

TRAIL CREEK, INDIANA CODE

Published by Order of the Town Council



MUNICIPAL CODE CORPORATION

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OFFICIALS

of the

TOWN OF

TRAIL CREEK, INDIANA

AT THE TIME OF THIS RECODIFICATION

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Town Council

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Town Clerk-Treasurer

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PREFACE

This Code constitutes a recodification of the general and permanent ordinances of the Town of Trail Creek, Indiana.

Source materials used in the preparation of the Code were the 1992 Code, as supplemented through July 15, 1991, and ordinances subsequently adopted by the town council. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any section of the 1992 Code, as supplemented, and any subsequent ordinance included herein.

The chapters of the Code have been conveniently arranged in alphabetical order, and the various sections within each chapter have been catchlined to facilitate usage. Notes which tie related sections of the Code together and which refer to relevant state law have been included. A table listing the state law citations and setting forth their location within the Code is included at the back of this Code.

Chapter and Section Numbering System

The chapter and section numbering system used in this Code is the same system used in many state and local government codes. Each section number consists of two parts separated by a dash. The figure before the dash refers to the chapter number, and the figure after the dash refers to the position of the section within the chapter. Thus, the second section of chapter 1 is numbered 1-2, and the first section of chapter 6 is 6-1. Under this system, each section is identified with its chapter, and at the same time new sections can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one section that would logically come between sections 6-1 and 6-2 is desired to be added, such new section would be numbered 6-1.5. New articles and new divisions may be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject. The next successive number shall be assigned to the new article or division. New chapters may be included by using one of the reserved chapter numbers. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters.

Page Numbering System

The page numbering system used in this Code is a prefix system. The letters to the left of the colon are an abbreviation which represents a certain portion of the volume. The number to the right of the colon represents the number of

the page in that portion. In the case of a chapter of the Code, the number to the left of the colon indicates the number of the chapter. In the case of an appendix to the Code, the letter immediately to the left of the colon indicates the letter of the appendix. The following are typical parts of codes of ordinances, which may or may not appear in this Code at this time, and their corresponding prefixes:

CODE	CD1:1
CODE COMPARATIVE TABLES	CCT:1
STATE LAW REFERENCE TABLE	SLT:11
CODE INDEX	CDi:1

Index

The index has been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology, others in legal terminology, and still others in language generally used by local government officials and employees. There are numerous cross references within the index itself that stand as guideposts to direct the user to the particular item in which the user is interested.

Looseleaf Supplements

A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up to date. Subsequent amendatory legislation will be properly edited, and the affected page or pages will be reprinted. These new pages will be distributed to holders of copies of the publication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this publication up to date at all times will depend largely upon the holder of the publication. As revised pages are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

Acknowledgments

This publication was under the direct supervision of Roger D. Merriam, Senior Code Attorney, and James W. Gager, Editor, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to Ms. Ann Dobbs, Town Clerk-Treasurer, and Mr. William Herrbach, Town Attorney, for their cooperation and assistance during the progress of the work on this publication. It is hoped that their efforts and those of the publisher have resulted in a Code of Ordinances which will make the active law of the town readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the town's affairs.

Copyright

All editorial enhancements of this Code are copyrighted by Municipal Code Corporation and the Town of Trail Creek, Indiana. Editorial enhancements include, but are not limited to: organization; table of contents; section catchlines; prechapter section analyses; editor's notes; cross references; state law references; numbering system; code comparative table; state law reference table; and index. Such material may not be used or reproduced for commercial purposes without the express written consent of Municipal Code Corporation and the Town of Trail Creek, Indiana.

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TABLE OF CONTENTS

	Page
Officials of the Town at the Time of this Recodification	iii
Current Officials (Reserved)	v
Preface	vii
Adopting Ordinance (Reserved)	

CODE OF ORDINANCES

Chapter

1. General Provisions	CD1:1
2. Administration	CD2:1
Art. I. In General	CD2:3
Art. II. Town Council	CD2:3
Art. III. Officers and Employees	CD2:3
Art. IV. Boards, Commissions, Committees, Departments and Authorities	CD2:3
Div. 1. Generally	CD2:3
Div. 2. Department of Parks and Recreation	CD2:3
Div. 3. Police Department Advisory Board	CD2:3
Art. V. Finance	CD2:4
Div. 1. Generally	CD2:4
Div. 2. Specific Funds	CD2:8
3—5. Reserved	CD3:1
6. Animals	CD6:1
Art. I. In General	CD6:3
Art. II. Licenses and Permits	CD6:21
7—9. Reserved	CD7:1
10. Buildings and Building Regulations	CD10:1
Art. I. In General	CD10:3
Art. II. Building Code	CD10:3
Art. III. Contractors	CD10:6
Art. IV. Barbed Wire Fences	CD10:7
11—13. Reserved	CD11:1
14. Elections	CD14:1
Art. I. In General	CD14:3
Art. II. Council Districts	CD14:3
15—17. Reserved	CD15:1
18. Emergency Management and Emergency Services	CD18:1
Art. I. In General	CD18:3
Art. II. Civil Emergencies	CD18:3

TRAIL CREEK CODE

Chapter	Page
19—21. Reserved	CD19:1
22. Environment	CD22:1
Art. I. In General.....	CD22:5
Art. II. Noise.....	CD22:5
Art. III. Nuisances	CD22:8
Art. IV. Wrecked and Abandoned Vehicles	CD22:8
Art. V. Weeds	CD22:11
Art. VI. Stormwater Management	CD22:12
Div. 1. Generally	CD22:12
Div. 2. Permit Procedures and Requirements	CD22:15
Div. 3. Waivers to Stormwater Management Re-	
quirements.....	CD22:17
Div. 4. General Performance Criteria for Stormwater	
Management	CD22:19
Div. 5. Basic Stormwater Management Design Cri-	
teria	CD22:20
Div. 6. Requirements for Stormwater Management	
Approval Plan	CD22:22
Div. 7. Construction Inspection	CD22:25
Div. 8. Maintenance and Repair of Stormwater Fa-	
cilities	CD22:27
Div. 9. Enforcement and Penalties	CD22:29
23—25. Reserved	CD23:1
26. Fees.....	CD26:1
27—29. Reserved	CD27:1
30. Licenses, Permits and Miscellaneous Businesses.....	CD30:1
Art. I. In General.....	CD30:3
Art. II. Adult Entertainment	CD30:3
Art. III. Garage Sales.....	CD30:13
Art. IV. Transient Merchants.....	CD30:14
31—33. Reserved	CD31:1
34. Offenses and Miscellaneous Provisions	CD34:1
35—37. Reserved	CD35:1
38. Solid Waste	CD38:1
Art. I. In General.....	CD38:3
Art. II. Collection and Disposal.....	CD38:3
Div. 1. Generally	CD38:3
Div. 2. Rates and Charges.....	CD38:5
39—41. Reserved	CD39:1
42. Traffic and Vehicles.....	CD42:1
43—45. Reserved	CD43:1
46. Utilities.....	CD46:1
Art. I. In General.....	CD46:3

TABLE OF CONTENTS—Cont'd.

Chapter	Page
Art. II. Sewers and Sewage Disposal.....	CD46:3
47—49. Reserved	CD47:1
50. Zoning.....	CD50:1
Art. I. In General.....	CD50:3
Art. II. Administration and Enforcement	CD50:9
Art. III. Zoning Districts Established; Zoning Map....	CD50:15
Art. IV. District Regulations.....	CD50:16
Art. V. Manufactured Housing.....	CD50:38
Art. VI. Signs	CD50:40
Code Comparative Table—1992 Code	CCT:1
Code Comparative Table—Ordinances	CCT:3
State Law Reference Table.....	SLT:1
Code Index	CDi:1

CODE OF ORDINANCES

Chapter 1

GENERAL PROVISIONS

- Sec. 1-1. Designation and citation of Code.
- Sec. 1-2. Definitions and rules of construction.
- Sec. 1-3. Section catchlines and other headings; history notes; references.
- Sec. 1-4. Effect of repeal of ordinances.
- Sec. 1-5. Certain ordinances not affected by Code.
- Sec. 1-6. Provisions deemed continuation of existing ordinances.
- Sec. 1-7. Code does not affect prior offenses or rights.
- Sec. 1-8. Severability of parts of Code.
- Sec. 1-9. Amendments to Code; effect of new ordinances; amendatory language.
- Sec. 1-10. Supplementation of Code.
- Sec. 1-11. General penalty; continuing violations.

Sec. 1-1. Designation and citation of Code.

The ordinances embraced in this and the following chapters shall constitute and be designated the "Trail Creek, Indiana Code," and may be so cited.

State law reference—Codification of ordinances required, IC 36-1-5-3.

Sec. 1-2. Definitions and rules of construction.

The following definitions and rules of construction shall apply to this Code and to all ordinances unless the context requires otherwise:

Generally. When provisions conflict, the specific shall prevail over the general. All provisions shall be liberally construed so that the intent of the town council may be effectuated. Terms and phrases shall be construed according to the common and approved usage of the language, but technical terms, technical phrases and terms and phrases that have acquired peculiar and appropriate meanings in law shall be construed according to such meanings. This Code shall be interpreted and applied so as to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare.

Code. The term "Code" means the Trail Creek, Indiana Code, as designated in section 1-1.

Computation of time. In computing any period of time, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, legal holiday or a day on which the town office in which the act is to be done is closed during regular business hours. In any event, the period runs until the end of the next day that is neither a Saturday, Sunday, legal holiday or a day on which the town office in which the act is to be done is closed. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, legal holidays and days on which the town office is closed shall be excluded from the computation.

Conjunction. In a provision involving two or more items, conditions, provisions or events, which items, conditions, provisions or events are connected by the conjunction "and," "or" or "either . . . or," the conjunction shall be interpreted as follows:

- (1) The term "and" indicates that all the connected terms, conditions, provisions or events apply.
- (2) The term "or" indicates that the connected terms, conditions, provisions or events apply singly or in any combination.
- (3) The term "either . . . or" indicates that the connected terms, conditions, provisions or events apply singly, but not in combination.

Council and town council. The terms "town council" and "council" mean the town council of the Town of Trail Creek, Indiana.

County. The term "county" means LaPorte County, Indiana.

Delegation of authority. A provision that authorizes or requires a town officer or town employee to perform an act or make a decision authorizes such officer or employee to act or make a decision through subordinates.

Gender. Terms of one gender include all other genders.

IC. The abbreviation "IC" refers to the Indiana Code, as amended.

Includes. The term "includes" does not limit a term to a specified example.

Joint authority. Terms giving a joint authority to three or more persons give such authority to a majority of such persons.

May. The term "may" shall be construed as being permissive and not mandatory.

Month. The term "month" means a calendar month.

Must. The term "must" shall be construed as being mandatory.

Number. Terms in the singular include the plural. Terms in the plural include the singular.

Oath. A solemn affirmation is the equivalent to an oath and a person shall be deemed to have sworn if such person makes such an affirmation.

Officers, departments, boards, commissions and employees. References to officers, departments, boards, commissions or employees are to town officers, town departments, town boards, town commissions and town employees.

Owner. The term "owner," as applied to property, includes any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety of the whole or part of such property.

Person. The term "person" means any human being, governmental or political subdivision or public agency, public or private corporation, partnership, firm, association or other organization, receiver, trustee, assignee or agent, or other legal representative thereof, or any other legal entity.

Personal property. The term "personal property" means any property other than real property.

Premises. The term "premises," as applied to real property, includes lands and structures.

Property. The term "property" includes real property, personal property and mixed property.

Public place. The term "public place" includes any street, sidewalk, park, cemetery, schoolyard, body of water or watercourse.

Real property. The term "real property" includes lands, tenements and hereditaments.

Shall. The term "shall" shall be construed as being mandatory.

Sidewalk. The term "sidewalk" means that portion of the street between the curblin and the adjacent property line intended for the use of pedestrians.

Signature and subscription. The terms "signature" and "subscription" include a mark when the signer or subscriber cannot write. In such situations, such person's name shall be written near the mark by a witness who writes his own name near such person's name.

State. The term "state" means the State of Indiana.

Street. The term "street" includes any alley, avenue, boulevard, lane, road, highway, viaduct or other public thoroughfare.

Tenant and occupant. The terms "tenant" and "occupant," as applied to premises, include any person holding a written or oral lease, or who actually occupies the whole or any part of such premises, alone or with others.

Tense. The present tense shall include the past and future tenses. The future tense shall include the present tense.

Town. The term "town" means the Town of Trail Creek, LaPorte County, Indiana.

Week. The term "week" means a period of seven consecutive days.

Writing. The term "writing" includes any form of recorded message capable of comprehension by ordinary visual means.

Year. The term "year" means a calendar year.

State law reference—Similar rules of statutory construction, IC 1-1-4-1 et seq.

Sec. 1-3. Section catchlines and other headings; history notes; references.

(a) The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the sections and are not titles of such sections, or of any part of the sections, nor unless expressly so provided shall they be so deemed when any such section, including the catchline, is amended or reenacted.

(b) History notes, cross references and state law references that appear in this Code after sections or subsections or that otherwise appear in footnote form are provided for the convenience of the user of the Code and have no legal effect.

(c) Unless specified otherwise, all references to chapters or sections are to chapters or sections of this Code and are references to such provisions as amended.

Sec. 1-4. Effect of repeal of ordinances.

(a) Unless specifically provided otherwise, the repeal of an ordinance does not revive any previously repealed ordinance.

(b) The repeal or amendment of an ordinance does not affect any punishment or penalty incurred before the repeal took effect, nor does such repeal or amendment affect any prosecution or proceeding pending at the time of the amendment or repeal.

Sec. 1-5. Certain ordinances not affected by Code.

Nothing in this Code or the ordinance adopting this Code affects the validity of any ordinance or portion of any ordinance:

- (1) Annexing property, deannexing property or excluding property from the town or describing the corporate limits.
- (2) Promising or guaranteeing the payment of money or authorizing the issuance of bonds or other instruments of indebtedness.
- (3) Authorizing or approving any contract, deed or agreement.
- (4) Making or approving any appropriation or budget.
- (5) Providing for salaries or other officer or employee benefits not codified in this Code.
- (6) Granting any right or franchise.
- (7) Dedicating or naming any park.
- (8) Adopting or amending the comprehensive plan.
- (9) Dedicating, accepting or vacating any plat.
- (10) Levying or imposing any special assessment.
- (11) Establishing the grade of any street or sidewalk.
- (12) Dedicating, establishing, naming, locating, relocating, opening, paving, widening, repairing or vacating any street or alley.
- (13) Levying, imposing or otherwise relating to taxes not codified in this Code.
- (14) Providing traffic or parking regulations for specific locations not codified in this Code.
- (15) Amending the zoning map or zoning atlas, or rezoning specific property.
- (16) That is temporary, although general in effect.
- (17) That is special, although permanent in effect.
- (18) The purpose of which has been accomplished.

Such provisions continue in full force and effect to the same extent as if published at length in this Code.

Sec. 1-6. Provisions deemed continuation of existing ordinances.

The provisions of this Code, insofar as they are substantially the same as legislation previously adopted by the town relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments.

Sec. 1-7. Code does not affect prior offenses or rights.

(a) Nothing in this Code or the ordinance adopting this Code affects any offense or act committed or done, any penalty or forfeiture incurred, or any contract or right established before the effective date of this Code.

(b) The adoption of this Code does not authorize any use or the continuation of any use of a structure or premises in violation of any town ordinance on the effective date of this Code.

Sec. 1-8. Severability of parts of Code.

The sections, subsections, paragraphs, sentences, clauses and phrases of this Code and all provisions adopted by reference in this Code are severable so that if any section, subsection, paragraph, sentence, clause and phrase of this Code or of any provision adopted by reference in this Code is declared unconstitutional or invalid by a valid judgment of a court of competent jurisdiction, such judgment shall not affect the validity of any other section, subsection, paragraph, sentence, clause and phrase of this Code or of any provision adopted by reference in this Code, for the town council declares that it is its intent that it would have enacted this Code and all provisions adopted by reference in this Code without such invalid or unconstitutional provisions.

Sec. 1-9. Amendments to Code; effect of new ordinances; amendatory language.

(a) All ordinances adopted subsequent to this Code that amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of the Code and printed for inclusion in the Code.

(b) Amendments to provisions of this Code may be made with the following language: "Section (chapter, article, division or subdivision, as appropriate) ___ of the Trail Creek, Indiana Code is hereby amended to read as follows:"

(c) If a new section, subdivision, division, article or chapter is to be added to the Code, the following language may be used: "Section (chapter, article, division or subdivision, as appropriate) ___ of the Trail Creek, Indiana Code is hereby created to read as follows:"

(d) All provisions desired to be repealed should be repealed specifically by section, subdivision, division, article or chapter number, as appropriate, or by setting out the repealed provisions in full in the repealing ordinance.

Sec. 1-10. Supplementation of Code.

(a) Supplements to this Code shall be prepared and printed whenever authorized or directed by the town. A supplement to this Code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of the supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages that have become

obsolete or partially obsolete. The new pages shall be so prepared that when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code that have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the person authorized to prepare the supplement may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as necessary to do so in order to embody them into a unified code. For example, the person may:

- (1) Arrange the material into appropriate organizational units.
- (2) Supply appropriate catchlines, headings and titles for chapters, articles, divisions, subdivisions and sections to be included in the Code and make changes in any such catchlines, headings and titles or in any such catchlines, headings and titles already in the Code.
- (3) Assign appropriate numbers to chapters, articles, divisions, subdivisions and sections to be added to the Code.
- (4) Where necessary to accommodate new material, change existing numbers assigned to chapters, articles, divisions, subdivisions or sections.
- (5) Change the term "this ordinance" or similar terms to "this chapter," "this article," "this division," "this subdivision," "this section" or "sections ___ to ___" (inserting section numbers to indicate the sections of the Code that embody the substantive sections of the ordinance incorporated in the Code).
- (6) Make other nonsubstantive changes necessary to preserve the original meaning of the ordinances inserted in the Code.

Sec. 1-11. General penalty; continuing violations.

- (a) In this section, the term "violation of this Code" means any of the following:
- (1) Doing an act that is prohibited or made or declared unlawful, an offense, a violation or a misdemeanor by ordinance or by rule or regulation authorized by ordinance.
 - (2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance.
 - (3) Failure to perform an act if the failure is prohibited or is made or declared unlawful, an offense, a violation or a misdemeanor by ordinance or by rule or regulation authorized by ordinance.

(b) In this section, the term "violation of this Code" does not include the failure of a town officer or town employee to perform an official duty unless it is specifically provided that the failure to perform the duty is to be punished as provided in this section.

(c) Except as otherwise provided by law or ordinance, a person convicted of a violation of this Code shall be punished by a fine of not more than \$2,500.00 for a first violation of this Code and \$7,500.00 for a second or subsequent violation of the same provision.

(d) Except as otherwise provided by law or ordinance:

- (1) With respect to violations of this Code that are continuous with respect to time, each day that the violation continues is a separate offense.
- (2) With respect to violations of this Code that are not continuous with respect to time, each act is a separate offense.

(e) The imposition of a penalty does not prevent suspension or revocation of a license, permit or franchise, or other administrative sanctions.

(f) Violations of this Code that are continuous with respect to time are a public nuisance and may be abated by injunctive or other equitable relief. The imposition of a penalty does not prevent injunctive relief.

State law references—Limitations on penalties, IC 36-1-3-8(9), 36-1-3-8(10); enforcement of ordinances, IC 36-1-6-1 et seq.

Chapter 2

ADMINISTRATION

Article I. In General

Secs. 2-1—2-18. Reserved.

Article II. Town Council

Secs. 2-19—2-39. Reserved.

Article III. Officers and Employees

Secs. 2-40—2-66. Reserved.

Article IV. Boards, Commissions, Committees, Departments and Authorities

Division 1. Generally

Secs. 2-67—2-90. Reserved.

Division 2. Department of Parks and Recreation

Sec. 2-91. Established.
Secs. 2-92—2-110. Reserved.

Division 3. Police Department Advisory Board

Sec. 2-111. Establishment.
Sec. 2-112. Duties.
Sec. 2-113. Appointment.
Sec. 2-114. Compensation.
Secs. 2-115—2-141. Reserved.

Article V. Finance

Division 1. Generally

Sec. 2-142. Conditions constituting public nuisances.
Sec. 2-143. Violations; issuance of citations.
Sec. 2-144. Notice prior to abatement by town.
Sec. 2-145. Failure to comply with notice to abate.
Sec. 2-146. Abatement by the town.
Sec. 2-147. Appeals.
Sec. 2-148. Storage of building materials.
Sec. 2-149. Appropriation of funds.
Secs. 2-150—2-166. Reserved.

TRAIL CREEK CODE

Division 2. Specific Funds

- Sec. 2-167. Establishment.
- Sec. 2-168. Establishment of fund.
- Sec. 2-169. Cumulative capital improvement fund.
- Sec. 2-170. Cumulative capital development fund.

ARTICLE I. IN GENERAL

Secs. 2-1—2-18. Reserved.

ARTICLE II. TOWN COUNCIL*

Secs. 2-19—2-39. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES†

Secs. 2-40—2-66. Reserved.

**ARTICLE IV. BOARDS, COMMISSIONS, COMMITTEES, DEPARTMENTS AND
AUTHORITIES**

DIVISION 1. GENERALLY

Secs. 2-67—2-90. Reserved.

DIVISION 2. DEPARTMENT OF PARKS AND RECREATION

Sec. 2-91. Established.

A department of parks and recreation is hereby established under the provisions of IC 36-1-3 (IC 36-10-3-1 et seq.).

Secs. 2-92—2-110. Reserved.

DIVISION 3. POLICE DEPARTMENT ADVISORY BOARD

Sec. 2-111. Establishment.

A three-member police department advisory board is hereby established to act in advisory capacity to the town council and to the town marshal.
(Code 1992, § 13.01)

Sec. 2-112. Duties.

The duties of the police department advisory board for the town shall be as follows:

- (1) To advise and make recommendations to the town council in all matters concerning police protection or law enforcement for the town.

***State law reference**—Town council, IC 36-5-2-1 et seq.

†**State law reference**—Compensation for officers and employees, IC 36-5-3-2.

- (2) To screen and make recommendations of any new applications for hire for the police department to the town council.
- (3) To receive complaints from the residents of the town concerning the police department and to make recommendations thereon for corrective action to the town council.
- (4) To investigate all complaints concerning malfeasance of town police officers with the assistance of the internal affairs officer and to make recommendations thereon concerning disciplinary actions to the town council and the town marshal.
- (5) To establish rules and regulations for the government of the advisory board and the town police department.
- (6) To review police activity reports, training and education programs for the town police department.
- (7) To help prepare, review and make recommendations to the town council regarding the budget of the police department.
- (8) To hold a meeting each quarter and such special meetings throughout the year as may be deemed necessary by the town council.

