft.
4. Commercial (Business, excludes Industrial) repairs and rehabilitation \$500.00 up to 2000 sq. ft. of usable space and 10¢ per sq. ft. beyond 2000 sq. ft.
5. New Commercial construction (Business, excludes Industrial) \$500.00 up to 2000 sq. ft. of usable space and 10¢ per sq. ft. beyond 2000 sq. ft.
6. Industrial construction repairs and rehabilitation \$750.00 up to 2000 sq. ft. of usable space and 10¢ per sq. ft. beyond 2000 sq. ft.
7. New Industrial construction \$1000.00 up to 2000 sq. ft. of usable space and 100 per sq. ft. beyond 2000 sq. ft.

All permit fees shall be nonrefundable.

APPLICATION FOR PLUMBING PERMIT

A BASIC LOCATION IMPROVEMENT PERMIT IS ALSO REQUIRED

Permit Number: _____ Date: __

Owner's Name: __

Phone Number: _____

Contractor's Name: _____ License #: __

Address: __

Address of Job: __

Circle One: Residential Business Industrial

Kind of Building: __

Number of stacks: _____ Number of Fixtures and Openings: __

New Water Heater: _____ Water line: New _____ Replace __

Sewer line: New _____ Replace: _____

Plans and specifications: __

Do you have a state release?: _____ If so, what is the state release number: __

Number of inspections: _____

Fair Market Value: _____

Estimated start date: _____ Estimated completion date: __

Was there a stop work order issued: Yes ___ No ___

Application: ___ Approved ___ Denied ___ Initials ___ Date: __

Costs:

1. Basic Residential repair: \$50.00
2. Basic Residential Plumbing System Replacement: \$50.00
3. New Residential construction up to 2,000 sq. ft. of living space: \$100.00 above 2,000 sq. ft. of living space add 10¢ per sq. ft.
4. Commercial (Business, excludes Industrial) repairs and rehabilitation \$150.00 up to 2,000 sq. ft. of usable space and 10¢ per sq. ft. beyond 2,000 sq. ft.
5. New Commercial Construction (Business, excludes Industrial) \$200.00 up to 2000 sq. ft. of usable space and 10¢ per sq. ft. beyond 2000 sq. ft.
 6. Industrial repairs and rehabilitation \$500.00 up to 2000 sq. ft. of usable space and 10¢ per sq. ft. beyond 2000 sq. ft.
 7. New Industrial Construction \$750.00 up to 2000 sq. ft. of usable space and 10¢ per sq. ft. beyond 2000 sq. ft.

All permit fees shall be nonrefundable.

APPLICATION FOR SIGN PERMIT

A BASIC LOCATION IMPROVEMENT PERMIT IS ALSO REQUIRED

Date: _____

Owner's Name: __

Address: __

Phone Number: _____

Contractor's Name: _____ License #: __

Address: __

Phone Number: _____

Are you insured: _____

Address of Job: __

Type of building: __

Fair Market Value: _____

Type of sign being installed: __

Detailed sign construction specifications (attach separate sheet and include location on parcel of real estate)

Is there going to be any neon on this sign: _____ If yes, do you have your neon specs: __

Approved: _____ Disapproved: __

Building Commissioner

Comments / Restrictions: __

Applicant's Signature _____ Date _____

Costs:

1. Rehabilitation of existing sign: \$100.00

2. New sign construction: \$100.00

All permit fees shall be nonrefundable.

APPLICATION FOR DEMOLITION/MOVING PERMIT

Fee: \$250.00

A BASIC LOCATION IMPROVEMENT PERMIT IS ALSO REQUIRED

Date: _____

Owner's Name: __

Address: __

Phone Number: _____

Contractor's Name: _____ License #: __

Address: __

Phone Number: _____ Are you insured: __

Address of Job: __

Type of building: __

Fair Market Value: _____

Where are you disposing of demolition material: __

Are there any sub-contractors? ____ If yes, list names, addresses and phone numbers: __

Approved: _____ Disapproved: _____

Daleville Building Commissioner

Comments/Restrictions: __

Applicant Signature _____ Date _____

(Ord. 07-01, adopted 5-5-2007, updated 5- -2009, Appendix)

TABLE OF SPECIAL ORDINANCES

Table

I. AGREEMENTS

II. ANNEXATIONS

III. LOANS

IV. PLANS

TABLE I: AGREEMENTS

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Description</i>
		Approving interlocal agreement

Res. 2015-02	1-12-2015	between the town and Salem Township for snow removal purposes
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TABLE II: ANNEXATIONS

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Description</i>
Res. 2015-01	1-12-2015	Annexing part of Sections 31 and 32 in Township 20 North, Range 9 East, Salem Township, containing 523.71 acres
Res. 2015-03	1-12-2015	Annexing the southwest quarter of the southwest quarter and a part of the south half of the southeast quarter of Section 12, Township 19 North, Range 8 East and a part of the northwest quarter and the northeast quarter of Section 13, Township 19 North, Range 8 East in Salem Township, containing 394.47 acres

TABLE III: LOANS

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Description</i>
Res. 2015-04	2-9-2015	Loan for purchase of water meters and other improvements to town water utility
Res. 2015-05	2-9-2015	Loan for purchase of water meters and other improvements of town water utility

TABLE IV: PLANS

<i>Ord. No.</i>	<i>Date Passed</i>	<i>Description</i>
Res. 2014-01	10-6-2014	Approval of Downtown Revitalization Plan

PARALLEL REFERENCES

References to Indiana Code

References to Resolutions

References to Ordinances

REFERENCES TO INDIANA CODE

<i>I.C. Section</i>	<i>Code Section</i>
1-1-1-5	10.04
1-1-1-7	10.12
1-1-1-8	10.05
1-1-4-5	10.05
1-1-5-1	10.11
1-1-6-1	10.08
4-21.5	95.09
4-21.5-3-7	151.08
4-22-2	95.03
5-2-8-2	34.15
5-3-1	95.16, 152.184, 152.186, 152.233
5-13-6-1(d)	30.03
5-14-1.5	51.31
5-22	33.03
6-1.1-17	34.16
6-1.1-41-4	34.19
6-2.5-5-26	112.01
6-3.5-7-15	34.18
8-1.5-1 et seq.	52.60
9-13-2	34.03
9-13-2-6	70.15

9-13-2-47	70.15
9-13-2-73	70.15
9-13-2-84	70.15
9-13-2-105	70.15
9-13-2-118	70.15
9-13-2-121(a)	70.15
9-13-2-155	70.15
9-13-2-157	70.15
9-13-2-178	70.15
9-13-2-196(a)	70.15
9-17	34.03
9-21-20-1	70.15
9-21-20-3	70.15
9-21-90-2	70.15
9-26	34.03
9-26-2-2 et seq.	34.03
9-29-4	34.03
9-29-11-1	34.03
13-1 1-2-99	152.003
14-6-1	72.03
14-34	52.03
15-2.1-21-8	90.03
16-18-2-110	70.15
16-22-8	70.15
22-9.5-1 et seq.	93.01
22-9.5-1-2	93.02, 93.09
22-9.5-2-3	93.02
22-9.5-2-4	93.02
22-9.5-2-7	93.02
22-9.5-2-8	93.02
22-9.5-2-9	93.02
22-9.5-2-11	93.02
22-9.5-2-13	93.02
22-9.5-3	93.03
22-9.5-3 et seq.	93.09
22-9.5-3-1	93.03
22-9.5-3-3	93.04, 93.09
22-9.5-3-4	93.09

22-9.5-3-5	93.05
22-9.5-3-8	93.07
22-9.5-4 et seq.	93.10
22-9.5-4-1	93.02
22-9.5-4-8	93.10
22-9.5-5	93.02
22-9.5-5-1(a)	93.04
22-9.5-5-1(b)	93.04
22-9.5-5-2	93.04
22-9.5-5-4	93.04
22-9.5-5-5	93.04
22-9.5-5-6	93.05
22-9.5-5-7	93.06
22-9.5-6	93.02, 93.10
22-9.5-6 et seq.	93.10
22-9.5-6-3	93.10
22-9.5-6-7	93.10
22-9.5-7 et seq.	93.10
22-9.5-8.1 et seq.	93.10
22-9.5-10-1	93.08
22-9.5-11-1	93.10
22-9.5-11-2	93.10
22-9.5-11-3	93.10
22-9.5-52	93.09
22-9.6-14	93.10
22-12-1	152.003
22-13-2-7	151.08
22-13-2-7(b)	151.03
22-15-3-1	151.06
22-15-4	151.04
25-6.1	112.01
27-2-15	95.09
35-45-4-1	152.003
35-47-2	34.03
35-47-2-3 et seq.	34.03
35-49-2-1	152.003
36-1-3-1 et seq.	152.001

36-1-3-8(a)(10)	10.99
36-1-6	95.02
36-1-9-12	152.238
36-1.1-41	34.19
36-2-7-10	95.17, 152.242
36-4	152.004
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