(Code 1992, § 13.02)

Sec. 2-113. Appointment.

- (a) The police department advisory board shall be appointed by the town council as follows:
 - (1) Two of the three members of said police department advisory board shall be appointed by the town council.
 - (2) One of the three members of said police department advisory board shall be appointed by the marshal of the town.
- (b) Members of said board shall be appointed for a term of four years.

(Code 1992, § 13.03)

Sec. 2-114. Compensation.

The members of the police department advisory board shall serve on said board without compensation.

(Code 1992, § 13.04)

Secs. 2-115—2-141. Reserved.

ARTICLE V. FINANCE*

DIVISION 1. GENERALLY

Sec. 2-142. Conditions constituting public nuisances.

(a) In addition to what is declared in this article and Code to be a public nuisance, those offenses which are known to the common law and the statutes of the state as public nuisances may, when found to exist within the town limits, be treated as such and be preceded against as provided in this article and Code, or in accordance with any other provisions of law. Wherever the term "nuisance" is used in this article it refers to a public nuisance.

*State law reference—Town budgets, IC 36-5-3-1 et seq.

(b) No owner, occupant, tenant or any other person having a substantial interest in any real or personal property within the town, or any agent thereof, shall permit or allow to remain on or within such property or upon public ways abutting such real property any materials, trash, garbage, debris or any other matter which is detrimental to public health, comfort, safety or to the aesthetic well-being of the community.

(c) The following conditions shall be considered to constitute public nuisances for the purpose of this section:

- (1) Litter.
- (2) Fallen tree stumps, dead trees, cut brush, and fallen or cut limbs.
- (3) Boxes, appliances, household items and tires.
- (4) Demolition remains.
- (5) Open excavations uncovered or improperly covered holes, whether lined or unlined, and dirt piles on any open or unfenced real property within the town.
- (6) Accumulated garbage and trash.
- (7) Automobile parts, disassembled automobiles, automobiles without engines, plumbing and piping material and parts, scrap metal, unseaworthy or dilapidated boats, dilapidated, deteriorated, or nonoperable jet skies, snowmobiles, motorcycles, bicycles, trailers, or mopeds, or abandoned and junked vehicles in violation of chapter 22, article IV.
- (8) Structures defaced with paint or wording.
- (9) Any portion of real property or any personal property which emits an unwholesome odor.
- (10) Any wastewater, filth, offal, garbage, rubbish, animal waste or human excrement which is deposited, allowed or caused to be upon any public or private property.
- (11) Any water or any other substance which is caused or permitted to flow onto or to be deposited upon any public property or public way except natural surface water drainage.
- (12) Any dead animal or animal parts.
- (13) Erection of a damn or any other obstruction by a private party which prevents the natural flow of water and causes it to collect and/or pool upon any public property.
- (14) Any real or personal property, which is infected with contagious disease or likely to cause an immediate health hazard.
- (15) The placing or accumulating on or within any real or personal property or the permitting of the same of any matter which attracts or may attract rodents, insects, domestic or wild animals in such manner as to create a health hazard or unsanitary or dangerous condition.

- (16) Any real or personal property used as a place of residence or habitation or for sleeping that is maintained in such a way to be dangerous or detrimental to life or health due to lack of or defects in water, drainage, heat, electricity, plumbing, ventilation or garbage and trash removal.
 - (17) The storage of any explosive, combustible or other material which creates a safety or health hazard.
 - (18) Trees, shrubbery, weeds, snow or other matter obstructing public ways or causing visual barriers which create vehicular traffic or pedestrian safety hazards.
 - (19) Trash or garbage containers left upon the sidewalk, the area between a street and a sidewalk, or the front or side yard, except as permitted by town code for trash and garbage collection purposes.
 - (20) Building materials stored on any lot in violation of any section of this article.
 - (21) Any furniture not originally designed or manufactured solely for outdoor use, or any furniture which was originally designed or manufactured for outdoor use which is now dilapidated or deteriorated.
- (Ord. No. 181, § 34.5, 9-20-2005)

Sec. 2-143. Violations; issuance of citations.

When a public nuisance is found to exist in violation of this article, after all persons known to have a substantial interest in the property have been given reasonable opportunity to bring the property into compliance and have not done so, the town council or its designee may request that a town marshal or building inspector issue a town ordinance violation citation to the record owner of the property or to the person shown to have right of exclusive possession of the property. Said citation shall impose a fine in conformance with this division. Each subsequent day a violation continues shall be considered a separate violation for which a citation may be issued.

(Ord. No. 181, § 34.6, 9-20-2005)

Sec. 2-144. Notice prior to abatement by town.

The building inspector or town marshal or their designee shall give 72 hours' notice in writing to remove from any real or personal property within the town any object or condition which is deemed to be a public nuisance under section 2-142. Such notice shall be given to the owner of record or his agent, and to any tenant or occupant of the property upon which the nuisance exists. Notice to the record owner may be mailed to his last known address. Notice to any tenants or occupant may be given by posting the same in a prominent place upon the premises where the nuisance is located.

(Ord. No. 181, § 34.7, 9-20-2005)

Sec. 2-145. Failure to comply with notice to abate.

Failure, neglect or refusal by the record owner or his agent, or the tenant or occupant, to comply with the terms of the notice given pursuant to section 2-144 shall constitute a violation of this article. Each day's violation, neglect or refusal to abate the nuisance following notice pursuant to section 2-144 shall constitute a separate offense under this article.

(Ord. No. 181, § 34.8, 9-20-2005)

Sec. 2-146. Abatement by the town.

(a) Upon the failure, neglect or refusal of any party to whom notice to abate a nuisance has been given under section 2-144, or whenever a nuisance exists which creates a health or safety hazard requiring immediate abatement in order to protect public health or safety, the town council or its designee may abate the nuisance, keeping accurate accounts of all costs, and bill them to the record owner or to the person shown to have the right of exclusive possession of the property. Appropriate legal action may be taken to collect such costs if they remain unpaid for 45 days after the billing date. Unpaid costs may be made a lien against the property.

(b) In addition to the provisions of subsection (a) of this section, the town may collect the expenses of nuisance abatement by a civil action in which the town shall be entitled to such expenses, together with the attorney's fees, court costs and other collection costs.

(Ord. No. 181, § 34.9, 9-20-2005)

State law reference—Authority to bring property into compliance with ordinances, IC 36-1-6-2.

Sec. 2-147. Appeals.

(a) *Generally.* Any appeal of either the removal notice or the bill must be made in writing within ten days of the date of the document being appealed. The appeal must be in writing and must be filed with the town clerk-treasurer. If a written appeal is filed with the town clerk-treasurer, the matter shall be scheduled for hearing before the town council and a hearing shall be held pursuant to IC 36-7-9. The hearing authority's order regarding this appeal is considered final from the date of its issuance and is subject to judicial review pursuant to the provisions of IC 36-7-9-8.

(b) *Failure to pay bill.* If the owner fails to pay a bill issued pursuant to this section within the time specified in the bill, or within the time specified in the order if an appeal of the bill is made, the town council shall certify to the auditor of the county the amount of the bill, plus any additional administrative costs incurred in the certification. The auditor of the county shall then place the entire amount certified on the tax duplicate for the property affected, and the total amount, including any accrued interest, shall, upon collection, be disbursed to the general fund of the town.

(Ord. No. 181, § 34.10, 9-20-2005)

Sec. 2-148. Storage of building materials.

Building materials and equipment may be placed or stored on lots zoned as residential or commercial only during the process of building on said lot or for a period of no longer than one month prior to a commencement of building and no longer than ten days after the completion of building on said lot.

(Ord. No. 181, § 34.11, 9-20-2005)

Sec. 2-149. Appropriation of funds.

(a) The town council is authorized to budget and appropriate funds from the general fund or from other funds to provide membership for the town and the elected and appointed officials and members of the municipality's boards, council, departments or agencies 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.

(b) The town council is further authorized to budget and appropriate funds to pay the expenses of duly authorized representatives to attend the meetings and functions of organizations to which the municipality belongs.

(Code 1992, § 45.01)

Secs. 2-150—2-166. Reserved.

DIVISION 2. SPECIFIC FUNDS

Sec. 2-167. Establishment.

There is hereby established in the town a law enforcement continuing education fund pursuant to IC 5-2-8-1—5-2-8-6.

(Code 1992, § 46.01)

Sec. 2-168. Establishment of fund.

There is hereby established in the town a special nonreverting operating fund for use by the parks and recreation department of the town pursuant to IC 36-10-3-20.

(Code 1992, § 61.01)

Sec. 2-169. Cumulative capital improvement fund.

In accordance with the requirements of IC 36-9-16-4, there is hereby created a special fund to be known as the cumulative capital improvement fund.

Sec. 2-170. Cumulative capital development fund.

(a) *Established.* There is hereby established the town cumulative capital development fund.

(b) *Tax levy imposed.* An ad valorem property tax levy will be imposed and the revenues from the levy will be retained in the town cumulative capital development fund.

(c) *Accumulative funds use.* The funds accumulated in the town cumulative capital development fund will be used for cumulative drainage fund (IC 36-9-27-100), general improvement fund (IC 36-9-16-5), cumulative building fund (IC 36-9-16-2), cumulative capital improvement fund (IC 36-9-16-3), cumulative street fund (IC 36-9-16.5) and cumulative building fund for sewers (IC 36-9-26).

(Ord. No. 140, §§ 1, 2, 4, 9-18-1992)

State law reference—Cumulative capital development fund, IC 36-9-15.5-1 et seq.

Chapters 3—5

RESERVED

Chapter 6

ANIMALS*

Article I. In General

- Sec. 6-1. Definitions.
- Sec. 6-2. Penalty.
- Sec. 6-3. General animal care requirements.
- Sec. 6-4. Sale of animals as novelties or use as prize prohibited; exceptions.
- Sec. 6-5. Motor vehicle accidents involving animals.
- Sec. 6-6. Animals in motor vehicles.
- Sec. 6-7. Poisoning of animals.
- Sec. 6-8. Trapping of animals restricted.
- Sec. 6-9. Maximum number of dogs or cats.
- Sec. 6-10. Acreage requirements for certain domestic animals; prohibition of swine.
- Sec. 6-11. Owners or agents responsible for removing animal wastes and dead animals.
- Sec. 6-12. Animal bites.
- Sec. 6-13. Vaccination of dogs and cats required.
- Sec. 6-14. Interference with humane officer prohibited.
- Sec. 6-15. Exclusion of service dogs prohibited.
- Sec. 6-16. Confinement by other than town officials; notice required.
- Sec. 6-17. Breaking into animal shelter prohibited.
- Sec. 6-18. Dangerous and poisonous animals prohibited.
- Sec. 6-19. Impoundment procedures.
- Sec. 6-20. Protected animals.
- Sec. 6-21. Keeping certain animals prohibited.
- Sec. 6-22. Seizure of certain animals.
- Sec. 6-23. Serious injury or death.
- Secs. 6-24—6-49. Reserved.

Article II. Licenses and Permits

- Sec. 6-50. Performing animal license.
- Sec. 6-51. Pet registration.
- Sec. 6-52. Pet shop permit.
- Sec. 6-53. Breeder permit.
- Sec. 6-54. Dangerous animal/attack dog permit.
- Sec. 6-55. Permit exemptions.
- Sec. 6-56. Issuance of permits; additional requirements.
- Sec. 6-57. Registration/permit revocation.
- Sec. 6-58. Inspection.

***State law references**—Municipal home rule, IC 36-1-3-1 et seq.; specific grant of authority relative to animals, IC 36-8-2-6.

ARTICLE I. IN GENERAL**Sec. 6-1. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandon means to deposit, leave, drop-off or otherwise dispose of any live animal on public or private property without providing the requisite care prescribed under section 6-3.

A.D.B.A. means the American Dog Breeders Association.

Agent means any person 18 years or older who is authorized by the animal's owner to act on such owner's behalf with respect to his animal.

A.K.C. means the American Kennel Club.

Altered animal means any animal that has been operated on to prevent it from procreating.

Animal means any live, nonhuman vertebrate or invertebrate creature that is domestic, wild or exotic.

Animal control agency means any governmental or private entity charged with or contracted with and given authority for the enforcement of the provisions of this chapter for and on behalf of the town.

Animal control officer means a person authorized to carry out the provisions of this chapter.

Animal performances or *animal exhibitions* means any spectacle, performance, display, act, exhibition or event in which an animal or animals are used.

Animal shelter means a facility or vehicle operated by a governmental or private entity for the temporary care, confinement, detention and humane treatment of animals.

At large means an animal that is:

- (1) Not on a leash and is off the property of its owner, its owner's agent or its keeper;
- (2) On a leash that does not adequately confine the animal to the property of its owner, its owner's agent or its keeper; or
- (3) On a leash that is not otherwise under the immediate control of a person physically capable of restraining the animal.

Auction means any place or facility where animals are regularly bought, sold or traded by means of auction sale, except for those facilities otherwise defined in this chapter or state law.

Bite means to seize, tear, wound or cut with the teeth resulting in a break in the skin.

Breeder means any person or for-profit business or corporation which harbors or keeps dogs or cats, and allows or causes those animals to procreate for the purpose of selling said offspring.

Circus means any performances, which are given for a fee, by traveling companies on vacant lots, using tents or some other kind of temporary enclosure for sheltering the public. Circuses are also subject to the licensing provisions set forth in the ordinances and state statute.

Controlled animal means any animal not defined as a domestic animal in this chapter, with the exception of small, nonpoisonous aquatic or amphibious animals, nonpoisonous reptilian animals, small cage birds and psittacines, and the possession of which requires a valid town-controlled animal permit. Such controlled animals shall include, but not be limited to, the following:

- (1) All poisonous animals, including rear-fang snakes;
- (2) Apes: chimpanzees (*Pan*), gibbons (*Hylobates*), gorillas (*Gorilla*), orangutans (*Pongo*) and siamangs (*Symphalangus*);
- (3) Baboons (*Papoe*, *Mandrillus*);
- (4) Bears (*Ursidae*);
- (5) Bison (*Bison*);
- (6) Cheetahs (*Acinonyx jubatus*);
- (7) Crocodilians (*Crocodylia*);
- (8) Constrictor snakes, such as boa, python and anaconda;
- (9) Coyotes (*Canis latrans*);
- (10) Deer (*Cervidae*), including all members of the deer family such as white-tailed deer, elk, antelope and moose;
- (11) Elephants (*Elephas* and *Loxodonta*);
- (12) Game cocks and other fighting birds;
- (13) Hippopotami (*Hippopotamidae*);
- (14) Hyenas (*Hyaenidae*);
- (15) Jaguars (*Panthera onca*);
- (16) Leopards (*Panthera pardus*);
- (17) Lions (*Panthera leo*);
- (18) Lynxes (*Lynx*);
- (19) Monkeys;
- (20) Ostriches (*Struthio*);
- (21) Piranha fish (*Characidae*);
- (22) Pumas (*Felis concolor*), also known as cougars, mountain lions, and panthers;
- (23) Rhinoceroses (*Rhinocero tidae*);
- (24) Sharks (class *Chondrichthyes*);

- (25) Snow leopards (*Panthera uncia*);
- (26) Spiders and insects which are poisonous;
- (27) Tigers (*Panthera tigris*); or
- (28) Wolves (*Canis lupus*).

Criminal trespass means:

- (1) Not having a contractual interest in the property, knowingly or intentionally entering the real property of another person after having been denied entry by the other person or his agent;
- (2) Not having a contractual interest in the property, knowingly or intentionally refusing to leave the real property of another person after having been asked to leave by the other person or his agent;
- (3) Accompanying another person in a vehicle, with knowledge that the other person knowingly or intentionally is exerting unauthorized control over the other vehicle;
- (4) Knowingly or intentionally interfering with the possession or use of the property of another person without his consent; or
- (5) Not having a contractual interest in the property, knowingly or intentionally entering the dwelling of another person without his consent.

For purposes of this chapter, a person has been denied entry if the denial was by means of personal communication, oral or written, or by putting or exhibiting a notice at the main entrance in a manner that is either prescribed by law or likely to come to the attention of the public.

Dangerous animal.

- (1) The term "dangerous animal" means any animal which:
 - a. Has attacked or bitten another animal while off the property of its owner, its owner's agent or its keeper;
 - b. Has attacked, attempted to attack, bitten or seriously injured any human being, without provocation, whether on or off the property of its owner, its owner's agent or its keeper;
 - c. Has a history, documented with a public agency or its designee, of attacking or biting any humans or domestic animals;
 - d. Has a known propensity, tendency or disposition to attack, to cause injury or to otherwise threaten or endanger the safety of humans or domestic animals;
 - e. Has been found to be at large and has been documented to be at large by an animal control officer on three or more separate occasions in a 12-month period.

- (2) No animal shall be considered a dangerous animal if the animal causes injury or damage to a person while that person is:
 - a. Committing or attempting to commit a criminal offense against the owner or agent of the owner;
 - b. Committing a criminal trespass upon the premises occupied by the owner, agent or keeper of the animal; or
 - c. Teasing, tormenting, abusing or assaulting the animal.
- (3) No K-9 patrol dogs or police dogs owned or kept by a law enforcement agency shall be considered a dangerous animal when used in the line of duty or for law enforcement purposes.

Designee means a person, organization or entity selected appointed or nominated for a particular purpose or duty.

Domestic animal means any animal that is a member of one of the following species:

- (1) Dog (*Canis familiaris*);
- (2) Cat (*Felis cattus* or *Felis domesticus*);
- (3) Cattle (*Bos domesticus*, *Bos taurus* or *Bos indicus*);
- (4) Horse (*Equus caballus*);
- (5) Donkey (*Equus asinus*);
- (6) Sheep (*Ovis aries*);
- (7) Goat (*Capra hircus*);
- (8) Rabbit (*Oryctolagus cuniculus*);
- (9) Mouse (*Mus musculus*);
- (10) Rat (*Rattus*);
- (11) Guinea pig (*Cavis procellus*);
- (12) Hamster (*Mesocricetus auratus*);
- (13) Gerbil (*Gerbillus*);
- (14) Cow or ox (*Bovine*);
- (15) Pigeon, homing or racing;
- (16) Chicken, turkey, goose, or duck;
- (17) Swine;
- (18) Chinchellas;
- (19) Mink;
- (20) Ferrets;

- (21) Bisons;
- (22) Llamas;
- (23) All other animals defined in IC 15-2.1-2-15.

Exotic animal means any animal the normal native habitat of which is not indigenous to the continental United States, excluding Alaska and Hawaii. This definition does not include fish, furbearing animals commercially bred for the furrier trade, and birds protected under federal laws and regulations.

Exposed to rabies means any human or nonhuman warm-blooded mammal that has been bitten or exposed to any other animal known or reasonably suspected to have been infected with rabies.

Fight means a conflict between two or more animals that is intentionally organized for such purpose.

Fowl means any kind of wild or domestic bird, excluding homing or racing pigeons, canaries, parrots or similar types of birds normally kept in cages.

Harboring means the actions of any person that permit an animal habitually to remain, to be lodged or to be fed within one's home, store, enclosure, yard or place of business or any premises on which such person resides or controls. An animal shall be presumed harbored if it is fed or sheltered for three consecutive days or more.

Humane officer means any person or agency designated by the state or the town as a person who is qualified to perform the duties required by the law of the town and state regarding animals.

K-9 patrol dogs or police dogs means a professionally trained dog used by law enforcement officers for law enforcement purposes and activities.

Keeper means any person, other than the owner, who has actual or constructive possession of an animal for the purpose of managing, controlling or caring for such animal. A person shall be construed as a keeper of an animal even if he does not have the owner's permission.

Kennel means any premises wherein any person engages in the business of boarding, breeding, buying, letting or keeping more than three dogs for the purpose of hire, training for a fee, or selling.

Leash means a cord, chain, rope, strap or other such physical restraint.

Microchip means a tiny computer chip, implanted underneath the skin of an animal that contains identification information relating to that animal.

Muzzle means a device constructed of strong, soft material or metal, designed to fasten over the mouth of an animal, without interfering with its vision or respiration or causing injury to the animal, to prevent the animal from biting any person or other animal.

Nip means to pinch or squeeze with the teeth without breaking the skin or damaging any tissue.

Not-for-profit means a business, association or entity established or organized as a not-for-profit corporation under state law or recognized as not-for-profit by the Internal Revenue Service or the state department of revenue. For-profit means all other types of businesses, associations or entities.

Off property means beyond the legal boundaries of the real property on which the owner, agent or keeper resides.

Owner means any person 18 years of age or older having temporary or permanent custody of, sheltering or having charge of, harboring, exercising control over, or having property rights to any animal covered by this chapter.

Performing animal exhibition means any spectacle, display, act or exhibit or event other than a circus, in which performing animals are used.

Pet means any animal kept for pleasure rather than utility.

Pet shop means any person, group of persons, partnership or corporation, whether operated separately or in connection with another business enterprise, which sells or barter animals.

Provoked means to deliberately arouse, incite or excite.

Public nuisance means any animal that endangers the life or health of persons or other animals, or substantially interferes with the rights of citizens, other than their owners, to enjoyment of life or property. The term "public nuisance animal" shall include, but not be limited to:

- (1) Any animal found running at large;
- (2) Any animal, whether or not on the property of its owner, that without provocation molests, attacks or otherwise interferes with the freedom of movement of persons in a public right-of-way;
- (3) Any animal that chases or interferes with motor vehicles in a public right-of-way;
- (4) Any animal that attacks other animals;
- (5) Any animal that damages, soils, defiles or defecates on any property other than that of its owner;
- (6) Any animal that makes disturbing noises, including, but not limited to, continued and repeated howling, barking, whining or other utterances causing unreasonable annoyance, disturbance or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored;
- (7) Any animal that causes fouling of the air by noxious or offensive odors and thereby creates unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored;
- (8) Any animal in heat that is not confined or restrained so as to prevent attraction or contact with other animals;

- (9) Any animal in any section of a public park, playground, schoolyard or other recreational area that is found running at large;
- (10) Any animal that causes unsanitary conditions in enclosures or surroundings where the animal is kept or harbored;
- (11) Any animal that trespasses on the private property of persons other than the owner of the animal; or
- (12) Any animal determined to be a dangerous animal.

Rabies vaccination means an injection, licensed by the USDA and approved by the state board of health, given to a dog, cat or other animal by a licensed veterinarian to prevent the spread of rabies.

Restraint means the securing of an animal by leash or lead, or confining it within the real property limits of its owner or agent.

Riding school or *stable* means any place that provides, for a fee, boarding and/or riding instructions for a horse, pony, donkey, mule or burro.

Rodeo means a performance featuring bronco riding, steer wrestling, calf roping, greased pig contest or bull riding.

Serious injury or *death* means any bodily injury which is caused by an animal, and is medically documented, that:

- (1) Creates a substantial risk of death;
- (2) Causes serious permanent disfigurement, unconsciousness or extreme pain; or
- (3) Results in a permanent or protracted loss or impairment of a bodily member or organ.

This definition shall not include any nip from an animal.

Service dogs means any dog that is trained to assist a handicapped person.

Stray means any animal that is not under restraint and/or upon reasonable inquiry by an animal control officer does not appear to have an owner.

U.K.C. means the United Kennel Club.

Unconfined dangerous animal means a dangerous animal which is not securely confined indoors, not under restraint, or not confined in a securely enclosed and locked pen or structure upon the premises of the owner, agent or keeper of such animal.

Unprovoked means without incitement or stimulation.

USDA means the United States Department of Agriculture.

Veterinarian means any person licensed and accredited to practice veterinary medicine in the state.

Wild animal means any animal not a domestic or exotic animal, with the exception of small, nonpoisonous aquatic or amphibious animals and small cage birds, which are normally found in the wild state.

(Ord. No. 180, § 35.01, 9-20-2005)

Sec. 6-2. Penalty.

(a) *Warning notices for pet registration and permits.*

- (1) Persons who fail to have their dogs or cats vaccinated and registered pursuant to section 6-51, or who fail to comply with the permit requirements of sections 6-50, 6-51, 6-52 and 6-53, may be served with a warning notice requesting immediate compliance. This notice shall be served by the animal control agency. Only one warning notice may be given per year to an individual who has failed to have a dog or cat vaccinated or properly registered. All other violations of this chapter are subject to the citations and fines stated herein.
- (2) The warning notice shall contain the name and address of the violator; the section violated; the nature of the violation; the date, time and location of the violation; the name of the officer issuing the warning notice and the telephone number of the officer to contact for information.

(b) *Citations and/or hearings before the town council; fines payable through the ordinance violations bureau.*

- (1) Any person served with a warning notice for failure to have a dog or cat vaccinated or registered and who fails to comply within ten days, and any person who violates any other provision of this chapter, shall be issued a citation. Citations shall contain the name and address of the violator; the ordinance section violated; the date, time and nature of the violation; the location of the violation; and the name of the person issuing the citation.
- (2) In addition to having a citation issued, the town may require a person who has violated a provision of this chapter to appear before the town council with proper notice of the same being issued to the violator, unless an appeal hearing is scheduled before the town council officer as further addressed in section 6-54.

(c) *Fines.*

- (1) Any person who violates any of the following sections shall be subject to a fine of \$50.00 per violation, which shall be payable through the ordinance violations bureau:
 - a. Section 6-3, General animal care requirements;
 - b. Section 6-4, Sale of baby rabbits, chicks or fowl prohibited; exceptions. See section 6-4(b);
 - c. Section 6-5, Animals in motor vehicles;
 - d. Section 6-7, Poisoning of animals;
 - e. Section 6-8, Trapping of animals restricted;

- f. Section 6-9, Maximum number of dogs or cats per household;
 - g. Section 6-11, Owners or agents responsible for removing animals wastes;
 - h. Section 6-13, Vaccination of dogs and cats required;
 - i. Section 6-14, Interference with animal control officer prohibited.
- (2) Any person who violates any of the following sections shall be subject to a fine of \$100.00 per violation:
- a. Section 6-50, Performing animal exhibitions;
 - b. Section 6-52, Pet shop permit;
 - c. Section 6-53, Breeding permit.
- (3) Any person who violates section 6-54, dangerous animal/attack dog permit, shall be subject to a fine of \$100.00 for each violation.
- (4) Any person who violates the following section shall be fined not more than \$2,500.00 per violation: section 6-3(5), Specific regulations; fighting.
- (5) Any person who violates any of the following sections shall be fined not less than \$200.00 for the first offense and not less than \$500.00 for the second offense:
- a. Section 6-20, Protected animals;
 - b. Section 6-21, Keeping certain animals prohibited;
 - c. Section 6-22, Seizure of certain animals.
- (6) Any person who violates any other provision of this chapter, unless otherwise specified, shall be issued fines of \$50.00 for the first offense and \$1,000.00 for each offense thereafter.
- (Ord. No. 180, § 35.99, 9-20-2005)

Sec. 6-3. General animal care requirements.

Every owner or his agent residing within the corporate limits of the town shall see that each of his animals:

- (1) Is kept in a clean, sanitary and healthy manner and is not confined so as to be forced to stand, sit or lie in its own excrement;
- (2) Has sufficient and wholesome food and water which is proper and nutritional for that species of animal;
- (3) Lives in a structure meeting minimum veterinary standards which will protect that animal from all elements of the weather and will allow that animal to stand, sit and lie down without restriction, and which is kept in a sanitary manner;
- (4) If ill, diseased or injured, receives proper veterinary care as necessary to promote the good health of the animal and prevent the transmittal of a disease to other animals or human beings;

- (5) Is not beaten, ill-treated, overloaded, overworked, tormented or otherwise abused or neglected, or involved in any dogfight, cockfight, bullfight or other combat between animals or between animals and humans;
 - (6) Is not physically altered in any manner by anyone other than a veterinarian, except for tattooing for identification purposes and grooming;
 - (7) Is not abandoned, neglected or tortured;
 - (8) Does not become a public nuisance;
 - (9) Does not become a dangerous animal;
 - (10) In the case of a dog or cat over the age of three months, is properly vaccinated against rabies by a licensed veterinarian annually, or upon such frequency as may be specified by state law, and such animals shall be licensed as required by this chapter and state law;
 - (11) Is properly restrained and not at large;
 - (12) During mating season, is kept in a secure enclosure in such a manner that it cannot come into contact with another animal of the same species, except for planned breeding.
- (Ord. No. 180, § 35.02, 9-20-2005)

Sec. 6-4. Sale of animals as novelties or use as prize prohibited; exceptions.

(a) No person shall display, sell, offer for sale, barter or give away any animal, reptile, fish or bird as a novelty or as an advertising device.

(b) No rabbit, chick, gosling, duckling, turkey or other fowl may be dyed or otherwise colored artificially; nor shall any dyed or artificially colored rabbit, chick, gosling, duckling, turkey or other fowl be sold, offered for sale, displayed, used as barter or given away.

(c) This section shall not be construed to prohibit the sale or display of natural chicks, ducklings, goslings, turkeys or other domestic fowl in proper brooder facilities by hatcheries or stores engaged in the business of selling them to be raised for commercial purposes, nor shall this section prohibit a pet shop holding a valid permit under this chapter, or a legitimate humane society or animal shelter from humanely caring for, adopting out or selling animals as pets.

(Ord. No. 180, § 35.03, 9-20-2005)

Sec. 6-5. Motor vehicle accidents involving animals.

Any person operating a motor vehicle who knowingly hits, runs over, or causes injury to an animal shall immediately notify the police department. Such notice shall include the motorist's name, address, phone number, type of animal hit, and the location of the animal.

(Ord. No. 180, § 35.04, 9-20-2005)

Sec. 6-6. Animals in motor vehicles.

No animal shall be left in a motor vehicle when the conditions in that vehicle would constitute a health hazard to that animal, or when the weather would constitute a health hazard to such animal confined in said motor vehicle; nor shall any person transport any animal in an unenclosed truck bed or open section of any vehicle unless the animal is enclosed in a cage which is securely fastened to the vehicle.

(Ord. No. 180, § 35.05, 9-20-2005)

Sec. 6-7. Poisoning of animals.

(a) No person shall deposit, dispose or place any poisonous substance on any public or private property within the corporate limits of the town, if a domestic animal is reasonably likely to consume such substance.

(b) A person shall not be liable under subsection (a) of this section for leaving common rat or mouse poisons or insecticides, in any form, on his property if the person exercises reasonable care in restricting a domestic animal's access to such poisons so that only the targeted rodents or insects are exposed to said poisons.

(Ord. No. 180, § 35.06, 9-20-2005)

Sec. 6-8. Trapping of animals restricted.

No person shall trap animals or fowl within the town limits, unless such traps are approved by an animal care facility and used for the control of nuisance animals. This prohibition shall not apply to any trap specifically designed to kill rats, mice, gophers or moles unless the property owner is unaware of their placement. Persons who believe that this section is being violated shall file their grievance with the animal control officer for review.

(Ord. No. 180, § 35.07, 9-20-2005)

Sec. 6-9. Maximum number of dogs or cats.

(a) No person shall keep more than a total of three dogs or cats over the age of six months per household in any residential area zone. These restrictions mean a total of three animals. For example, two dogs and one cat, or two cats and one dog, but in no event shall the total number exceed three of such animals per household.

(b) This restriction shall not apply to property which is at least one-third of an acre of land (14,520 square feet); however, any person owning more than three of such animals must comply with subsection (c) of this section.

(c) Persons desiring to have more than three animals who meet the regulation set forth in subsection (b) of this section must have a minimum of 1,000 additional square feet for each additional animal.

(Ord. No. 180, § 35.08, 9-20-2005)

Sec. 6-10. Acreage requirements for certain domestic animals; prohibition of swine.

(a) Any person desiring to keep any of the following domestic animals or fowl in the town must have a minimum of five contiguous acres of land in the town, upon which the animals would be kept and which acreage must be enclosed by a fence to confine such animals:

- (1) Cows, oxen, cattle, calves or other livestock;
- (2) Donkeys, asses, burros or mules;
- (3) Sheep;
- (4) Goats, except pygmy goats (see subsection (e) of this section);
- (5) Chickens, roosters, geese, turkeys, ducks or other fowl, except racing or homing pigeons;
- (6) Bees;
- (7) Horses;
- (8) Bison;
- (9) Llamas; or
- (10) Swine, except pot-belly pigs (see subsection (e) of this section).

The maximum number of such animals, which maybe maintained on such property, shall be determined in light of current animal husbandry and veterinary standards.

(b) In no event shall the shelter and feeding station for any of the animals or fowl designated in subsection (a) of this section be closer than 50 feet from the adjoining property line.

- (1) Nothing in this section shall be deemed or construed to prohibit the keeping of bees in a hive, stand or box located or kept within a zoological park, school or university building for the purpose of study or observation, as long as the public safety is ensured.
- (2) Bees must be kept in accordance with the following provisions:
 - a. If bee colonies are kept within 50 feet of any exterior boundary of the property on which the hive, stand or box is located, a barrier shall be erected that will prevent bees from flying through it.
 - b. Fresh, clean watering facilities for bees shall be provided on the premises.
 - c. The bees and equipment shall be kept in accordance with the provisions of state statutes.

(c) Any person desiring to raise rabbits or pets or racing or homing pigeons within the town must keep such animals and birds in safe and sanitary conditions so that a public nuisance as defined herein is not created.

(d) No person may keep within the town, as presently or hereinafter established, any swine, pigpens or hog sties. Possession of said items constitutes a public nuisance.

(e) Pot-bellied pigs/pygmy goats shall be allowed only on a lot with a minimum of two acres of land for each individual animal and all other sections of this chapter shall be added hereto. (Ord. No. 180, § 35.09, 9-20-2005)

Sec. 6-11. Owners or agents responsible for removing animal wastes and dead animals.

(a) Any owner or his agent taking the owner's dog or cat outside of the owner's real property limits must immediately remove any excrement deposited by the animal on any public or private property, except in the case of a guide dog for a blind person or service dog for a deaf or physically disabled person.

(b) The owner of any dead animal shall remove and properly dispose of the animal within 24 hours after its death. The real property owner is responsible for removal of any strange animal carcass on his real property. (Ord. No. 180, § 35.10, 9-20-2005)

Sec. 6-12. Animal bites.

(a) If any person is a victim of an animal bite, he shall immediately notify the county health department, town police department or animal control agency of the incident, and provide a description of the animal and identification, if possible, of the owner. When an animal is determined to have bitten a person, the animal shall be confined in quarantine for a period of not less than ten days.

(b) If the animal's owner presents proof of current rabies inoculations, the animal may be left in the charge of the owner under quarantine unless, in the judgment of the humane officer or police officer and based upon considerations of public safety, the humane officer determines it should be removed to an animal shelter or veterinary hospital for the period of observation.

(c) In addition to any other legal obligations prescribed by law, the owner shall pay for all costs incurred in the quarantine and/or impoundment of the animal before such animal will be released. If the owner is unable or unwilling to pay for said costs, the animal may be humanely euthanized, and the owner shall still remain liable to the animal shelter for any costs incurred in said quarantine and/or impoundment.

(d) If the owner of the quarantined animal cannot be determined, or if the owner does not furnish proof of current rabies inoculation, the animal shall be impounded under the authority of the town animal control agency and confined in the town's animal control facility for a period of observation of not fewer than ten days.

(e) Animal control officers shall be empowered to enter onto private property for the purpose of impounding animals which are known to have bitten a person and shall obtain legal process to do so if necessary.

(f) Unless otherwise provided, the town and any of its agents shall comply with the standards set forth in IC 15-2.1-6-1—15-2.1-6-13, entitled rabies. (Ord. No. 180, § 35.11, 9-20-2005)

Sec. 6-13. Vaccination of dogs and cats required.

The owner shall maintain proof of an animal's vaccination so that it can be presented to the town or its agents upon request.

(Ord. No. 180, § 35.12, 9-20-2005)

State law reference—Rabies vaccinations, IC 35-46-3-1.

Sec. 6-14. Interference with humane officer prohibited.

No person shall interfere with or impede a humane officer or any other authorized agent in the performance of his duties as set forth in this chapter.

(Ord. No. 180, § 35.13, 9-20-2005)

Sec. 6-15. Exclusion of service dogs prohibited.

No person owning, operating or maintaining any public place of business to which the general public is invited for any business purpose shall exclude therefrom any dog that has been trained to assist the blind, the hearing impaired or the physically disabled. However, such dog must be in the company of the handicapped person for whom it was trained to assist or in the company of a licensed obedience service trainer.

(Ord. No. 180, § 35.14, 9-20-2005)

Sec. 6-16. Confinement by other than town officials; notice required.

Unless authorized by the owner of an animal, no person shall hold or retain possession of any animal of which he is not the owner for more than 24 hours without first reporting the possession of the animal to a humane officer or an animal control agency or its designee. When reporting possession of an animal, such person shall give his name and address, a description of the animal, a true and complete statement of the circumstances under which he took possession of the animal, and the precise location where the animal is confined.

(Ord. No. 180, § 35.15, 9-20-2005)

Sec. 6-17. Breaking into animal shelter prohibited.

It shall be unlawful for any person to break into any animal shelter where animals are impounded by the town or in any way remove or assist in the removal of any animal from the described property without lawful permission.

(Ord. No. 180, § 35.16, 9-20-2005)

Sec. 6-18. Dangerous and poisonous animals prohibited.

No person shall harbor or possess within the town any poisonous animal, reptile, amphibian, fish or insect, or any animal that poses a threat to the public health and safety. Such animal may be impounded by the animal control agency and disposed of in a manner determined to be in the best interest of the animal and the public.

(Ord. No. 180, § 35.17, 9-20-2005)

Sec. 6-19. Impoundment procedures.

(a) An animal control officer, humane officer or police officer may immediately seize, impound or confine any of the following animals:

- (1) Any dog or cat without a valid license tag;
- (2) Any animal running at large;
- (3) Any animal constituting a public nuisance;
- (4) Any unattended animal that is ill, injured or otherwise in need of care;
- (5) Any unattended animal that is reasonably believed to have been abused or neglected;
- (6) Any animal that is reasonably suspected of having rabies;
- (7) Any animal charged with being dangerous or determined to be dangerous by the animal control agency;
- (8) Any animal that is considered unattended or abandoned, as in situations where the owner is deceased, has been arrested or evicted from his regular place of residence.

(b) If any dangerous, ferocious or vicious animal is found at large and cannot be safely impounded, the animal may be tranquilized, slain or humanely euthanized to prevent harm or undue suffering by a police officer, an animal control officer, or humane officer.

(c) Impounded dogs and cats that are not properly licensed must be kept pursuant to regulations of the county humane society.

(d) The town animal control agency shall have authority to take whatever action is reasonably necessary, including humane euthanization, to deal with a sick or injured animal, for the welfare of the animal and for the safety of humane officers and the public.

(e) Nothing contained herein shall limit the animal shelter's authority to take whatever action is reasonably necessary to provide veterinary care by a licensed veterinarian for a sick or injured animal.

(f) Any animal impounded in an animal control facility, if not reclaimed by its owner as provided for herein, shall thereby become the property of the animal control agency and, if not adopted by the public, shall be humanely euthanized.

(g) An animal's owner shall be liable for any expenses, including veterinary services, incurred by the local humane society, animal care facility animal shelter or any other agency under this chapter.

(Ord. No. 180, § 35.18, 9-20-2005)

Sec. 6-20. Protected animals.

(a) No person shall possess, offer for sale and attempt to buy or own within the town any of the following animals of either thoroughbred or hybrid stock or pedigree:

- (1) All wild cats of the family feline.

- (2) Polar bear (*Thalarctos maritimus*).
- (3) Red wolf (*Canis niger* and hybrids).
- (4) Vicuna (*Vicugna*).
- (5) Alligator.
- (6) Caiman or crocodile of the order of crocodilia.
- (7) Gray or timber wolf (*Canis lupus* and hybrids).
- (8) Sea otter (*Enhydra lutris*).
- (9) Pacific Ridley turtle (*Lepidochelys olivacea*).
- (10) Atlantic green turtle (*Chelonia myns*).
- (11) Mexican Ridley turtle (*Lepidochelys kemp*).

(b) No person shall buy, sell or offer for sale or own a native or foreign species or subspecies of mammal, bird, amphibian or reptile, or the dead body or parts thereof, which appears on the endangered species list designated by the United States Secretary of Interior and published in the Code of Federal Regulations pursuant to the Endangered Species Act of 1969 (P.L. 91-135), as amended.

(c) No person shall import or cause to be imported into the town any part of the plumage, skin or dead body of any species of hawk, owl or eagle. This subsection shall not be construed to forbid or restrict the importation or use of the plumage, skin, body or any part thereof legally collected for use by American Indians for ceremonial purposes or in the preservation of their tribal customs and heritage.

(d) This section shall not be construed to prevent the importation, possession, purchase or sale of any species to any person or organization licensed to present a circus or carnival pursuant to this Code.

(e) A humane officer may seize and impound any animal being offered for sale or owned in violation of this section. Any person violating any of the provisions of this section shall be fined no more than \$200.00 for the first offense and no more than \$500.00 for each subsequent offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(Ord. No. 180, § 35.19, 9-20-2005)

Sec. 6-21. Keeping certain animals prohibited.

(a) No person shall keep, maintain or have in his possession or under his control, within the town, any poisonous reptile or any other dangerous or carnivorous wild animal or reptile, any vicious or dangerous domesticated animal or any other animal or reptile of wild, vicious or dangerous propensities.

(b) No person shall keep, maintain or have in his possession or under his control, within the town, any of the following animals of either thoroughbred or hybrid stock or pedigree:

- (1) All poisonous animals, including rear-fang snakes;
- (2) Apes such as chimpanzees (*Pan*), gibbons (*Hylobates*), gorillas (*Gorilla*), orangutans (*Pongo*), and siamangs (*Symphalangus*);
- (3) Baboons (*Papoi*, *Mandrillus*);
- (4) Bears (*Ursidae*);
- (5) Bison (*Bison*);
- (6) Cheetahs (*Acinonyx jubatus*);
- (7) Crocodilians (*Crocodylia*);
- (8) Constrictor snakes, including, but not limited to, boas, pythons and anacondas;
- (9) Coyotes (*Canis latrans*);
- (10) Deer (*Cervidae*) such as white-tailed deer, elk, antelope and moose;
- (11) Elephants (*Elephas* and *Loxodonta*);
- (12) Game cocks and other fighting birds;
- (13) Hippopotami (*Hippopotamidae*);
- (14) Hyenas (*Hyaenidae*);
- (15) Jaguars (*Panthera onca*);
- (16) Leopards (*Panthera pardus*);
- (17) Lions (*Panthera leo*);
- (18) Lynxes (*Lynx*);
- (19) Monkeys, old world (*cercopithecidae*), new world;
- (20) Ostriches (*Struthio*);
- (21) Piranha fish (*Characidae*);
- (22) Pumas (*Felis concolor*) such as cougars, mountain lions and panthers;
- (23) Rhinoceroses (*Rhinocero tidae*);
- (24) Sharks (class *Chondrichthyes*);
- (25) Snow leopards (*Panthera uncia*);
- (26) Spiders and insects which are poisonous;
- (27) Tigers (*Panthera tigris*);
- (28) Wolves (*Canis lupus* and hybrids);
- (29) Monitor lizard; or

(30) Wild animals.

(c) The provisions of this section shall not apply to institutions of higher learning, zoological parks, circuses or persons harboring animals specifically for the purpose of rehabilitation and release into their natural habitat pursuant to a valid wildlife permit issued by the state or an agency of the United States if:

- (1) Their location conforms to the provision of the town ordinance.
- (2) All animals and animal quarters are kept in a clean and sanitary condition and so maintained as to eliminate offensive odors.
- (3) Animals are confined in such a manner so as to prevent their escape and protect the public from coming in direct contact with them.
- (4) Any person violating any provision of this section shall be fined not less than \$200.00 for the first offense and not more than \$500.00 for each subsequent offense, and a separate offense shall be deemed committed on each day during which or on which a violation occurs or continues.

(Ord. No. 180, § 35.20, 9-20-2005)

Sec. 6-22. Seizure of certain animals.

(a) No person shall keep, harbor, own or permit to be kept on his premises any wild animal (*ferae naturae*). Wild animals shall include, but are not limited to, raccoons, skunks, foxes, squirrels, chipmunks, porcupines, wolves and woodchucks.

(b) Any person who owns, possesses or harbors any wild animal in violation of this chapter may have the animal seized and impounded.

(Ord. No. 180, § 35.21, 9-20-2005)

Sec. 6-23. Serious injury or death.

(a) If an animal kills or causes serious injury, the animal shall be deemed a dangerous animal pursuant to section 6-1, and the animal shall be humanely impounded. The owner shall be responsible for the costs of caring for the animal during the period of impoundment including, but not limited to, costs of boarding and veterinary treatment, if necessary. If the owner institutes an appeal pursuant to section 6-54, and the animal is ultimately determined not to be a dangerous animal, the owner shall not be charged the costs of boarding the animal.

(b) Upon the impoundment of the animal pursuant to this section, the owner shall be given 48 hours to show or apply for a license pursuant to section 6-54 or to appeal the determination that the animal is a dangerous animal pursuant to section 6-1.

(c) If the owner fails to appeal or to show proof of or apply for a license within 48 hours of impoundment, or if the owner waives in writing all ownership interests in the animal, the owner's right to possession, title and custody and care of said animal shall be forfeited and the animal may be humanely euthanized.

(d) If the owner's appeal is denied, the owner shall have 48 hours after the denial to apply for a license pursuant to section 6-54 and 14 days after the denial to actually obtain a dangerous dog permit. The failure to apply within 48 hours of the denial constitutes waiver of ownership rights in the animal.

(e) The owner of an animal which kills or causes serious injury to a person who is found guilty of criminal trespass as heretofore described shall not be subject to the violation provisions set forth herein.

(f) Due to the overriding public health and safety concerns related to any dangerous animals, the provisions of this article are purposely intended to be reasonable regulations, yet may be more restrictive than regulations found in other sections of this chapter.

(g) If a conflict arises between the provisions of this article and other sections of this chapter, the provisions of this article shall prevail due to the public health and safety concerns. (Ord. No. 180, § 35.22, 9-20-2005)

Secs. 6-24—6-49. Reserved.

ARTICLE II. LICENSES AND PERMITS

Sec. 6-50. Performing animal license.

(a) No person shall operate or maintain a performing animal exhibition without first having obtained a license from the animal control agency.

(b) The applicant shall describe the proposed location, the purposes for which it is maintained, and the dates and hours of such performances. The application shall be accompanied by the written approval of the department of code enforcement showing compliance with the local and state regulations governing location of and sanitation at the establishment, the written approval of the building, zoning and public health and safety regulations.

(c) The applicant shall provide proof of insurance executed by a company legally authorized to do business in the state. The liability limits shall not be less than the amounts set forth in IC 34-4-16.5-4.

(d) Each license for any performing animal exhibition shall cost the amount established in section 26-6(1) and shall be valid for no more than five consecutive days.

(e) Licenses for such performing animal exhibitions shall not be transferable from one owner to another or to different premises.

(f) Any license issued under the provisions of this section may be suspended or revoked for violation of any local, county or state law regulating such establishments upon notice and hearing to the licensee.

(Ord. No. 180, § 35.23, 9-20-2005)

Sec. 6-51. Pet registration.

(a) This section does not pertain to any dangerous animal or attack dog.

(b) Any person owning, keeping, harboring or having custody of any dog or cat over the age of three months must obtain a pet registration for such animal. No pet registration shall be required of any municipal animal control facility or governmental agency, or for a service dog. Animals belonging to those agencies or persons will be issued complimentary registration tags.

(c) A written application for such registration shall be made to the town animal control agency or town clerk-treasurer's office. The applicant shall include his name and address, a description of the animal, payment of the appropriate fee established in section 26-6(2), and a valid rabies certificate. This application must be made within 30 days after either obtaining a dog or cat over three months of age, or after a younger animal attains the age of three months. This requirement, however, shall not apply to a nonresident keeping a dog or cat within the town for not longer than 30 days.

(d) A durable tag stamped with a registration number and year of issuance will be provided to pet registration holders for each registration granted. Dogs and cats must wear their tags at all times, except when involved in any organized show, obedience demonstration, training situation, when under the care of a licensed veterinarian, or when properly kenneled. A fee in the amount established in section 26-6(2)d shall be paid to the town for a replacement tag.

(e) No such registration shall be issued for a dog or cat unless the animal owner provides proof of current and effective rabies vaccination.

(Ord. No. 180, § 35.24, 9-20-2005)

Sec. 6-52. Pet shop permit.

(a) No person shall operate a pet shop without first obtaining from the town or its agent a pet shop permit and paying the fee established by section 26-6(3). Any person holding a pet shop permit shall furnish at the time of sale, to each customer purchasing a dog or cat, a written statement containing the following information:

- (1) Date of sale;
- (2) Name, address and telephone number of the purchaser and permit holder;
- (3) Permit holder's number;
- (4) Species, breed, description, age and sex of the dog or cat sold;
- (5) The animal's origin, its owner's name and address, and its health papers, as required under state law;
- (6) Vaccination and parasite medication administered to the animal, date administered, and name of the veterinarian or person who administered the same;
- (7) Guarantee of good health for a period of not less than one week with recommendation to have the animal examined by a licensed veterinarian.

The permit holder shall retain a copy of said written statement for a period of 12 months from the date of sale and provide a duplicate copy to the licensing authority if the purchaser resides within the corporate limits of the town.

(b) The permit holder shall also deliver to the purchaser at the time of sale a written statement of the registration and licensing requirements applicable to the purchased animal if the purchaser resides within the corporate limits of the town. Such statement shall be prepared by the town and provided by the animal control agency.

(c) All pet shops shall take care to house animals in a sanitary manner, and to provide appropriate veterinary services, humane care and housing according to the needs of individual species.

(Ord. No. 180, § 35.25, 9-20-2005)

Sec. 6-53. Breeder permit.

(a) *Required; information provided to customers.* No person shall operate as a breeder without first obtaining from the town or its agent a breeder permit and paying the necessary fees. Any person holding a breeder permit shall furnish at the time of sale, to each customer purchasing a dog or cat, a written statement containing the following information:

- (1) Date of sale;
- (2) Name, address and telephone number of the purchaser and permit holder;
- (3) Permit holder's number;
- (4) Species, breed, description, age and sex of the dog or cat sold;
- (5) The animal's origin, its owner's name and address, and its health papers, as required under state law;
- (6) Vaccination and parasite medication administered to the animal, date administered, and name of the veterinarian or person who administered the same;
- (7) Guarantee of good health for a period of not less than one week with recommendation to have the animal examined by a licensed veterinarian.

The permit holder shall retain a copy of said written statement for a period of 12 months from the date of sale and provide a duplicate copy to the licensing authority if the purchaser resides within the corporate limits of the town.

(b) *Statement of registration and licensing requirements; fee.* The permit holder shall also deliver to the purchaser at the time of sale a written statement of the registration and licensing requirements applicable to the purchased animal if the purchaser resides within the corporate limits of the town. Such statement shall be prepared by the town and provided by the animal control agency. Persons required to obtain a permit as a breeder shall pay to the town the fee established in section 26-6(4)a for such a permit.

(c) *Housing of animals; caretaking.* All breeders shall take care to house animals in a sanitary manner, and to provide appropriate veterinary services, humane care and housing according to the needs of individual species.

(d) *Breeding of dangerous animals.*

- (1) A person who intends to breed any other dangerous animal shall apply for a permit to breed such animals from the animal control agency and the town's duly authorized agent. The applicant shall specify in the application the breed, age, sex and license number of such animals that the person intends to use for breeding. The application shall be accompanied by a fee in the amount established in section 26-6(4)b. The applicant must address the following items when completing said application:
 - a. Description of the physical facilities where the breeding will take place;
 - b. Authorization to inspect said breeding facilities to ensure compliance with this section and section 6-56;
 - c. Consent to comply with all zoning and public safety laws.
- (2) If the animal control agency or the town's duly authorized agent is satisfied that the applicant meets the requirements under this section, they shall issue a local breeder's license to the applicant. However, a breeder's license shall not be issued to anyone convicted of an offense against an animal as set forth in IC 35-46-3-1, as amended.
- (3) The licensee must notify the department of code enforcement, the animal control agency or the town's duly authorized third party of the birth of all offspring of such animal within 48 hours of such births.
- (4) No person shall breed such animals unless the person has been issued a breeder's permit under this section as a breeder.

(Ord. No. 180, § 35.26, 9-20-2005)

Sec. 6-54. Dangerous animal/attack dog permit.

(a) A person shall not own, harbor, possess or keep an attack dog, or any other dangerous animal unless such animal is licensed under this section or an application for licensing of such animal under this section is pending. Any person whose pet has been determined to be a dangerous animal may file an appeal within 48 hours after such determination. The appeal shall be in writing, accompanied with a nonrefundable appeal fee in the amount established in section 26-6(4)a. and be directed to the animal control agency and the department of code enforcement.

(b) Any owner of an attack dog, or other dangerous animal shall apply to the animal control agency or the town's agent for licensing of said animal. The application shall be on a form provided by the town's agent and shall be accompanied by the following:

- (1) A valid driver's license or state-issued picture identification showing the owner's name and current address;
- (2) Proof that the applicant owns said animal and is 18 years of age or older;

- (3) One copy of a registration certificate issued for said animal by the A.K.C. and/or A.D.B.A., if available and applicable;
- (4) One copy of the current immunization and health records for said animal showing the animal received a current rabies vaccination by a licensed veterinarian;
- (5) Proof that the applicant has insurance coverage for not less than \$300,000.00 for any injury, damage or loss caused by said animal;
- (6) Four photographs of said animal from four different sides taken not more than one month before the date of the application. Such photographs shall consist of a front, back, left and right side view of the animal;
- (7) Proof that the animal has been microchipped by a licensed veterinarian;
- (8) The name, address and phone number of the animal's previous owner;
- (9) A fee in the amount established in section 26-6(4)b.

(c) The dangerous animal/attack dog shall be confined, at all times, within a habitable escape-proof dwelling or an escape-proof cage made of at least 14 gauge wire with at least six feet high sides, a wood or wire roof and a brick or cement floor. The cage door also shall be locked with a padlock. However, when such animal is not confined within a habitable dwelling or an escape-proof cage, it shall be muzzled and reined or tethered to its master, owner or keeper who shall maintain control over the animal to prevent injury to any person or animal.

(d) The dangerous animal/attack dog shall wear a permit tag issued by the animal control agency stating that the animal is registered as a dangerous animal/attack dog.

(e) When licensing an animal not previously licensed under this section, the animal control agency or its designee shall assign a specific license number to said animal, without duplication, the number of which shall remain the same for the life of the animal.

(f) If the animal is lost or escapes, the owner or owner's agent shall report said incident immediately to the town's animal control agency.

(g) The owner of a dangerous animal/attack dog shall post signs on his property where such animal will be kept, clearly visible from the closest street, advising the general public about such animal's presence on the premises. Such signs shall be supplied by the animal control agency after the applicant pays for the permit. The permit, however, shall not be issued until the owner posts the signs and the animal control agency inspects the property to verify proper posting of the signs. The cost of the signs is nonrefundable and they will belong to the applicant even if the permit is reissued or revoked.

(h) No person shall be issued an attack dog/dangerous animal permit if they have been convicted of a felony.

(i) The animal control agency shall visually inspect the premises where the animal is kept. The inspection will consist of the cage, or, if there is no cage, the officer will inspect the escape-proof habitat dwelling, doors, windows and screen opening to determine if, in fact, they

are escape-proof. The inspection will also consist of the placement of warning signs, the animal leash, the muzzle and the pad lock for the cage. The animal control agency must be satisfied that the owner has met all licensing requirements before issuing or renewing a permit.

(j) If an attack dog/dangerous animal permit is revoked, the owner shall not be reissued another permit.

(k) Duly authorized members of the police department or other law enforcement agencies, including, but not limited to, game wardens, conservation officers, and other law enforcement officers shall be exempt from the provisions of this section if the animal is used for law enforcement duties.

(l) If the animal control agency and/or department of code enforcement is notified of an address where an attack dog is being kept or harbored, and that animal and owner of the property has not been in violation of any section of this chapter, the owner shall have a maximum of 14 days to obtain the attack dog/dangerous animal permit. If the permit is not obtained within the 14 days, the animal shall be impounded. The animal will then be held a maximum of ten days so that a permit can be issued. If a permit is still not obtained the animal shall be euthanized.

(m) If the owner of a dangerous animal/attack dog violates any provisions of this chapter, the animal shall be impounded immediately and held until an animal control commission hearing. At such hearing, the animal control commission shall determine whether in fact a violation of this chapter has occurred. If the commission determines that a violation of this chapter has occurred, it shall have the authority to impose a fine, pursuant to section 6-2(c)(3) and/or order the animal euthanized. A dangerous animal/attack dog shall not be euthanized until after the animal control commission has rendered a final decision.

(n) In the event that an attack dog/dangerous animal changes owners, the new owner must apply for a new permit. The original owner's permit shall not be transferable to the new owner. The original owner shall notify the animal control agency that the animal has been sold or given away.

(o) The owner of an attack dog/dangerous animal shall notify the animal control agency if the address changes where the animal is being kept. The owner must report the new address so an inspection can be made of the premises.

(p) All licenses issued under this article shall expire December 31 of each year.

(q) No person shall fight, bait, conspire to fight or bait, or keep, train or transport for the purpose of fighting or baiting any animal required to be licensed under this chapter. A person who violates this section shall be reported by the department of code enforcement or its designated agent to the county prosecutor's office for prosecution under IC 35-46-3-8 et seq.

(r) The owner or owner's agent of an animal required to be licensed under this chapter shall notify the town's police department and the town's animal control agency within four hours if said animal is running at large, has been stolen or has attacked a person or a domestic animal. (Ord. No. 180, § 35.27, 9-20-2005)

Sec. 6-55. Permit exemptions.

No permits shall be required for the following organizations or animals:

- (1) The town animal control agency;
- (2) A state-licensed veterinary hospital/clinic;
- (3) Birds held under state or federal falconry permits; or
- (4) Service dogs specifically trained to assist their disabled owner.

However, all other animal care provisions of this chapter shall apply to such exempt persons or entities.

(Ord. No. 180, § 35.28, 9-20-2005)

Sec. 6-56. Issuance of permits; additional requirements.

(a) A person may register or apply for a permit with the town clerk-treasurer. The applicant shall include on the appropriate forms the following information:

- (1) His name, address and phone number;
- (2) The type of permit requested;
- (3) The number and description of the animals;
- (4) Proof of a valid rabies vaccination by a licensed veterinarian, if required by law;
- (5) Information regarding sterilization; and
- (6) The appropriate registration or permit fee.

Appropriate state and federal permit numbers must be provided in cases involving wildlife or federally protected animals, or any animal, which requires any state or federal permit.

(b) All applicants shall comply with all other applicable federal, state and local laws, and the applicant shall not have been convicted of any cruelty to animal offense pursuant to the state code. Applicants for permits shall, upon reasonable notice, allow the town animal control agency to conduct on-site inspections prior to the issuance of any permit and/or at any time during the valid term of such permit.

(c) The town or the animal control agency shall have the authority to issue or deny an application for registration and/or a permit. In determining whether to issue or deny an application for registration or a permit, the town or the animal control agency shall consider the following factors:

- (1) Whether the person has been convicted of cruelty to animals;
- (2) Whether the applicant has the proper facilities in place for a specific species as required by this law;
- (3) Whether the applicant has sufficient knowledge and proof of previous experience in handling and keeping such animal species; and

(4) Whether the applicant has a history, documented by the animal control agency or the town's designated agent, of providing inadequate or improper care for such animals.

(d) Registrations and permits, except dangerous animal/attack dog, shall be issued for a term of one year, effective January 1 through December 31 of each year. They shall be purchased during the first three months of each calendar year or within 30 days of acquiring the animal, whichever comes later. However, a performing animal license shall only be valid for 14 days.

(e) Upon approval of an application for registration or a permit, the town animal control agency shall issue a pet registration or permit in written form which shall include the registration or permit number, the type of registration or permit, and any pertinent information. In addition, for each registered pet, the town animal control agency shall issue a durable tag stamped with the registration number and year of issuance for each said registration.

(f) The town animal control agency shall maintain records with the identifying registration number, microchip number and permit number.

(g) All fees shall be paid at the time of application and prior to the issuance of the permit or registration.

(h) No person shall use any registration, permit, license or tag for any animal other than the animal for which it was issued.

(i) It shall be unlawful for any person to manufacture, to cause to be manufactured, or to have in his possession or control a stolen, counterfeit or forged animal registration, permit, license, tag, rabies or neutering certificate, or other form of licensing or documentation required by this section.

(Ord. No. 180, § 35.29, 9-20-2005)

Sec. 6-57. Registration/permit revocation.

Any pet registration or permit provided for in this article may be revoked after notice and a hearing before the town council. An owner's pet registration or permit, however, shall only be revoked after said officer or commission finds that the animal owner or permit holder has failed to comply with any requirements of this chapter.

(Ord. No. 180, § 35.31, 9-20-2005)

Sec. 6-58. Inspection.

(a) Whenever it is necessary to make an inspection to enforce any of the provisions of or perform any duty imposed by this chapter or when there is reasonable cause to believe that there exists in any building or upon any premises any violation of the provisions of this chapter

or state law, a health officer, police officer, code enforcement officer or humane officer is authorized at all reasonable times to inspect the same for compliance with the provisions of this chapter or any state law, provided that:

- (1) If the property is occupied, the officer shall first present proper credentials to the occupant and request entry, explaining the reasons therefor; and
- (2) If the property is unoccupied, the officer shall make a reasonable effort to locate the owner or other persons having control of the property and request entry, explaining the reasons therefor.

(b) In the event the officer has reasonable cause to believe that the keeping or maintaining of an animal is so hazardous, unsafe, dangerous or constitutes a public nuisance as to require immediate inspection to safeguard the animal or the public health or safety, the officer shall first present proper credentials and request entry, explaining the reasons therefor. If entry is refused or cannot be obtained, the officer shall have recourse to secure lawful entry and inspection of the property.

(Ord. No. 180, § 35.32, 9-20-2005)

Chapters 7—9

RESERVED

Chapter 10

BUILDINGS AND BUILDING REGULATIONS*

Article I. In General

Secs. 10-1—10-18. Reserved.

Article II. Building Code

- Sec. 10-19. Purpose.
- Sec. 10-20. Authority.
- Sec. 10-21. Scope.
- Sec. 10-22. Adoption of regulations by reference.
- Sec. 10-23. Application for permits.
- Sec. 10-24. Permit required.
- Sec. 10-25. Compliance with other codes.
- Sec. 10-26. Fees.
- Sec. 10-27. Review of application.
- Sec. 10-28. Inspections.
- Sec. 10-29. Right of entry.
- Sec. 10-30. Stop work order.
- Sec. 10-31. Certificate of occupancy.
- Sec. 10-32. Standards and practices.
- Sec. 10-33. Violations.
- Sec. 10-34. Right of appeal.
- Secs. 10-35—10-56. Reserved.

Article III. Contractors

- Sec. 10-57. Definitions.
- Sec. 10-58. General building contractor registration and revocation of registration procedures.
- Secs. 10-59—10-89. Reserved.

Article IV. Barbed Wire Fences

- Sec. 10-90. Definition.
- Sec. 10-91. Safety hazard.
- Sec. 10-92. Use by special permit.
- Sec. 10-93. Request for special permit.

***State law references**—Municipal home rule, IC 36-1-3-1 et seq.; general grant of authority over buildings, IC 36-7-2-3 et seq.

ARTICLE I. IN GENERAL

Secs. 10-1—10-18. Reserved.

ARTICLE II. BUILDING CODE***Sec. 10-19. Purpose.**

The purpose of this chapter is to provide minimum standards for the protection of life, limb, health, environment, public safety and welfare, and for the conservation of energy in the design and construction of buildings and structures.

(Code 1992, § 22.02)

Sec. 10-20. Authority.

The building inspector is hereby authorized and directed to administer and enforce all of the provisions of this chapter. Whenever in the building regulations it is provided that anything must be done to the approval of or subject to the direction of the building inspector or any other officer of the town, it shall be construed to give such officer only the discretion of determining whether the rules and standards established by the code have been complied with; and no such provision shall be construed as giving any officer discretionary powers as to what such regulations, codes or standards shall be, or power to require conditions not prescribed by ordinances or to enforce ordinance provisions in an arbitrary or discriminatory manner.

(Code 1992, § 22.03)

Sec. 10-21. Scope.

The provisions of this chapter apply to the construction, alterations, repair, use, occupancy, maintenance and additions to all buildings and structures in the town.

(Code 1992, § 22.04)

Sec. 10-22. Adoption of regulations by reference.

The statewide code of fire and building laws adopted pursuant to the authority in IC 22-13-2-2 are adopted by reference. Two copies of the same are on file as required by law in the office of the clerk-treasurer.

(Code 1992, § 22.05)

State law reference—Adoption by reference, IC 36-1-5-4.

Sec. 10-23. Application for permits.

No permits shall be issued for the foregoing purposes unless the application for such permit is accompanied by a plat or sketch of the proposed location showing lot boundaries, and by plans and specifications showing the work to be done. Plans for building construction under

***State law reference**—State building code, IC 22-13-2-1 et seq.

the authority of the fire prevention and building safety commission of the state must also be filed with said council. No local permits shall be issued hereunder until a copy of a release for construction from the state is received by the building inspector.

(Code 1992, § 22.06)

Sec. 10-24. Permit required.

A permit shall be obtained before beginning construction, alteration or repair of any building or structure whereby the value of the alteration or repair exceeds \$1,000.00; value, as defined herein, is to be determined by the building inspector for the town. All permits shall be issued by the building inspector using forms to be furnished by him. All fees provided for herein shall be paid to the town. Any alteration, construction or repair done under this article must be done by a contractor holding a current state license or local license in the trade or specialty authorized by the permit.

(Code 1992, § 22.07; Ord. No. 139, § 8, 7-21-1992)

Sec. 10-25. Compliance with other codes.

All work done under any permit issued hereunder shall be in full compliance with all other codes pertaining thereto, and in addition to the fees for permits hereinafter provided for, there shall be paid the fees prescribed in such codes.

(Code 1992, § 22.08)

Sec. 10-26. Fees.

The fees to be paid for building permits and inspections shall be as provided in section 26-10(1).

(Code 1992, § 22.10; Ord. No. 139, § 10, 7-21-1992)

Sec. 10-27. Review of application.

Prior to the issuance of any building permit hereunder, the building inspector shall:

- (1) Review all building permit applications to determine full compliance with the provisions of this article.
- (2) Review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding or any other water related problem.

(Code 1992, § 22.11)

Sec. 10-28. Inspections.

After issuance of any building permit hereunder, the building inspector shall make, or shall cause to be made, such inspections of the work being done under such permit as are necessary to ensure full compliance with the provisions of this article and the terms of the permit.

(Code 1992, § 22.12)

Sec. 10-29. Right of entry.

Upon presentation of proper credentials, the building inspector or his duly authorized representatives may enter at reasonable times any building, structure or premises in the town to perform any duty imposed upon him by this article.

(Code 1992, § 22.13)

Sec. 10-30. Stop work order.

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

(Code 1992, § 22.14)

Sec. 10-31. Certificate of occupancy.

No certificate of occupancy for any building or structure erected, altered or repaired after the adoption of the ordinance from which this article is derived shall be issued unless such building or structure was erected, altered or repaired in compliance with the provisions of this article.

(Code 1992, § 22.15)

Sec. 10-32. Standards and practices.

All work on the construction, alteration and repair of buildings and other structures shall be performed in a good and workmanlike manner according to accepted standards and practices in the trade.

(Code 1992, § 22.16)

Sec. 10-33. Violations.

It shall be unlawful for any person, whether as owner, lessee, sublessee or occupant, to erect, construct, enlarge, alter, repair, improve, remove, convert, demolish, equip, use, occupy or maintain any building or structure, other than fences, in the town or cause or permit the same to be done contrary to or in violation of the provisions of this article.

(Code 1992, § 22.17)

Sec. 10-34. Right of appeal.

All persons shall have the right to appeal the building inspector's decision first through the board of zoning appeals and then to the state under IC 22-13-2-7.

(Code 1992, § 22.18)

Secs. 10-35—10-56. Reserved.

ARTICLE III. CONTRACTORS

Sec. 10-57. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Contractor, building, means an individual, firm, partnership or corporation which agrees to furnish materials or perform services to a property owner at a specified price, especially relating to construction. The term "building contractor" shall not include any private person doing remodeling work on his own private home or accessory structure. Further, for purposes of the contractor registration ordinance, the term "building contractor" shall not include any individual, firm, partnership or corporation which agrees to furnish materials or perform services to a building contractor (i.e., a subcontractor).

Contractor, registered, means a building contractor who complies with the requirements stated in the application for building contractor registration and who obtains a contractor's registration designation from the town that is authorized by the town clerk-treasurer and approved by the building inspector.

(Ord. No. 182, 2005)

Sec. 10-58. General building contractor registration and revocation of registration procedures.

(a) A building contractor of record on the building permit application or any individual or entity acting as a building contractor doing business in the town is required to complete a general building contractor registration application and pay the annual registration fee at the office of the clerk-treasurer:

- (1) In advance of undertaking any activity requiring a building permit under the town ordinance; and
- (2) For which the aggregate value of work, as indicated on the approval building permit application (or as determined by the building inspector), including any subsequent changes following issuance of the building permit, is in excess of \$10,000.00.

(b) The annual registration fee is as established in section 26-10(2). Registration fees are nonrefundable. Registration shall be effective for a period of one year from the date of issuance and all registration renewals shall be completed within 30 days prior to the expiration of any current registration. If a general building contractor registration lapses, the contractor must cease all business in the town until a general building contractor registration is renewed or otherwise reinstated.

(c) If the building inspector determines that a building contractor has committed a fraud, misrepresentation and/or multiple or flagrant violations of the town ordinances, then the building inspector shall notify, by registered mail, the building contractor, the property owner of record on the approved building permit, and the town board of zoning appeals of the

violations. The board of zoning appeals will, within 30 days of such notice being served, conduct a hearing to review the findings by the building inspector and, if necessary, establish any penalty, which may include but is not limited to the following:

- (1) Revocation of the general building contractor registration.
- (2) Revocation of the building contractor's approval on any or all building permits.
- (3) Denial of the surety (performance) bond acceptance by the town from the building contractor on the current and/or future projects for a period of one year.

Any decision of the board of zoning appeals may, within 30 days, be appealed to the town council.

(d) If a registered contractor's registration is revoked:

- (1) The registered contractor will not be permitted to apply for any new building permits for one year and any pending building permit applications will be denied;
- (2) The registered contractor will only be allowed to complete construction on projects for which there are approved building permits at the time of general building contractor registration revocation, if the approved building permits were not revoked under subsection (c) of this section;
- (3) The board of zoning appeals shall notify by registered mail the registered contractor and the property owner of record on the approved building permit that the general building contractor registration has been revoked;
- (4) In the event subsequent violations occur during the revocation period, the board of zoning appeals may extend the period of revocation up to one year for each additional violation to a maximum period of five years. Upon appeal, the town council will conduct a hearing to review the findings by the board of zoning appeals.

(Ord. No. 182, 2005)

Secs. 10-59—10-89. Reserved.

ARTICLE IV. BARBED WIRE FENCES

Sec. 10-90. Definition.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Barbed wire, when used in this Code, means wire with many sharp protruding points or edges all along it.

(Code 1992, § 31.0.04)

Sec. 10-91. Safety hazard.

In the opinion of the town council, the use of barbed wire is an unnecessary and unreasonable safety hazard for children. It is further the opinion of the town council that the use of barbed wire creates a hazard to the citizenry, and that in the interest of the public health, safety and general welfare of the citizens of the town it is deemed advisable and necessary to prohibit the use of barbed wire within the town.

(Code 1992, § 31.0.01)

Sec. 10-92. Use by special permit.

(a) The use of barbed wire within the town is prohibited except by a special permit to be secured from the town board of trustees.

(b) Said special permit may be granted by the town board of trustees to permit the use of barbed wire within certain areas, provided that the use of such barbed wire does not conflict with the purpose of this article, to-wit: the interest of the public health, safety and general welfare of the citizens of the town.

(Code 1992, § 31.0.02)

Sec. 10-93. Request for special permit.

Said special permit can be obtained from the town board of trustees by making an application or request therefor.

(Code 1992, § 31.0.03)

Chapters 11—13

RESERVED

Chapter 14

ELECTIONS*

Article I. In General

Sec. 14-1. Councilmember for districts.
Secs. 14-2—14-20. Reserved.

Article II. Council Districts

Sec. 14-21. Redistricting of districts.
Sec. 14-22. District No. 1.
Sec. 14-23. District No. 2.
Sec. 14-24. District No. 3.
Sec. 14-25. District No. 4.
Sec. 14-26. District No. 5.

***State law reference**—Elections generally, IC 3-5-1-1 et seq.

ARTICLE I. IN GENERAL

Sec. 14-1. Councilmember for districts.

Councilmembers shall be elected by the vote of the voters within the town at large.
(Code 1992, § 12.07)

State law reference—Authority to provide for at large elections, IC 36-5-2-5.

Secs. 14-2—14-20. Reserved.

ARTICLE II. COUNCIL DISTRICTS*

Sec. 14-21. Redistricting of districts.

The town shall be divided into five districts.
(Code 1992, § 12.01)

Sec. 14-22. District No. 1.

All that area bounded and described as follows within the corporate limit of the town: beginning at the intersection of the centerlines of Roeske Avenue and Greenwood Avenue, thence east along the centerline of Greenwood Avenue to the centerline of Johnson Road, thence Southeasterly along the centerline of Johnson Road to the intersection of the northerly line of Lot No. 12 in the unrecorded plat of Bartholomew's Subdivision extended southwesterly to the centerline of Johnson Road, thence northeasterly along the northerly line of said Lot No. 12 and said northerly line extended to the centerline of Trail Creek, thence southeasterly along the centerline of Trail Creek to its intersection with the centerline of Whippoorwill Avenue extended easterly, said centerline of Whippoorwill Avenue being also the east-west centerline of the southwest one quarter of Section 35, Township 38 North, Range 4 West, Trail Creek, LaPorte County, Indiana, thence east, along said east-west centerline to the centerline of the Menke Road, thence north along the centerline of said Menke Road and said centerline extended northerly to the centerline of Michigan Boulevard, thence northwesterly along the centerline of Michigan Boulevard to the centerline of Roeske Avenue, thence south along the centerline of Roeske Avenue to the place of beginning.

(Code 1992, § 12.02)

Sec. 14-23. District No. 2.

All that area bounded and described as follows within the corporate limit of the town: beginning at the intersection of the centerlines of Roeske Avenue and Greenwood Avenue, thence east along the centerline of Greenwood Avenue to the centerline of Johnson Road,

***State law references**—Districts required, IC 36-5-2-4.1; establishment of districts, IC 36-1-6-10.

thence southeasterly along the centerline of Johnson Road to the centerline of Whippoorwill Avenue, thence west along the centerline of Whippoorwill Avenue to the centerline of Roeske Avenue, thence north along the centerline of Roeske Avenue to the place of beginning.

(Code 1992, § 12.03)

Sec. 14-24. District No. 3.

All that area bounded and described as follows within the corporate limit of the town: beginning at the intersection of Roeske Avenue and Whippoorwill Avenue, thence east along the centerline of Whippoorwill Avenue to the centerline of Johnson Road, thence southeasterly along the centerline of Johnson Road to the centerline of Coolspring Avenue, thence west along the centerline of Coolspring Avenue to the centerline of Roeske Avenue, thence north along the centerline of Roeske Avenue to the place of beginning.

(Code 1992, § 12.04)

Sec. 14-25. District No. 4.

All that area bounded and described as follows within the corporate limit of the town: beginning at the intersection of Roeske Avenue and Coolspring Avenue, thence east along the centerline of Coolspring Avenue to the northeast corner of Section 3, Township 37 North, Range 4 West, Trail Creek, LaPorte County, Indiana, thence south along the east line of said Section 3, said east line being also the west line of Whispering Pines Subdivision and said west line extended to the centerline of Wellnetz Road, thence west along the centerline of Wellnetz Road to the intersection of said centerline with the east line of Evergreen Park Subdivision, thence south along the east line of said Evergreen Park Subdivision and said east line extended to the east-west centerline of said Section 3, Township 37 North, Range 4 West, Trail Creek, LaPorte County, Indiana, said east-west centerline being also the centerline of U.S. Highway No. 20, thence west along said centerline to the western town boundary, said western boundary being the north-south centerline of Section 3, Township 37 North, Range 4 West, Trail Creek, LaPorte County, Indiana, thence north along said western boundary to the place of beginning.

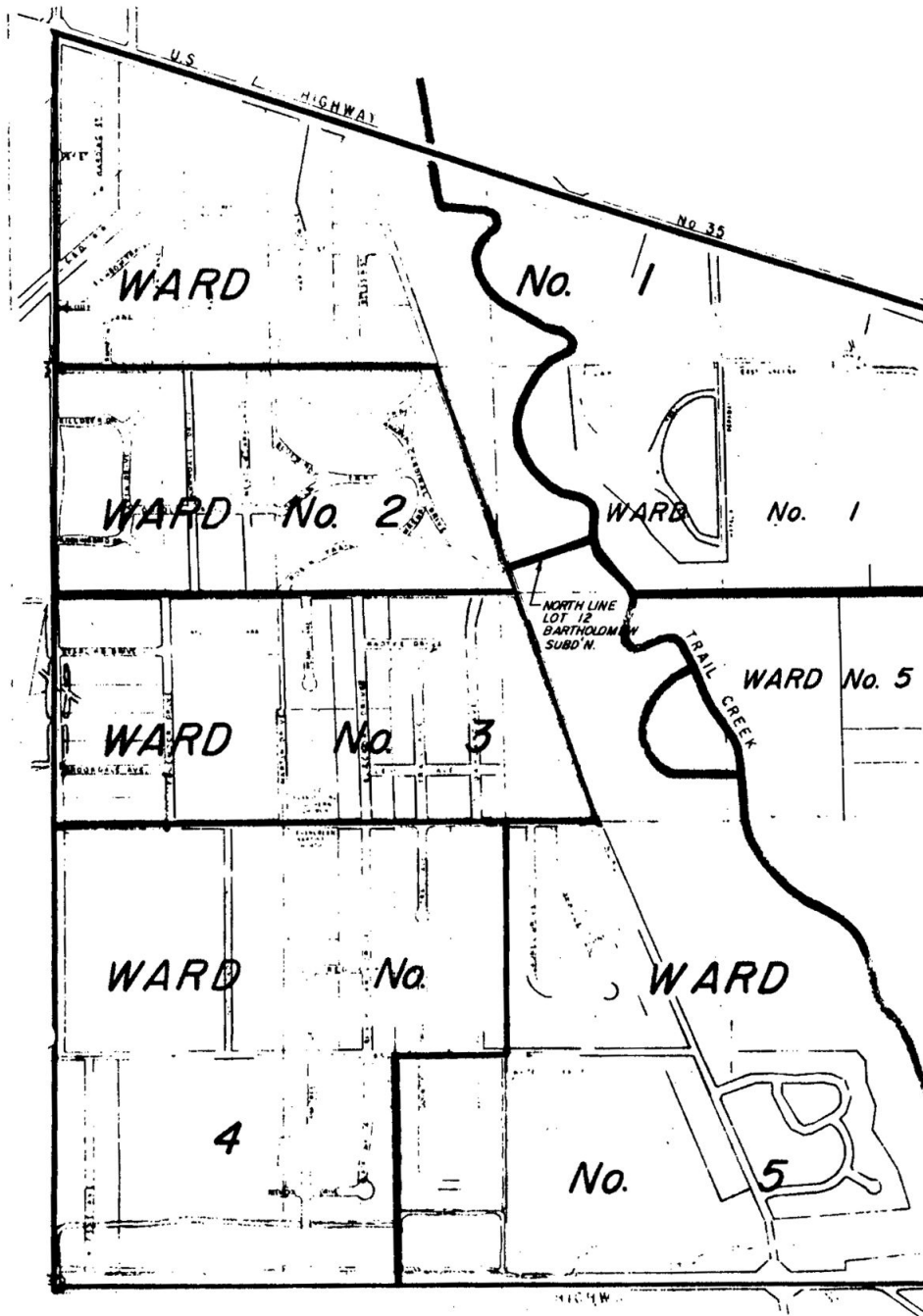
(Code 1992, § 12.05)

Sec. 14-26. District No. 5.

All that area bounded and described as follows within the corporate limit of the town: beginning at the northeast corner of Section 2, Township 37 North, Range 4 West, Trail Creek, LaPorte County, Indiana, said point being on the centerline of Coolspring Avenue, thence east along the centerline of the Coolspring Avenue to the centerline of the Johnson Road, thence northwesterly along the centerline of the Johnson Road to the intersection of the northerly line of Lot No. 12 in the unrecorded plat of Bartholomew's Subdivision extended southwesterly to the centerline of Johnson Road, thence northeasterly along the northerly line of said Lot No. 12 and said northerly line extended to the centerline of Trail Creek, thence southeasterly along the centerline of Trail Creek to its intersection with the centerline of Whippoorwill Avenue extended easterly, said centerline of Whippoorwill Avenue being also the east-west centerline

of the southwest one quarter of Section 35, Township 38 North, Range 4 West, Trail Creek, LaPorte County, Indiana, thence east along said east-west centerline to the centerline of the Menke Road, thence south along the north-south centerline of Section 35, Township 38 North, Range 4 West and the north-south centerline of Section 2, Township 37 North, Range 4 West, Trail Creek, LaPorte County, Indiana, to the center of said Section 2, thence west along the east-west centerline of Sections 2 and 3, Township 37 North, Range 4 West, Trail Creek, LaPorte County, Indiana, said centerlines being also the centerline of U.S. Highway 20 and said centerline of U.S. Highway 20 extended to the intersection of said centerline and the west line of Pagel Park Estates extended south, thence north along the west line of Pagel Park Estates and said West line extended to the centerline of Wellnetz Road, thence east along said centerline of Wellnetz Road to the east line of Section 2, Township 37 North, Range 4 West, said east line being also the west line of Whispering Pines Subdivision extended south, thence north along the west line of Whispering Pines Subdivision and said west line extended to the northeast corner of Section 2, Township 37 North, Range 4 West, Trail Creek, LaPorte County, Indiana, and the place of beginning.

(Code 1992, § 12.06)



Chapters 15—17

RESERVED

Chapter 18

EMERGENCY MANAGEMENT AND EMERGENCY SERVICES*

Article I. In General

Secs. 18-1—18-18. Reserved.

Article II. Civil Emergencies

- Sec. 18-19. Definitions.
- Sec. 18-20. Proclamation of president.
- Sec. 18-21. Imposition of curfew.
- Sec. 18-22. Additional regulations.
- Sec. 18-23. Emergency powers.
- Sec. 18-24. Penalty.

***State law reference**—Emergency management, IC 10-14-1-1 et seq.

ARTICLE I. IN GENERAL

Secs. 18-1—18-18. Reserved.

ARTICLE II. CIVIL EMERGENCIES

Sec. 18-19. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Civil emergency means:

- (1) A riot of unlawful assembly characterized by the use of actual force of violence or any threat to use force if accompanied by immediate power to execute such force by three or more persons acting together without authority of law; or
- (2) Any natural disaster or manmade calamity including flood, conflagration, cyclone, tornado, earthquake or explosion within the corporate limits of the town resulting in the death or injury of persons or the destruction of property to such an extent that extraordinary measures must be taken to protect the public health, safety and welfare.

Curfew means a prohibition against any person or persons walking, running, loitering, standing or motoring upon any alley, street, highway, public property or vacant premises within the corporate limits of the town during the hours in which a curfew has been imposed, excepting persons officially designated to duty with reference to said civil emergency.

(Code 1992, § 30.5.05(A))

Sec. 18-20. Proclamation of president.

When in the judgment of the president a civil emergency as defined herein is deemed to exist, he shall forthwith proclaim in writing the existence of same. In the event the president is unable to act for any reason, including, but not limited to, absence from the town or illness, the town marshal shall act in his stead. In the event the town marshal under such circumstances is unable to act for any reason, including, but not limited to, absence from town or illness, then any one of the other elected officers of the town shall act in the president's stead.

(Code 1992, § 30.5.05(B))

Sec. 18-21. Imposition of curfew.

After proclamation of a civil emergency by the president, he may order a general curfew applicable to such geographical areas of the town or to the town as a whole, as he deems advisable and applicable during such hours of the day or night as he deems necessary in the interest of the public safety and welfare.

(Code 1992, § 30.5.05(C))

Sec. 18-22. Additional regulations.

After proclamation of a civil emergency, the president may also in the interest of public safety and welfare make any or all of the following orders:

- (1) Order the closing of all retail liquor stores.
- (2) Order the closing of all taverns.
- (3) Order the closing of all private clubs or portions thereof wherein the consumption of intoxicating liquor and/or beer is permitted.
- (4) Order the discontinuance of the sale of beer.
- (5) Order the discontinuance of selling, distributing or giving away gasoline or other liquid flammable or combustible products in any container other than a gasoline tank property affixed to a motor vehicle.
- (6) Order the closing of gasoline stations and other establishments, the chief activity of which is the sale, distribution or dispensing of liquid flammable or combustible products.
- (7) Subject to IC 35-47-11-5, order the discontinuance of selling, distributing, dispensing or giving away of firearms and/or ammunition.
- (8) Issue such other orders as are imminently necessary for the protection of life and property.

(Code 1992, § 30.5.05(D))

Sec. 18-23. Emergency powers.

During the period of a declared state of emergency, the president shall have the power to invoke any or all of the following provisions:

- (1) *Alcoholic beverages.* No person shall consume any alcoholic beverages in a public street or place which is publicly owned, or in any motor vehicle driven or parked thereon which is within a duly designated restricted area.
- (2) *Weapons.* No person shall carry or possess any rock, bottle, club, brick or weapon, who uses or intends to use the same unlawfully against the person or property of another.
- (3) *Incendiary missiles.* No person shall make, carry, possess or use any type of Molotov Cocktail, gasoline or petroleum base fire bomb or other incendiary missile.
- (4) *Restricted areas.* No person shall enter any area designated by the president as a restricted area unless in the performance of the official duties or with written permission from the president or his duly designated representative, or such person shall prove residence therein.

(Code 1992, § 30.5.05(E))

Sec. 18-24. Penalty.

No person shall violate any provisions of a proclamation promulgated pursuant to the provisions of this section.

(Code 1992, § 30.5.06)

Chapters 19—21

RESERVED

Chapter 22

ENVIRONMENT*

Article I. In General

Sec. 22-1. Open burning.
Secs. 22-2—22-20. Reserved.

Article II. Noise

Sec. 22-21. Loud noises prohibited.
Sec. 22-22. Prohibited acts.
Sec. 22-23. Exceptions.
Sec. 22-24. Permits for special exceptions.
Sec. 22-25. Remedies.
Secs. 22-26—22-53. Reserved.

Article III. Nuisances

Sec. 22-54. Bicycles.
Secs. 22-55—22-81. Reserved.

Article IV. Wrecked and Abandoned Vehicles

Sec. 22-82. Definitions.
Sec. 22-83. Scope of coverage.
Sec. 22-84. Prohibition.
Sec. 22-85. Nuisance.
Sec. 22-86. Exclusion.
Sec. 22-87. Permit.
Sec. 22-88. Enforcement.
Secs. 22-89—22-119. Reserved.

Article V. Weeds

Sec. 22-120. Growth and disposition of weeds.
Secs. 22-121—22-138. Reserved.

Article VI. Stormwater Management

Division 1. Generally

Sec. 22-139. Purpose.
Sec. 22-140. Applicability.
Sec. 22-141. Compatibility with other permit and ordinance requirements.
Sec. 22-142. Development of a stormwater design manual.

***State law references**—Municipal home rule, IC 36-1-3-1 et seq.; power to regulate public health, safety and welfare, IC 36-8-2-4.

TRAIL CREEK CODE

- Sec. 22-143. Definitions.
- Secs. 22-144—22-169. Reserved.

Division 2. Permit Procedures and Requirements

- Sec. 22-170. Permit required.
- Sec. 22-171. Application—Requirements.
- Sec. 22-172. Same—Review fees.
- Sec. 22-173. Same—Procedure.
- Sec. 22-174. Permit duration.
- Secs. 22-175—22-201. Reserved.

Division 3. Waivers to Stormwater Management Requirements

- Sec. 22-202. Waivers for providing stormwater management.
- Sec. 22-203. Fee in lieu of stormwater management practices.
- Sec. 22-204. Dedication of land.
- Secs. 22-205—22-231. Reserved.

Division 4. General Performance Criteria for Stormwater Management

- Sec. 22-232. Sites one acre or greater.
- Secs. 22-233—22-257. Reserved.

Division 5. Basic Stormwater Management Design Criteria

- Sec. 22-258. Minimum control requirements.
- Sec. 22-259. Site design feasibility.
- Sec. 22-260. Conveyance issues.
- Sec. 22-261. Treatment/geometry conditions.
- Sec. 22-262. Landscaping plans required.
- Sec. 22-263. Maintenance agreements.
- Sec. 22-264. Nonstructural stormwater practices.
- Secs. 22-265—22-291. Reserved.

Division 6. Requirements for Stormwater Management Approval Plan

- Sec. 22-292. Stormwater management plan required for all developments.
- Sec. 22-293. Stormwater management concept plan requirements.
- Sec. 22-294. Final stormwater management plan requirements.
- Sec. 22-295. Performance bond/security.
- Secs. 22-296—22-323. Reserved.

Division 7. Construction Inspection

- Sec. 22-324. Notice of construction commencement.
- Sec. 22-325. As-built plans.
- Sec. 22-326. Landscaping and stabilization requirements.
- Secs. 22-327—22-355. Reserved.

ENVIRONMENT

Division 8. Maintenance and Repair of Stormwater Facilities

- Sec. 22-356. Maintenance easement.
- Sec. 22-357. Maintenance covenants.
- Sec. 22-358. Requirements for maintenance covenants.
- Sec. 22-359. Inspection of stormwater facilities.
- Sec. 22-360. Right of entry for inspection.
- Sec. 22-361. Records of installation and maintenance activities.
- Sec. 22-362. Failure to maintain practices.
- Secs. 22-363—22-382. Reserved.

Division 9. Enforcement and Penalties

- Sec. 22-383. Violations.
- Sec. 22-384. Notice of violation.

ARTICLE I. IN GENERAL**Sec. 22-1. Open burning.**

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Open burning means the burning from which the products of combustion are emitted directly into the outside atmosphere without passing through a stack.

(b) *Unlawful.* It shall be unlawful for any person to cause or allow open burning within the town.

(Code 1992, §§ 33.0.01, 33.0.02)

Secs. 22-2—22-20. Reserved.**ARTICLE II. NOISE****Sec. 22-21. Loud noises prohibited.**

No person shall make, continue or cause to be made or continued any loud, raucous, improper, unreasonable, offensive or unusual noise which disturbs, injures or is dangerous to the comfort, repose, health, peace or safety of others within the town.

(Ord. No. 173, § 1, 9-16-2003)

Sec. 22-22. Prohibited acts.

The following acts, among others, are declared to be loud, raucous or disturbing noises in violation of this section, but such enumeration shall not be deemed to be exclusive:

- (1) The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle on any street or public place except as a danger warning; a creation by means of any such signaling device on any unreasonably loud and raucous sound; and any such signaling device for an unreasonably period of time. The use of any signaling device except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust; and the use of any such signaling device when traffic is for any reason held up.
- (2) Using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such a manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or any times louder volume that is necessary for convenient hearing for the person who is in the room, vehicle or chamber in which such machine or device is operated and who is a voluntary listener. The operation of any set, instrument, phonograph, machine or device between the hours of 10:00 p.m. and 7:00

a.m. in such a manner as to be plainly audible at a distance of 50 feet from the property line wherein the sound is emitting or vehicle in which it is located shall be prima facie evidence of a violation of this section.

- (3) Using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, loudspeaker, sound amplifier or other machine or device for the producing of sound, which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure.
- (4) Yelling, hooting, whistling or singing on the public streets, particularly between the hours of 10:00 p.m. and 7:00 a.m. or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office or in any dwelling, hotel or other type of residence or of any person in the vicinity.
- (5) The keeping of any animal or bird, which by causing frequent or long continued noise shall disturb the comfort or repose of any person in the vicinity.
- (6) The discharge into the open air of the exhaust or any stationary internal combustion engine, motorboat or motor vehicle except through a muffler or other device, which will effectively prevent loud or explosive noises therefrom.
- (7) The use of any automobile, motorcycle or other vehicle so out of repair and in such a manner as to create loud and unnecessary engine noise, grating, grinding, rattling or other noise in excess of the noise limit measured in decimals as prescribed by state standards. The noise limit applied to total noise from a motor vehicle or motorcycle including that noise of other vehicles attached thereto.
- (8) The operation of any motor vehicle or motorcycle in such a manner as to create excessive noise such as squealing of tires or other noise unrelated to engine noise and noise caused by unnecessary grinding, rattling or other vehicle disrepair need not be measured in decibels to violate this section.
- (9) The erection, including excavating, demolition, alteration or repair of any building, other than between the hours of 7:00 a.m. and 6:00 p.m. on weekdays, except in the case of urgent necessity in the interest of public health and safety, and then only with a permit from the building commissioner. The permit may be granted for a period not to exceed three days or less while the emergency continues and may be renewed for a period of three days or less while the emergency continues. If the building commissioner shall determine that the public health and safety will not be impaired by the erection, demolition or alteration or repair of any building or the excavation of streets and highways within the hours of 6:00 p.m. and 7:00 a.m., and further determines that loss or inconvenience would result to any party in interest, he may grant permission for such work to be done within the hours of 6:00 p.m. and 7:00 a.m., upon application being made at the time the permit for work is awarded or during the progress of the work.

- (10) The creation of any loud or raucous noise on any street adjacent to any church while the same is in use, which unreasonably interferes with the working of such institution, or which unduly disturbs church attendees, provided that conspicuous signs are displayed in such streets indicating the same is a church.
 - (11) The shouting and crying of peddlers, hawkers and vendors, which disturbs the peace and quiet of the neighborhood.
 - (12) The use of any drum or other instrument or device for the purpose of attracting attention by the creation of noise to any performance, show or sale.
- (Ord. No. 173, § 2, 9-16-2003)

Sec. 22-23. Exceptions.

(a) The provisions of this article shall not apply to the emission of sound for the purpose of alerting persons to the existence of an emergency, or the emission or sound in the performance of work to prevent or alleviate physical or property damage threatened or caused by a public calamity or other emergency, or to outside school activities sponsored by school located within the boundaries of the town.

(b) Attendant noise connected with actual performance of athletic or sporting events and practices related thereto.

(Ord. No. 173, § 3, 9-16-2003)

Sec. 22-24. Permits for special exceptions.

(a) The board of zoning appeals shall have the authority to issue permits for holidays, celebrations, concerts, parades or other special events, public or personal.

(b) A hardship permit may be obtained if it is shown that:

- (1) Bringing the source of sound or activity for which the permit is sought into compliance with the provisions of this article would constitute an unreasonable hardship on the applicant, the community or other persons; and
- (2) The adverse impact on the health, safety and welfare of persons affected by the permit has been outweighed by the hardship.

(c) Permits may contain any conditions, including a time limit, that are necessary to limit the adverse impact of the activity.

(d) Noncompliance with any condition of the permit shall terminate and subject the person holding it to the provisions of this article.

(e) The zoning commission shall issue guidelines to defining the procedure to be followed in applying for a permit and specific criteria to be considered in deciding whether to issue a permit. The fee for each permit shall be as established in section 26-22(1).

(Ord. No. 173, § 4, 9-16-2003)

Sec. 22-25. Remedies.

(a) Any persons charged with violation of this article, whether by ticket, citation or affidavit, shall have the option of paying the fine imposed within the time specified in the notice of arrest to the town clerk-treasurer upon entering a plead of guilty and upon waiving appearance in court.

(b) A payment of a fine to the town clerk-treasurer shall be deemed an acknowledgement of conviction of the alleged offense, and the clerk-treasurer, upon accepting the prescribed fine, shall issue a receipt to the violator acknowledging payment thereof.

(c) Each day that a violation is in effect shall constitute a separate offense.

(d) In addition to any and all other remedies, the town may, at its discretion, file suit and civil action in any other having jurisdiction thereof for an injunction against any person to prohibit violation of the provisions of this article.

(Ord. No. 173, § 5, 9-16-2003)

Secs. 22-26—22-53. Reserved.

ARTICLE III. NUISANCES*

Sec. 22-54. Bicycles.

(a) *Storage fee.* The clerk-treasurer of the town shall charge and collect a storage fee in the amount established in section 26-22(2) from the owner of any bicycle seized and stored by the town pursuant to the enforcement of any state statutes or town codes.

(b) *Public sale.* The clerk-treasurer of the town of trail creek is hereby authorized to sell at public sale any bicycles stored by the town in excess of 30 days.

(Code 1992, §§ 34.0.02, 34.0.03)

Secs. 22-55—22-81. Reserved.

ARTICLE IV. WRECKED AND ABANDONED VEHICLES

Sec. 22-82. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Garage means a structure having a roof supported by walls, and is used for the shelter, enclosure or protection of vehicles or other personal property. One wall of a garage may be composed primarily of a large door.

***State law reference**—Authority to regulate conduct, or use or possession of property, that might endanger the public health, safety, or welfare, IC 36-8-2-4.

Junked or wrecked automobiles means any motor vehicle, including parts thereof, which meets at least one of the following qualifications:

- (1) Does not display a current, valid state license plate;
- (2) Cannot be operated safely under its own power;
- (3) Is qualified for but is not carried on the most recent tax assessment records of the county;
- (4) Does not have equipment upon it which is in good working order and adjustment as required by the laws of the state;
- (5) As to a part of any motor vehicle, is not kept inside of a garage or other structure as defined herein.

Other structure means anything constructed or erected, the use of which requires a more or less permanent location on the ground or which is attached to something permanently located on the ground.

Public view means vehicles left in the open, including those that are covered with any type of material. Vehicles stored, parked or kept in a garage or other structure will be considered in public view if a garage or similar door remains open for more than 24 hours. Public view shall not be determined merely based on whether or not the vehicle may be seen from public property.

Vehicle means every vehicle which is self-propelled and every vehicle which is propelled by electric power.

(Ord. No. 152, 1-21-1997)

Sec. 22-83. Scope of coverage.

Any vehicle shall be deemed to be wrecked, junked or abandoned if such vehicle does not have attached thereto a valid and current license plate; provided, however, that the existence of a valid and current license plate shall not be the sole determining factor. Any vehicle kept for the purpose of selling parts therefrom shall be deemed to be included in this article.

(Code 1992, § 33.5.02; Ord. No. 152, 1-21-1997)

Sec. 22-84. Prohibition.

No person shall park or store any wrecked, junked or abandoned automobile or other vehicle, or parts thereof, on private or public property within the town except in a garage or other enclosure so as not to be exposed to public view, except as herein otherwise provided in sections 22-86 and 22-87.

(Code 1992, § 33.5.01)

Sec. 22-85. Nuisance.

The keeping, parking or storing of any wrecked, junked or abandoned vehicle, or part thereof, on private property exposed to public view, except as provided herein, is hereby declared to be a nuisance.

(Code 1992, § 33.5.03)

Sec. 22-86. Exclusion.

Nothing herein shall be construed to apply to any person lawfully engaged in the junk business, garage, body shop or other vehicle repair business; provided, however, that such business must be conducted in a properly zoned area.

(Code 1992, § 33.5.04; Ord. No. 152, 1-21-1997)

Sec. 22-87. Permit.

Any person not engaged in a lawful business excluded under section 22-86 and owning or having on their property a wrecked, junked or abandoned vehicle for the purpose of being repaired or providing parts for another vehicle may obtain a permit for that purpose from the town clerk-treasurer at his office. Said permit shall be valid for a period not to exceed 30 days and shall not be renewable. The town clerk-treasurers shall issue a permit upon the payment of the fee established in section 26-22(3). The permit shall be displayed on the windshield of the vehicle for which it was issued.

(Code 1992, § 33.5.05; Ord. No. 152, 1-21-1997)

Sec. 22-88. Enforcement.

(a) The town marshal or any deputies are hereby authorized to issue a written demand to the owner, occupant, agent or person in possession of the premises on which any wrecked, junked or abandoned vehicle is kept in violation of this article. Said demand shall notify the person to remove the vehicle from the premises within ten days from the receipt of notice.

(b) Upon the failure or refusal of the person to remove the vehicle within the time specified, the town marshal or any deputies shall impound the vehicle and cause it to be removed by a licensed towing agency and stored in a place affording protection from vandalism or other damage.

(c) The owner shall have 30 days in which to reclaim the vehicle by paying to the town clerk-treasurer the actual expenses of removal and storage. If not reclaimed within such time, the vehicle shall either be sold for junk or at public auction by the town. Any money received over the actual expenses shall be returned to the owner.

(d) The powers given to the town marshal and deputies are intended in no way to abridge or void any existing authority given to any other department, group or agency of the town.

(e) The town marshal or any deputies may enter at reasonable times any building, structure or premises in the town in order to perform the duties imposed upon him by this article; provided, however, that if questioned, the town marshal or deputy shall present any and all proper credentials.

(Code 1992, § 33.5.06; Ord. No. 152, 1-21-1997)

Secs. 22-89—22-119. Reserved.

ARTICLE V. WEEDS*

Sec. 22-120. Growth and disposition of weeds.

(a) It shall be unlawful for any rank weeds or similar vegetation to be allowed to grow over four inches on any ground, uncut, within the corporate limits of the town. Such weeds shall be cut and hauled away or disposed of in an appropriate manner upon the order in writing of the clerk-treasurer of the town; said order shall set a reasonable time limit of not more than 14 days when such weeds shall be disposed of, and said order shall be served either by the town marshal or by certified mail from the clerk-treasurer. The clerk-treasurer shall issue said order to the owner or lessee of property in violation of this section only after a written complaint has been filed with the clerk-treasurer.

(b) If any owner or lessee, being duly ordered as herein provided, fails or refuses to obey said order, it shall be the duty of the clerk-treasurer to cause the weeds to be disposed of in an approved manner, and said clerk-treasurer shall keep an accurate account of the expense thereof, which shall be paid from the town's fund. The clerk-treasurer shall then notify said owner or lessee of said property of the amount of expense for said work done and said owner or lessee shall have ten days to reimburse the town for said expenses. Upon the failure of said owner or lessee to reimburse the town for said expenses within said time, said expenses shall become a lien on the property of said owner or lessee and shall be collected by law and turned into the town in the manner that delinquent taxes of said town are collected.

(c) In addition to the provisions of subsection (b) of this section, the town may collect the expenses of weed removal by a civil action in which the town shall be entitled to such expenses, together with the attorneys fees, court costs and other collection costs.

(Code 1992, § 32.5.03)

Secs. 22-121—22-138. Reserved.

*State law reference—Weed removal, IC 37-7-10.1-1 et seq.

ARTICLE VI. STORMWATER MANAGEMENT

DIVISION 1. GENERALLY

Sec. 22-139. Purpose.

The purpose of this article, as established by the town, is to meet the requirements of the state department of environmental management Rule 327 IAC 15-13 (Rule 13).
(Ord. of ?-?-?, § 1.1)

Sec. 22-140. Applicability.

(a) This article shall be applicable to all subdivision or site plan applications with land disturbances effecting one acre or more unless eligible for an exemption or granted a waiver by the town under the specifications of division 3 of this article. This article also applies to land development activities that are smaller than the minimum applicability criteria if such activities are part of a larger common plan of development that meets the following applicability criteria, even though multiple separate and distinct land development activities may take place at different times on different schedules.

(b) To prevent the adverse impacts of stormwater runoff, the town has developed a set of performance standards that must be met at new development sites. The following activities are exempt from these stormwater performance criteria:

- (1) Additions or modifications to existing single-family structures.
- (2) Developments that do not disturb more than 43,560 square feet (one acre) of land, provided they are not part of a larger common development plan.
- (3) Repairs to any stormwater treatment practice deemed necessary by the town.

(c) When a site development plan is submitted that qualifies as a redevelopment project as defined in section 22-143, decisions on permitting and on-site stormwater requirements shall be governed by stormwater sizing criteria found in the current stormwater design manual. This criteria is dependent on the amount of impervious area created by the redevelopment and its impact on water quality. Final authorization of all redevelopment projects will be determined after a review by the town.

(Ord. of ?-?-?, § 1.2)

Sec. 22-141. Compatibility with other permit and ordinance requirements.

This article is not intended to interfere with, abrogate or annul any other ordinance, rule or regulation, statute or other provision of law. The requirements of this article should be considered minimum requirements, and where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

(Ord. of ?-?-?, § 1.3)

Sec. 22-142. Development of a stormwater design manual.

The town has developed additional policies, criteria and information, including specifications and standards, for the proper implementation of the requirements of this article and has provided such information in its stormwater design manual.

(Ord. of ?-?-?, § 1.5)

Sec. 22-143. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accelerated erosion means erosion caused by development activities that exceeds the natural processes by which the surface of the land is worn away by the action of water, wind or chemical action.

Applicant means a property owner or agent of a property owner who has filed an application for a stormwater management permit.

Best management practice or *BMP* means any structural or nonstructural control measure utilized to improve the quality and, as appropriate, the quantity of stormwater runoff.

Building means any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal or property, and occupying more than 100 square feet of area.

Channel means a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

Dedication means the deliberate appropriation of property by its owner for general public use.

Detention means the temporary storage of storm runoff in a stormwater management practice with the goals of controlling peak discharge rates and providing gravity settling of pollutants.

Detention facility means a detention basin or alternative structure designed for the purpose of temporary storage of stream flow or surface runoff and gradual release of stored water at controlled rates.

Developer means a person who undertakes land disturbance activities.

Drainage easement means a legal right granted by a landowner to a grantee allowing the use of private land for stormwater management purposes.

Erosion and sediment control plan means a plan that is designed to minimize the accelerated erosion and sediment runoff at a site during construction activities.

Fee in lieu means a payment of money in place of meeting all or part of the stormwater performance standards required by this article.

Hotspot means an area where land use or activities generate highly contaminated runoff, with concentrations of pollutants in excess of those typically found in stormwater.

Hydrologic soil group (HSG) means a natural resource conservation service classification system in which soils are categorized into four runoff potential groups. The groups range from A soils, with high permeability and little runoff production, to D soils, which have low permeability rates and produce much more runoff.

Impervious cover means those surfaces that cannot effectively infiltrate rainfall (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

Industrial stormwater permit means a national pollutant discharge elimination system permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

Infiltration means the process of percolating stormwater into the subsoil.

Infiltration facility means any structure or device designed to infiltrate retained water to the subsurface. These facilities may be above grade or below grade.

Jurisdictional wetland means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

Land disturbance activity means any activity which changes the volume or peak flow discharge rate of rainfall runoff from the land surface. This may include the grading, digging, cutting, scraping or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation or any activity which bares soil or rock or involves the diversion or piping of any natural or manmade watercourse.

Landowner means the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

Maintenance agreement means a legally recorded document that acts as a property deed restriction, and which provides for longterm maintenance of stormwater management practices.

Nonpoint source pollution means pollution from any source other than from any discernible, confined and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

Offset fee means a monetary compensation paid to a local government for failure to meet pollutant load reduction targets.

Off-site facility means a stormwater management measure located outside the subject property boundary described in the permit application for land development activity.

On-site facility means a stormwater management measure located within the subject property boundary described in the permit application for land development activity.

Recharge means the replenishment of underground water reserves.

Redevelopment means any construction, alteration or improvement equal to or greater than 43,560 square feet (one acre) in areas where existing land use is high density commercial, industrial, institutional or multifamily residential.

Stop work order means an order issued which requires that all construction activity on a site be stopped.

Stormwater management means the use of structural or nonstructural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates and detrimental changes in stream temperature that affect water quality and habitat.

Stormwater retrofit means a stormwater management practice designed for an existing development site that previously had either no stormwater management practice in place or a practice inadequate to meet the stormwater management requirements of the site.

Stormwater runoff means flow on the surface of the ground, resulting from precipitation.

Stormwater treatment practices (STPs) means measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

Town of Trail Creek means the Town of Trail Creek, Indiana, the entity that issues and enforces this article.

Water quality volume (WQ_v) means the storage needed to capture and treat 90 percent of the average annual stormwater runoff volume. Numerically, WQ_v will vary as a function of longterm rainfall statistical data.

Watercourse means a permanent or intermittent stream or other body of water, either natural or manmade, which gathers or carries surface water.

(Ord. of ?-?-?, § 2)

Secs. 22-144—22-169. Reserved.

DIVISION 2. PERMIT PROCEDURES AND REQUIREMENTS

Sec. 22-170. Permit required.

No landowner or land operator shall commence any land disturbance activities without first meeting the requirements of this article prior to commencing the proposed activity.

(Ord. of ?-?-?, § 3.1)

Sec. 22-171. Application—Requirements.

(a) Unless specifically excluded by this article, any landowner or operator desiring a permit for a land disturbance activity shall submit to the town a permit application on a form provided for that purpose.

(b) Unless otherwise excepted by this article, a permit application must be accompanied by the following in order that the permit application be considered:

- (1) A stormwater management concept plan;
- (2) A maintenance agreement; and
- (3) A nonrefundable permit review fee.

(c) The stormwater management plan shall be prepared to meet the requirements of division 4 of this article, the maintenance agreement shall be prepared to meet the requirements of division 8 of this article, and fees shall be those established by the town. (Ord. of ?-?-?, § 3.2)

Sec. 22-172. Same—Review fees.

The fee for review of any land development application shall be based on the amount of land to be disturbed at the site, and the fee structure shall be established by the town. All of the monetary contributions shall be credited to a local budgetary category to support local plan review, inspection and program administration, and shall be made prior to the issuance of any building permit for the development. (Ord. of ?-?-?, § 3.3)

Sec. 22-173. Same—Procedure.

(a) Applications for land disturbance activity permits may be filed with the town on any regular business day.

(b) Permit applications shall include the following: two copies of the stormwater management concept plan, two copies of the maintenance agreement, and any required review fees.

(c) Within 20 business days of the receipt of a complete permit application, including all documents as required by this article, the town shall inform the applicant whether the application, plan and maintenance agreement are approved or disapproved.

(d) If the permit application, stormwater management plan or maintenance agreement are disapproved, the applicant may revise the stormwater management plan or agreement. If additional information is submitted, the town shall have five business days from the date the additional information is received to inform the applicant that the plan and maintenance agreement are either approved or disapproved.

(e) If the permit application, final stormwater management plan and maintenance agreement are approved by the town, all appropriate land disturbance activity permits shall be issued.

(Ord. of ?-?-?, § 3.4)

Sec. 22-174. Permit duration.

Permits issued under this section shall be valid from the date of issuance through the date the town notifies the permit holder that all stormwater management practices have passed the final inspection required under permit condition.

(Ord. of ?-?-?, § 3.5)

Secs. 22-175—22-201. Reserved.

DIVISION 3. WAIVERS TO STORMWATER MANAGEMENT REQUIREMENTS

Sec. 22-202. Waivers for providing stormwater management.

(a) Every applicant shall provide for stormwater management as required by this article, unless a written request is filed to waive this requirement. Requests to waive the stormwater management plan requirements shall be submitted to the town for approval.

(b) The minimum requirements for stormwater management may be waived in whole or in part upon written request of the applicant, provided that at least one of the following conditions applies:

- (1) It can be demonstrated that the proposed development is not likely to impair attainment of the objectives of this article.
- (2) Alternative minimum requirements for on-site management of stormwater discharges have been established in a stormwater management plan that has been approved by the town and the implementation of the plan is required by local ordinance.
- (3) Provisions are made to manage stormwater by an off-site facility. The off-site facility is required to be in place, to be designed and adequately sized to provide a level of stormwater control that is equal to or greater than that which would be afforded by on-site practices and there is a legally obligated entity responsible for longterm operation and maintenance of the stormwater practice.
- (4) The town finds that meeting the minimum on-site management requirements is not feasible due to the natural or existing physical characteristics of a site.
- (5) Nonstructural practices will be used on the site that reduce:
 - a. The generation of stormwater from the site;
 - b. The size and cost of stormwater storage; and
 - c. The pollutants generated at the site.

These nonstructural practices are explained in detail in the current design manual and the amount of credit available for using such practices shall be determined by the town.

(c) In instances where one of the conditions set forth in subsection (b) of this section applies, the town may grant a waiver from strict compliance with these stormwater management provisions as long as acceptable mitigation measures are provided. However, to be eligible for a variance, the applicant must demonstrate to the satisfaction of the town that the variance will not result in the following impacts to downstream waterways:

- (1) Deterioration of existing culverts, bridges, dams and other structures;
- (2) Degradation of biological functions or habitat;
- (3) Accelerated streambank or streambed erosion or siltation;
- (4) Increased threat of flood damage to public health, life and property.

(d) Furthermore, where compliance with minimum requirements for stormwater management is waived, the applicant will satisfy the minimum requirements by meeting one of the mitigation measures selected by the town. Mitigation measures may include, but are not limited to, the following:

- (1) The purchase and donation of privately owned lands, or the grant of an easement to be dedicated for preservation and/or reforestation. These lands should be located adjacent to the stream corridor in order to provide permanent buffer areas to protect water quality and aquatic habitat.
- (2) The creation of a stormwater management facility or other drainage improvements on previously developed properties, public or private, that currently lack stormwater management facilities designed and constructed in accordance with the purposes and standards of this article.
- (3) Monetary contributions (fee in lieu) to fund stormwater management activities such as research and studies (e.g., regional wetland delineation studies, stream monitoring studies for water quality and macroinvertebrates, stream flow monitoring, threatened and endangered species studies, hydrologic studies and monitoring of stormwater management practices).

(Ord. of ?-?-?, § 4.1)

Sec. 22-203. Fee in lieu of stormwater management practices.

(a) Where the town waives all or part of the minimum stormwater management requirements, or where the waiver is based on the provision of adequate stormwater facilities provided downstream of the proposed development, the applicant shall be required to pay a fee in an amount as determined by the town.

(b) When an applicant obtains a waiver of the required stormwater management requirements, the monetary contribution required shall be in accordance with a fee schedule (unless the developer and the stormwater authority agree on a greater alternate contribution)

established by the town, and based on the cubic feet of storage required for stormwater management of the development in question. All of the monetary contributions shall be credited to an appropriate capital improvements program project and shall be made by the developer prior to the issuance of any building permit for the development.

(Ord. of ?-?-?, § 4.2)

Sec. 22-204. Dedication of land.

In lieu of a monetary contribution, an applicant may obtain a waiver of the stormwater management requirements by entering into an agreement with the town for the granting of an easement or the dedication of land by the applicant, to be used for the construction of an off-site stormwater management facility. The agreement shall be entered into by the applicant and the town prior to the recording of plats or, if no record plat is required, prior to the issuance of the building permit.

(Ord. of ?-?-?, § 4.3)

Secs. 22-205—22-231. Reserved.

DIVISION 4. GENERAL PERFORMANCE CRITERIA FOR STORMWATER
MANAGEMENT

Sec. 22-232. Sites one acre or greater.

Unless judged by the town to be exempt or granted a waiver, the following performance criteria shall be addressed for stormwater management at all sites one acre or greater:

- (1) All site designs shall establish stormwater management practices to control the peak flow rates of stormwater discharge associated with specified design storms and reduce the generation of stormwater. These practices should seek to utilize previous areas for stormwater treatment and to infiltrate stormwater runoff from driveways, sidewalks, rooftops, parking lots and landscaped areas to the maximum extent practical to provide treatment for both water quality and quantity.
- (2) All stormwater runoff generated from new development shall not discharge directly into a jurisdictional wetland or local water body without adequate treatment. Where such discharges are proposed, the impact of the proposal on wetland functional values shall be assessed using a method acceptable to the town. In no case shall the impact on functional values be any less than allowed by the Army Corp of Engineers (ACE) or other agencies regulating wetlands in the state.
- (3) To protect stream channels from degradation, a specific channel protection criteria shall be provided as prescribed in the current stormwater manual.
- (4) Stormwater discharges to critical areas with sensitive resources (i.e., cold water fisheries, shellfish beds, swimming beaches, recharge areas, water supply reservoirs) may be subject to additional performance criteria, or may need to utilize or restrict certain stormwater management practices.

- (5) Certain industrial sites are required to prepare and implement a stormwater pollution prevention plan, and shall file a notice of intent (NOI) under the provisions of the National Pollutant Discharge Elimination System (NPDES). The stormwater pollution prevention plan requirement applies to both existing and new industrial sites.
 - (6) Stormwater discharges from land uses or activities with higher potential pollutant loadings, known as hotspots, may require the use of specific structural STPs and pollution prevention practices.
 - (7) Prior to design, applicants are required to consult with the town to determine if they are subject to additional stormwater design requirements.
 - (8) The calculations for determining peak flows as found in the stormwater design manual shall be used for sizing all stormwater management practices.
- (Ord. of ?-?-?, § 5)

Secs. 22-233—22-257. Reserved.

DIVISION 5. BASIC STORMWATER MANAGEMENT DESIGN CRITERIA

Sec. 22-258. Minimum control requirements.

(a) All stormwater management practices will be designed so that the specific storm frequency storage volumes (e.g., recharge, water quality, channel protection, ten-year, 100-year) as identified in the current stormwater design manual are met, unless the town grants the applicant a waiver or the applicant is exempt from such requirements.

(b) In addition, if hydrologic or topographic conditions warrant greater control than that provided by the minimum control requirements, the town reserves the right to impose any and all additional requirements deemed necessary to control the volume, timing and rate of runoff.
(Ord. of ?-?-?, § 6.1)

Sec. 22-259. Site design feasibility.

Stormwater management practices for a site shall be chosen based on the physical conditions of the site. Among the factors that should be considered:

- (1) Topography;
- (2) Maximum drainage area;
- (3) Depth to water table;
- (4) Soils;
- (5) Slopes;
- (6) Terrain;
- (7) Location in relation to environmentally sensitive features or ultra-urban areas.

Applicants shall consult the stormwater design manual for guidance on the factors that determine site design feasibility when selecting a stormwater management practice.

(Ord. of ?-?-?, § 6.2)

Sec. 22-260. Conveyance issues.

All stormwater management practices shall be designed to convey stormwater to allow for the maximum removal of pollutants and reduction in flow velocities. This shall include, but not be limited to:

- (1) Maximizing of flowpaths from inflow points to outflow points;
- (2) Protection of inlet and outfall structures;
- (3) Elimination of erosive flow velocities;
- (4) Providing of underdrain systems, where applicable.

(Ord. of ?-?-?, § 6.3)

Sec. 22-261. Treatment/geometry conditions.

All stormwater management practices shall be designed to capture and treat stormwater runoff according to the specifications outlined in the stormwater design manual. These specifications will designate the water quantity and quality treatment criteria that apply to an approved stormwater management practice.

(Ord. of ?-?-?, § 6.4)

Sec. 22-262. Landscaping plans required.

All stormwater management practices must have a landscaping plan detailing both the vegetation and how and who will manage and maintain this vegetation.

(Ord. of ?-?-?, § 6.5)

Sec. 22-263. Maintenance agreements.

All stormwater treatment practices shall have an enforceable operation and maintenance agreement to ensure the system functions as designed. This agreement will include any and all maintenance easements required to access and inspect the stormwater treatment practices, and to perform routine maintenance as necessary to ensure proper functioning of the stormwater treatment practice. In addition, a legally binding covenant specifying the parties responsible for the proper maintenance of all stormwater treatment practices shall be secured prior to issuance of any permits for land disturbance activities.

(Ord. of ?-?-?, § 6.6)

Sec. 22-264. Nonstructural stormwater practices.

The use of nonstructural stormwater treatment practices is encouraged in order to minimize the reliance on structural practices. Credit in the form of reductions in the amount of stormwater that must be managed can be earned through the use of nonstructural practices

that reduce the generation of stormwater from the site. These nonstructural practices are explained in detail in the current stormwater design manual and applicants wishing to obtain credit for use of nonstructural practices must ensure that these practices are documented and remain unaltered by subsequent property owners.
(Ord. of ?-?-?, § 6.7)

Secs. 22-265—22-291. Reserved.

DIVISION 6. REQUIREMENTS FOR STORMWATER MANAGEMENT APPROVAL PLAN

Sec. 22-292. Stormwater management plan required for all developments.

(a) No application for development will be approved unless it includes a stormwater management plan detailing in concept how runoff and associated water quality impacts resulting from the development will be controlled or managed. This plan must be prepared by an individual approved by the town and must indicate whether stormwater will be managed on-site or off-site and, if on-site, the general location and type of practices.

(b) The stormwater management plan shall be referred for comment to all other interested agencies, and any comments must be addressed in a final stormwater management plan. This final plan must be signed by a licensed professional engineer (PE), who will verify that the design of all stormwater management practices meet the submittal requirements outlined in the submittal checklist found in the stormwater design manual. No land disturbing activities shall commence until a satisfactory final stormwater management plan, or a waiver thereof, has undergone a review and been approved by the town after determining that the plan or waiver is consistent with the requirements of this article.
(Ord. of ?-?-?, § 7.1)

Sec. 22-293. Stormwater management concept plan requirements.

(a) A stormwater management concept plan shall be required with all permit applications and will include sufficient information (e.g., maps, hydrologic calculations, etc.) to evaluate the stormwater effects of the project, the potential impacts of all proposed development of the site, both present and future, on the water resources, and the effectiveness and acceptability of the measures proposed for managing stormwater generated at the project. The intent of this conceptual planning process is to determine the type of stormwater management measures necessary for the proposed project, and to ensure adequate planning for management of stormwater runoff from future development. To accomplish this goal the following information shall be included in the concept plan:

- (1) A map indicating the location of existing and proposed buildings, roads, parking areas, utilities, structural stormwater management and sediment control facilities. The map will also clearly show proposed land use with tabulation of the percentage of surface

area to be adapted to various uses; drainage patterns; locations of utilities, roads and easements; the limits of clearing and grading; a written description of the site plan and justification of proposed changes in natural conditions may also be required.

- (2) Sufficient engineering analysis to show that the proposed stormwater management measures are capable of controlling runoff from the site in compliance with this article and the specifications of the stormwater design manual.
- (3) A written or graphic inventory of the natural resources at the site and surrounding area as it exists prior to the commencement of the project and a description of the watershed and its relation to the project site. This description should include a discussion of soil conditions, forest cover, topography, wetlands and other native vegetative areas on the site. Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development.
- (4) A written description of the required maintenance burden for any proposed stormwater management facility.
- (5) The town may also require a concept plan to consider the maximum development potential of a site under existing zoning, regardless of whether the applicant presently intends to develop the site to its maximum potential.

(b) For development or redevelopment occurring on a previously developed site, an applicant shall be required to include within the stormwater concept plan measures for controlling existing stormwater runoff discharges from the site in accordance with the standards of this article to the maximum extent practicable.

(Ord. of ?-?-?, § 7.2)

Sec. 22-294. Final stormwater management plan requirements.

After review of the stormwater management concept plan, and modifications to that plan as deemed necessary by the town, a final stormwater management plan must be submitted for approval. The final stormwater management plan, in addition to the information from the concept plan, shall include all of the information required in the stormwater design manual. This includes:

- (1) *Contact information.* The name, address and telephone number of all persons having a legal interest in the property and the tax reference number and parcel number of the property or properties affected.
- (2) *Topographic base map.* A one inch equals 200 feet topographic base map of the site which extends a minimum of 100 feet beyond the limits of the proposed development and indicates existing surface water drainage including streams, ponds, culverts, ditches and wetlands; current land use including all existing structures; locations of utilities, roads and easements; and significant natural and manmade features not otherwise shown.

- (8) *Maintenance agreement.* The applicant must execute an easement and an inspection and maintenance agreement binding on all subsequent owners of land served by an on-site stormwater management measure in accordance with the specifications of this article.
 - (9) *Erosion and sediment control plans for construction of stormwater management measures.* The applicant must prepare an erosion and sediment control plan for all construction activities related to implementing any on-site stormwater management practices.
 - (10) *Other permits.* The applicant shall ensure that all other applicable permits have been acquired for the site prior to approval of the final stormwater management plan.
- (Ord. of ?-?-?, § 7.3)

Sec. 22-295. Performance bond/security.

(a) The town requires the submittal of a performance security or bond prior to issuance of a permit in order to ensure that the stormwater practices are installed by the permit holder as required by the approved stormwater management plan. The amount of the installation performance security shall be the total estimated construction cost of the stormwater management practices approved under the permit, plus 25 percent. The performance security shall contain forfeiture provisions for failure to complete work specified in the stormwater management plan.

(b) The installation performance security shall be released in full only upon submission of as-built plans and written certification by a registered professional engineer that the stormwater practice has been installed in accordance with the approved plan and other applicable provisions of this article. The town will make a final inspection of the stormwater practice to ensure that it is in compliance with the approved plan and the provisions of this article. Provisions for a partial pro rata release of the performance security based on the completion of various development stages can be done at the discretion of the town.

(Ord. of ?-?-?, § 7.4)

Secs. 22-296—22-323. Reserved.

DIVISION 7. CONSTRUCTION INSPECTION

Sec. 22-324. Notice of construction commencement.

The applicant must notify the town in advance before the commencement of construction. Regular inspections of the stormwater management system construction shall be conducted by the staff of the town or certified by a professional engineer or their designee who has been approved by the town. All inspections shall be documented and written reports prepared that contain the following information:

- (1) The date and location of the inspection;

- (2) Whether construction is in compliance with the approved stormwater management plan;
- (3) Variations from the approved construction specifications;
- (4) Any violations that exist.

If any violations are found, the property owner shall be notified in writing of the nature of the violation and the required corrective actions. No added work shall proceed until any violations are corrected and all work previously completed has received approval by the town.

(Ord. of ?-?-?, § 8.1)

Sec. 22-325. As-built plans.

All applicants are required to submit actual as-built plans for any stormwater management practices located on-site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a professional engineer. A final inspection by the town is required before the release of any performance securities can occur.

(Ord. of ?-?-?, § 8.2)

Sec. 22-326. Landscaping and stabilization requirements.

(a) Any area of land from which the natural vegetative cover has been either partially or wholly cleared or removed by development activities shall be revegetated within ten days from the substantial completion of such clearing and construction. The following criteria shall apply to revegetation efforts:

- (1) Reseeding must be done with an annual or perennial cover crop accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until such time as the cover crop is established over 90 percent of the seeded area.
- (2) Replanting with native woody and herbaceous vegetation must be accompanied by placement of straw mulch or its equivalent of sufficient coverage to control erosion until the plantings are established and are capable of controlling erosion.
- (3) Any area of revegetation must exhibit survival of a minimum of 75 percent of the cover crop throughout the year immediately following revegetation. Revegetation must be repeated in successive years until the minimum 75 percent survival for one year is achieved.

(b) In addition to the requirements in subsection (a) of this section, a landscaping plan must be submitted with the final design describing the vegetative stabilization and management techniques to be used at a site after construction is completed. This plan will explain not only how the site will be stabilized after construction, but who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved.

(Ord. of ?-?-?, § 8.3)

Secs. 22-327—22-355. Reserved.

DIVISION 8. MAINTENANCE AND REPAIR OF STORMWATER FACILITIES

Sec. 22-356. Maintenance easement.

Prior to the issuance of any permit that has a stormwater management facility as one of the requirements of the permit, the applicant or owner of the site must execute a maintenance easement agreement that shall be binding on all subsequent owners of land served by the stormwater management facility. The agreement shall provide for access to the facility at reasonable times for periodic inspection by the town or its contractor or agent, and for regular or special assessments of property owners to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this article. The easement agreement shall be recorded in the land records.

(Ord. of ?-?-?, § 9.1)

Sec. 22-357. Maintenance covenants.

(a) Maintenance of all stormwater management facilities shall be ensured through the creation of a formal maintenance covenant that must be approved by the town and recorded into the land record prior to final plan approval. As part of the covenant, a schedule shall be developed for when and how often maintenance will occur to ensure proper function of the stormwater management facility. The covenant shall also include plans for periodic inspections to ensure proper performance of the facility between scheduled cleanouts.

(b) The town, in lieu of a maintenance covenant, may accept dedication of any existing or future stormwater management facility for maintenance, provided that such facility meets all the requirements of this article and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

(Ord. of ?-?-?, § 9.2)

Sec. 22-358. Requirements for maintenance covenants.

All stormwater management facilities must undergo, at the minimum, an annual inspection to document maintenance and repair needs and ensure compliance with the requirements of this article and accomplishment of its purposes. These needs may include:

- (1) Removal of silt, litter and other debris from all catchbasins, inlets and drainage pipes;
- (2) Grass cutting and vegetation removal; and
- (3) Necessary replacement of landscape vegetation.

Any maintenance needs found must be addressed in a timely manner, as determined by the town, and the inspection and maintenance requirement may be increased as deemed necessary to ensure proper functioning of the stormwater management facility.

(Ord. of ?-?-?, § 9.3)

Sec. 22-359. Inspection of stormwater facilities.

Inspection programs may be established on any reasonable basis, including, but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the NPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater treatment practices.

(Ord. of ?-?-?, § 9.4)

Sec. 22-360. Right of entry for inspection.

When any new drainage control facility is installed on private property, or when any new connection is made between private property and a public drainage control system, sanitary sewer or combined sewer, the property owner shall grant to the town the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when it has a reasonable basis to believe that a violation of this article is occurring or has occurred, and to enter when necessary for abatement of a public nuisance or correction of a violation of this article.

(Ord. of ?-?-?, § 9.5)

Sec. 22-361. Records of installation and maintenance activities.

Parties responsible for the operation and maintenance of a stormwater management facility shall keep records of the installation and of all maintenance and repairs, and shall retain the records for at least three years. These records shall be made available to the town during inspection of the facility and at other reasonable times upon request.

(Ord. of ?-?-?, § 9.6)

Sec. 22-362. Failure to maintain practices.

If a responsible party fails or refuses to meet the requirements of the maintenance covenant, the town, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the facility in proper working condition. In the event that the stormwater management facility becomes a danger to public safety or public health, the town shall notify the party responsible for maintenance of the stormwater management facility in writing. Upon receipt of that notice, the responsible person shall have three days to effect maintenance and repair of the facility in an approved manner. After proper notice, the town may assess the owner of the facility for the cost of repair work

and any penalties; and the cost of the work shall be a lien on the property, or prorated against the beneficial users of the property, and may be placed on the tax bill and collected as ordinary taxes by the town.

(Ord. of ?-?-?, § 9.7)

Secs. 22-363—22-382. Reserved.

DIVISION 9. ENFORCEMENT AND PENALTIES

Sec. 22-383. Violations.

Any development activity that is commenced or is conducted contrary to this article may be restrained by injunction or otherwise abated in a manner provided by law.

(Ord. of ?-?-?, § 10.1)

Sec. 22-384. Notice of violation.

When the town determines that an activity is not being carried out in accordance with the requirements of this article, it shall issue a written notice of violation to the owner of the property. The notice of violation shall contain:

- (1) The name and address of the owner or applicant;
- (2) The address, when available, or a description of the building, structure or land upon which the violation is occurring;
- (3) A statement specifying the nature of the violation.

(Ord. of ?-?-?, § 10.2)

Chapters 23—25

RESERVED

Chapter 26

FEES

Secs. 26-1—26-5. Reserved.

Sec. 26-6. Animals.

Secs. 26-7—26-9. Reserved.

Sec. 26-10. Buildings and building regulations.

Secs. 26-11—26-21. Reserved.

Sec. 26-22. Environment.

Secs. 26-23—26-29. Reserved.

Sec. 26-30. Licenses, permits and miscellaneous business regulations.

Secs. 26-31—26-49. Reserved.

Sec. 26-50. Zoning.

Secs. 26-1—26-5. Reserved.**Sec. 26-6. Animals.**

The fees required by chapter 6 are as follows:

- (1) For a performing animal license, per day (section 6-50(d)), \$100.00.
- (2) For a dog or cat registration (section 6-51):
 - a. Each altered dog or cat, \$5.00.
 - b. Each unaltered dog or cat, \$10.00.
 - c. If a licensed veterinarian determines that the neutering or spaying process constitutes a threat to the health of said animal, the fee shall be \$5.00.
 - d. For a replacement tag, \$5.00.
- (3) For a pet shop permit (section 6-52), \$100.00.
- (4) For a breeder's permit:
 - a. Except for dangerous animal/attack dog (section 6-53(b)), \$50.00.
 - b. Dangerous animal/attack dog breeder license (section 6-53(d)(1)), \$200.00.
- (5) Dangerous animal/attack dog:
 - a. Fee for appeal of determination animal is a dangerous animal (section 6-54(a)), \$25.00.
 - b. Dangerous animal/attack dog permit fee, per animal (section 6-54(b)), \$100.00.

Secs. 26-7—26-9. Reserved.**Sec. 26-10. Buildings and building regulations.**

The fees required by chapter 10 shall be as follows:

- (1) Building permits (section 10-26):
 - a. *New construction.* The minimum permit fees shall be as follows:
 1. Single-family residential construction under 1,500 square feet, \$200.00.
 2. Single-family residential construction over 1,500 square feet, \$250.00.
 3. Two-family and group house construction shall be determined on a per-unit basis as follows:
 - (i) Unit under 1,500 square feet, \$200.00 per unit.
 - (ii) Unit over 1,500 square feet, \$250.00 per unit.
 4. Local business and general office construction, \$350.00. This fee is predicated on the building inspector inspecting the construction site on ten occasions. If the number of required inspections exceeds ten, then the building inspector shall have the power to charge \$25.00 for each inspection after ten.

- b. *Additions, alterations and accessory buildings.*
1. If the cost is between \$1,000.00 and \$2,500.00, the fee is \$25.00.
 2. If the cost is between \$2,501.00 and \$5,000.00, the fee is \$50.00.
 3. If the cost is between \$5,001.00 and 10,000.00, the fee is \$75.00.
 4. If the cost is over \$10,000.00 then the fee is \$200.00.
 5. These fees are predicated on the building inspector inspecting the addition, alteration or accessory building one time. If the building inspector must inspect more than one time, then the building inspector shall have the power to charge \$25.00 for each additional inspection.
- (2) Building contractor registration fee (section 10-58), \$150.00.

Secs. 26-11—26-21. Reserved.

Sec. 26-22. Environment.

The fees required by chapter 22 shall be as follows:

- (1) Permits for special exceptions (section 22-24(d)), \$100.00.
- (2) Bicycle storage fee (section 22-54(a)), \$5.00.
- (3) Wrecked, junked or abandoned vehicle permit (section 22-87), \$5.00.

Secs. 26-23—26-29. Reserved.

Sec. 26-30. Licenses, permits and miscellaneous business regulations.

The fees required by chapter 30 shall be as follows:

- (1) Adult entertainment:
 - a. Permit application fee (section 30-24(b)b), \$500.00.
 - b. Permit renewal fee (section 30-25(d)(2)), \$100.00.
- (2) Garage sale (section 30-60(b)), \$5.00.
- (3) Deposit by transient merchant as license fee (section 30-83), \$3.00 per day for the first ten days or any part thereof for which said applicant desires to engage in said business as such transient merchant, itinerant vendor or solicitor, and \$5.00 per day for each day over said first ten days said applicant desires to so engage in business.

Secs. 26-31—26-49. Reserved.

Sec. 26-50. Zoning.

The fees required by chapter 50 for signs and related devices shall be as follows:

- (1) Permit fee for banners affixed as a wall sign (section 50-139(e)), \$5.00.
- (2) Permit fee for pennants (section 50-142(j)), \$5.00.

- (3) Permit fee for illuminated signs (section 50-143(c)), \$30.00 per illuminated sign.
- (4) Permit fee for nonilluminated signs containing 25 square feet or more, but less than 100 square feet (section 50-143(c)), \$4.00.
- (5) Nonilluminated signs containing more than 100 square feet (section 50-143), \$10.00.

Chapters 27—29

RESERVED

Chapter 30

LICENSES, PERMITS AND MISCELLANEOUS BUSINESSES

Article I. In General

- Sec. 30-1. Issuance of permits.
- Secs. 30-2—30-20. Reserved.

Article II. Adult Entertainment

- Sec. 30-21. Purpose and findings.
- Sec. 30-22. Definitions.
- Sec. 30-23. Location and distance requirements subject to certain objective criteria promoting purpose and findings.
- Sec. 30-24. Permit required.
- Sec. 30-25. Issuance and renewal of permit.
- Sec. 30-26. Periodic inspection.
- Sec. 30-27. Expiration of permit.
- Sec. 30-28. Suspension of permit.
- Sec. 30-29. Revocation of permit.
- Sec. 30-30. Hearing on permit denial, suspension or revocation; appeal.
- Sec. 30-31. Minors not permitted on premises.
- Sec. 30-32. Hours of operation.
- Sec. 30-33. Exhibition of sexually explicit films or videos on premises.
- Sec. 30-34. Culpable mental state required to establish liability.
- Sec. 30-35. Failure of official to meet time frame not risk rights of applicant or permittee.
- Secs. 30-36—30-58. Reserved.

Article III. Garage Sales

- Sec. 30-59. Definitions.
- Sec. 30-60. License requirements.
- Sec. 30-61. Advertising signs.
- Secs. 30-62—30-80. Reserved.

Article IV. Transient Merchants

- Sec. 30-81. Definitions.
- Sec. 30-82. License requirements.
- Sec. 30-83. Application procedure.
- Sec. 30-84. Exceptions.

ARTICLE I. IN GENERAL**Sec. 30-1. Issuance of permits.**

Consent is hereby given that liquor retailers' permits may be issued to applicants otherwise qualified under IC title 7.1 (IC 7.1-1-1 et seq.) to persons and applicants owning premises located within the limits of the town, said permits are to be issued by the alcoholic beverages commission in accordance with such statute.

(Code 1992, § 41.01)

Secs. 30-2—30-20. Reserved.**ARTICLE II. ADULT ENTERTAINMENT****Sec. 30-21. Purpose and findings.***(a) Purpose.*

- (1) The purpose of this article is to regulate sexually oriented businesses in order to promote the health, safety and general welfare of the citizens of the town, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult uses within the town.
- (2) The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of, or reasonable access to, any communicative materials, including sexually oriented materials.
- (3) Similarly, it is neither the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment to the United States Constitution or Indiana Constitution Article 1, § 9, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.
- (4) Neither is it the intent or effect of this article to condone or legitimize the distribution of obscene material.

(b) Findings.

- (1) Sexually oriented businesses, as defined in this article, should be regulated.
- (2) They should be segregated from one another and from houses of worship, schools, parks and residential neighborhoods to protect the public health, welfare and safety because, inter alia, sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects, including, but not limited to, personal and property crimes, illicit and unsanitary sexual activity, illicit drug use, decreased desirability of and negative impacts on the use of surrounding properties, blight, litter and sexual assault and exploitation.

- (3) The town has a substantial government interest in preventing each of the aforementioned adverse effects.

Sec. 30-22. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Establish or establishment means:

- (1) The opening or commencement of any sexually oriented business as a new business; or
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business.

House of worship means any church, synagogue, mosque, temple or building that is used primarily for religious worship and related religious activities.

Nudity or state of nudity means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

Operate or cause to operate means to cause to function, or to put or keep in a state of doing business.

Operator means any person on the premises of a sexually oriented business who is authorized to exercise overall operational control of the business, or who causes it to function or puts or keeps it in operation. A person may be found to be operating, or causing to be operated, a sexually oriented business, whether or not that person is an owner or part owner of the business.

Park means any park used or designated as an area for recreational activities, including, but not limited to, playgrounds, nature trails, swimming pools, athletic fields, basketball, baseball, tennis courts, walking paths or similar public land within the town.

Permittee means a person whose name appears on the permit/application to operate a sexually oriented business.

Regularly features means the consistent and repeated offering of the identified goods or services to the public as one of the intended profit-making objectives of the commercial enterprise, which enterprise regularly holds itself forth to the public as a place where such goods or services may be obtained.

Residence means any structure used by one or more persons as a dwelling.

School means any nursery school, daycare facility, preschool, kindergarten school, public or private elementary, middle or secondary school, special education school, vocational school, junior college or college and university. The term "school" includes all school grounds.

Seminude or state of seminudity means a state of dress in which opaque clothing covers no more than the genitals, anus, anal cleft or cleavage, pubic area, vulva and nipple and areola

of the female breast, as well as portions of the body covered by supporting straps or devices. This definition shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit or other wearing apparel; provided that the areola and nipple are not exposed, in whole or in part.

Sexual device means any three-dimensional object designed and marketed for stimulation of the male or female human genital organ or anus, or for sadomasochistic use or abuse of oneself or others, and shall include devices such as dildos, vibrators and penis pumps, and shall also include other devices with nonsex-related utility, such as leather whips, straps and ligatures, when such devices are marketed in a context suggesting sexual or sadomasochistic purposes. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

Sexually oriented business means and includes those businesses defined as follows:

Adult bookstore or adult video store means a commercial establishment that has a significant or substantial percent of its stock-in-trade, or derives a significant or substantial percent of its revenue, or devotes a significant or substantial portion of its interior business or advertising to the sale or rental, for any form of consideration, of any one of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes, slides or other visual representations that are characterized by the display of specified sexual activities or specified anatomical areas.

Adult theater means an establishment where films, motion pictures, videocassettes, slides or similar photographic reproductions, which are characterized by the display of specified sexual activities or specified anatomical areas, are regularly shown to persons for any form of consideration. This definition shall include businesses that regularly feature view booths or rooms of less than 150 square feet, wherein such films are regularly shown.

Sexual device shop means a commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic or any establishment primarily dedicated to providing medical or healthcare products or services.

Significant or substantial means 30 percent or more.

Specified anatomical areas means:

- (1) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areola; or
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities means:

- (1) The fondling or other intentional touching of human genitals, pubic region, buttocks, anus or female breasts;

- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
- (3) Masturbation, actual or simulated; or
- (4) Excretory functions, as part of or in connection with any of the activities set forth in subsections (1)—(3) of this definition.

Sec. 30-23. Location and distance requirements subject to certain objective criteria promoting purpose and findings.

(a) It shall be considered a nuisance and a violation for any person to establish, operate or cause to be operated a sexually oriented business in the town, unless it is 2,000 feet from:

- (1) Any other sexually oriented business;
- (2) Any house of worship, park or school; or
- (3) Any structure used as a residence.

(b) For the purpose of this section, measurements shall be made in a straight line in all directions, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is or is to be established.

Sec. 30-24. Permit required.

(a) No person shall maintain, operate, conduct or cause to be conducted any sexually oriented business within the limits of the town without first obtaining a permit under this section.

(b) An applicant for a sexually oriented business permit shall file with the town clerk-treasurer a completed application, made on a form prescribed and provided by the town clerk-treasurer.

- (1) An application shall be considered complete if it includes the information required in this section.
- (2) The applicant shall be qualified according to the provisions of this article.
- (3) The application is complete when it includes the information and items required in this subsection (b)(3).
 - a. An application for a permit must contain the following information:
 - 1. The full name of the applicant, and any other names or aliases used in the preceding five years.
 - 2. The applicant's current business or mailing address.
 - 3. Proof that the applicant is at least 18 years of age, consisting of either:
 - (i) A copy of the applicant's birth certificate and current photo;
 - (ii) A copy of the applicant's driver's license with picture; or

- (iii) Another picture identification document issued by a government agency.
- 4. The name of the business, the business location and legal description of the property, and a description of the type of sexually oriented business.
- 5. A sketch or diagram showing the configuration of the premises, including a statement of the total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but shall be drawn to a designated scale, or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.
- 6. A signed statement stating the following:
 - (i) That the business is authorized by the state to conduct business within the state;
 - (ii) That the site being applied for meets the requirements of section 30-23, regarding required distances from all residences, houses of worship, parks, schools and other sexually oriented businesses; and
 - (iii) The name and address of the statutory agent authorized to receive service of process.
- 7. If a person wishing to operate a sexually oriented business is an individual, he shall sign the application for a permit as applicant.
- 8. If an entity (partnership, corporation, limited liability company, etc.) or group of individuals seeks to obtain a permit, each individual with 20 percent or greater interest must sign as an applicant, under oath, and provide the information required in subsection (b)(3)a.1—6 of this section.
- b. At the time of filing an application, the applicant shall be required to pay a nonrefundable application fee in the amount established in section 26-30(1) or the investigation the town requires to review the application.

(c) The information provided by an applicant in connection with the application for a permit under this article shall be maintained by the town on a confidential basis, and may be disclosed only:

- (1) To other governmental agencies in connection with a bona fide law enforcement or public safety function; or
- (2) As may otherwise be required by law or a court order.

Sec. 30-25. Issuance and renewal of permit.

(a) *Temporary permit.*

- (1) Upon the filing of a completed application for a sexually oriented business permit, the town clerk-treasurer shall issue a temporary permit to the applicant.
- (2) The temporary permit shall expire upon the final administrative decision of the town to deny or grant a permit.

- (3) Within 30 days after the receipt of a completed application, the town clerk-treasurer shall either issue a permit or issue a written notice of intent to deny a permit.

(b) *Reasons for refusal to grant a permit.* The town clerk-treasurer shall approve the application and grant a sexually oriented business permit unless one or more of the following is true:

- (1) The applicant is less than 18 years of age;
- (2) The applicant has failed to provide the information required by section 30-24 or has provided false information on the application;
- (3) The premises to be used for the sexually oriented business is currently in violation of or is not in compliance with the town's health, fire or building codes, or the locational requirements of section 30-23;
- (4) The applicant failed to pay the nonrefundable permit application fee; or
- (5) The applicant has a permit under this article that has been revoked within the previous year.

(c) *Permit term and restrictions.*

- (1) The granting of a permit to a permittee for a sexually oriented business shall be for one year.
- (2) The permit is nontransferable to any other person other than the applicants listed on the application, and is valid only for the location listed on the application.

(d) *Renewal of permit.*

- (1) The permittee who has been granted a permit to operate a sexually oriented business, and who wishes to renew a permit shall:
 - a. File a renewal application of its permit 60 days before the expiration of the issuance date when the original permit was granted; and
 - b. Follow all conditions of this section.
- (2) Upon application for renewal, the permittee shall pay a nonrefundable fee in the amount established in section 26-30(1)b for the investigation the town requires to review the renewal application.

Sec. 30-26. Periodic inspection.

(a) To ensure compliance with the specific regulations of this article, sexually oriented businesses permittees and their employees shall permit officers or agents of the town to inspect, from time to time, portions of the sexually oriented business premises where patrons are permitted, during those times when the sexually oriented business is occupied by patrons or is open for business.

(b) The town shall construe this section narrowly to authorize reasonable inspections of the permitted premises pursuant to this article, but not to authorize a harassing or excessive pattern of inspections.

Sec. 30-27. Expiration of permit.

(a) Each permit shall expire one year from its date of issuance, and may be renewed only by filing an application as provided in section 30-25(d).

(b) An application for renewal shall be filed at least 60 days before the expiration date.

(c) When an application for renewal is filed less than 30 days before the expiration date, the expiration of the permit will not be affected.

Sec. 30-28. Suspension of permit.

(a) The town shall issue a written notice of intent to suspend a permit for a period not to exceed 30 days, if a permittee has knowingly violated any section of this article, or has knowingly allowed an employee of the sexually oriented business to violate this article.

(b) The issuance of a written notice of intent to suspend shall not be a prerequisite to the issuance of a written notice of intent to revoke a permit per section 30-29.

Sec. 30-29. Revocation of permit.

(a) The town shall issue a written notice of intent to revoke a sexually oriented business permit, if a cause of suspension in section 30-28 occurs, and the permit has been suspended within the preceding 12 months.

(b) The town shall issue a written notice of intent to revoke a sexually oriented business permit if a permittee:

- (1) Provided false information in conjunction with the application for the sexually oriented business permit.
- (2) Allowed possession, use or sale of controlled substances on the premises.
- (3) Allowed prostitution on the premises.
- (4) Operated the sexually oriented business during a period of time when the permittee's permit was suspended.
- (5) Allowed any act of sexual intercourse, sodomy, oral copulation or masturbation to occur in or on the permitted premises.

(c) When, after the notice and hearing procedure described in section 30-30, the town revokes a permit, the revocation shall continue for one year. The permittee shall not be issued a permit for one year from the date the revocation becomes effective; provided that if the conditions of section 30-30 are met, a provisional permit will be granted.

Sec. 30-30. Hearing on permit denial, suspension or revocation; appeal.(a) *Notice.*

- (1) If facts exist for the denial, suspension or revocation of a permit under this article, the town clerk-treasurer shall notify the applicant or permittee (respondent) in writing of the intent to deny, suspend or revoke the permit, including the grounds therefor, by personal delivery or certified mail.
- (2) The notification shall be directed to the most current business address on file with the town clerk-treasurer.
- (3) Within five working days of receipt of such notice, the respondent may provide to the town clerk-treasurer, in writing, a response that shall include a statement of reasons why the permit or permits should not be denied, suspended or revoked.
- (4) Within three days of the receipt of respondent's written response, the town council shall notify the respondent in writing of the hearing date on the respondent's denial, suspension or revocation proceeding.

(b) *Hearing.* Within ten working days of the receipt of respondent's written response, the town council shall conduct a hearing at which the respondent shall have the opportunity to be represented by counsel, and to present evidence and witnesses on his behalf.

(c) *Decision.*

- (1) The town council shall issue a written opinion and decision within ten days of the hearing.
- (2) If a response is not received by the town council in the time provided, or if, after a hearing, the town council finds that grounds as specified in this article exist for denial, suspension or revocation, then such denial, suspension or revocation shall become final five days after the town council sends, by certified mail, written notice that the permit has been denied, suspended or revoked. Such notice shall include a statement advising the applicant or permittee of the right to appeal such decision to a court of competent jurisdiction.
- (3) If the town council finds that no grounds exist for denial, suspension or revocation of a permit, then within ten days after the hearing, the town council shall withdraw the intent to deny, suspend or revoke the permit, and shall so notify the respondent in writing by certified mail of such action, and shall contemporaneously issue the permit.

(d) *Appeal and provisional permit.*

- (1) When a decision to deny, suspend or revoke a permit becomes final, the applicant or permittee (aggrieved party) whose application for a permit has been denied, or whose permit has been suspended or revoked, shall have the right to appeal such action to a court of competent jurisdiction.

- (2) Upon the filing of any court action to appeal, challenge, restrain or otherwise enjoin the town's enforcement of the denial, suspension or revocation, the town shall immediately issue the aggrieved party a provisional permit.
- (3) The provisional permit shall allow the aggrieved party to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee, as the case may be, and will expire upon the court's entry of a judgment on the aggrieved party's action to appeal, challenge, restrain or otherwise enjoin the town's enforcement.

Sec. 30-31. Minors not permitted on premises.

A person who operates a sexually oriented business shall not allow a person under the age of 18 years of age to be in or remain upon the business premises.

Sec. 30-32. Hours of operation.

A sexually oriented business shall not be open for business between the hours of 10:00 p.m. and 10:00 a.m. of any particular day.

Sec. 30-33. Exhibition of sexually explicit films or videos on premises.

A person who operates or causes to be operated a sexually oriented business, and who exhibits on the premises, in a viewing room of less than 150 square feet of floor space, films or videos characterized by an emphasis on specified sexual activities or specified anatomical areas, shall comply with the following requirements:

- (1) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms.
 - a. A manager's station shall not be greater than 32 square feet in area.
 - b. Restrooms may not contain video reproduction equipment.
 - c. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view, from at least one of the manager's stations, of each area of the premises to which any patron is permitted access for any purpose.
 - d. The view required in this subdivision must be by direct line of sight from the manager's station.
- (2) It shall be the duty of the permittee to ensure that the view area specified in subsection (1) of this section remains at all times unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials.
- (3) No viewing room or booth may be occupied by more than one person at any time.

- (4) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access, at an illumination of not less than five footcandles, as measures at the floor level.
- (5) It shall be the duty of the permittee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- (6) No permittee shall allow openings of any kind to exist between viewing rooms or booths.

Sec. 30-34. Culpable mental state required to establish liability.

(a) Where any provision or offense herein fails to state a necessary level of culpability to establish a violation or liability, the offense shall be established upon a showing that the person acted knowingly or recklessly with regard to the predicate act.

(b) Notwithstanding anything to the contrary, for the purposes of this article, an act by an employee shall be imputed to the sexually oriented business permittee to establish a violation of this article, or to deny, suspend or revoke a license, only if a permittee allowed, either knowingly or recklessly, a violation of this article to occur.

(c) It shall be a defense to liability that the sexually oriented business permittee was powerless to prevent the violation.

Sec. 30-35. Failure of official to meet time frame not risk rights of applicant or permittee.

(a) In the event that a government official is required to take an act or to do a thing pursuant to this article within a prescribed time, and fails to take such act or to do such thing within the time prescribed, such failure shall not prevent the exercise of constitutional rights of an applicant or permittee.

(b) If the act required of the official under this article, but not completed in the time prescribed, includes approval of conditions necessary for the town's approval of an application for a sexually oriented business permit, including a renewal, the applicant or permittee shall be deemed to have satisfied the conditions for which approval was sought.

Secs. 30-36—30-58. Reserved.

ARTICLE III. GARAGE SALES**Sec. 30-59. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Garage sale includes sidewalk sales, yard sales, basement sales, porch sales or any similar sales by which goods, wares or merchandise are disposed of by the owners or tenants of residential property in the town.

(Code 1992, § 42.01)

Sec. 30-60. License requirements.

(a) It shall be unlawful for any person, copartner or corporation to conduct a garage sale without first having obtained a license from the office of the clerk-treasurer of the town. Application for a license to conduct a garage sale shall be made in writing on a form provided by the clerk-treasurer, the application of which shall be signed by the person responsible for the conduct of said garage sale.

(b) The license fee to be charged for a garage sale shall be in the amount established in section 26-30(2).

(c) All licenses issued hereunder shall be valid for any three consecutive days.

(d) No person, copartner or corporation shall be entitled to more than two garage sales in any calendar year.

(e) All licenses issued shall be prominently displayed upon the premises where the garage sale is conducted.

(f) A rain day license, at no extra cost, may be granted by contacting the town clerk-treasurer within 24 hours of the scheduled garage sale, excluding holidays or weekends. The clerk-treasurer shall verify the rain day before reissuing the license.

(Code 1992, § 42.02)

Sec. 30-61. Advertising signs.

(a) No signs that are more than two square feet may be used to advertise a garage sale.

(b) All garage sale signs must be removed within 24 hours after the sale.

(Code 1992, § 42.03)

Secs. 30-62—30-80. Reserved.

ARTICLE IV. TRANSIENT MERCHANTS***Sec. 30-81. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Itinerant vendor means any transient person who temporarily engages in the making or selling of any goods, wares or merchandise, including the making and selling of photographs, within the town, regardless of whether such goods, wares or merchandise are peddled from house to house, sold or hawked upon the streets or other public places, or sold from any room, building, structure or lot, rented or leased for the purpose of carrying on such business.

Solicitor means any person not a bona fide resident of the town for at least six months prior to application who goes from place to place in the town selling or taking orders for, or offering to sell or take orders for goods, wares or merchandise, or any article for future delivery.

Transient merchants, when used in this article, means and includes all persons, individuals, copartners and corporations, both as principals and agents, who engage in, do or transact any temporary or transient business in the town by selling goods, wares or merchandise and who, for the purpose of carrying on such business, hire, lease or occupy any room, building, vehicle, railway car, store, shop, vacant lot or parking lot, tent or structure, for the exhibition and sale of goods, wares and merchandise, excepting those hereinafter exempted, and anyone conducting business as above set forth, within the corporate limits of the town for a period of less than 180 days.

(Code 1992, § 40.01)

Sec. 30-82. License requirements.

No transient merchant, itinerant vendor or solicitor shall be granted a license as provided in section 30-83 until he has first secured a license from the county auditor pursuant to the Transient Merchant Law of Indiana (IC 37-25-3-1 et seq.) and this article.

(Code 1992, § 40.02)

Sec. 30-83. Application procedure.

It shall be unlawful for any transient merchant, itinerant vendor or solicitor to engage in, do or transact any business as such in the town without first having obtained a license as hereinafter provided. Such transient merchant, itinerant vendor or solicitor desiring to do business within the corporate limits of the town shall file his verified application for licensing for that purpose with the clerk-treasurer of the town at least seven days prior to beginning business, the application of which shall state his name, residence, room, building, vehicle, railway car, store, shop, vacant lot or parking lot, rent or structure in which he expects to do business, and the make and character of the goods, wares and merchandise he intends to sell,

***State law references**—Transient merchants, IC 25-37-1-1 et seq.; municipal authority over transient merchants, IC 25-37-1-11.

the length of time he desires to do business in said town, and at the same time deposit a certified check or money order as a license fee in the amount established in section 26-30(3). No license shall be good for more than one person unless there is a copartnership, nor for more than one place of business, and this article shall also apply to any person who engages local residents to sell their goods, wares and merchandise on commission.

(Code 1992, § 40.03)

Sec. 30-84. Exceptions.

The provisions of this article 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, constables or other public officers selling goods, wares and merchandise for the benefit of creditors according to law, nor to bona fide assignees or receivers appointed in this state selling goods, wares and merchandise for the benefit of creditors, nor to the sales by producers of farm or dairy products, where such produce was raised or produced on the premises of the seller.

(Code 1992, § 40.04)

Chapters 31—33

RESERVED

Chapter 34

OFFENSES AND MISCELLANEOUS PROVISIONS

- Sec. 34-1. Interference with officials.
- Sec. 34-2. Firearms; bows and arrows.
- Sec. 34-3. Diversion of water.

Sec. 34-1. Interference with officials.

It shall be unlawful for any person to intentionally impede or interfere with, or attempt to impede or interfere with any town official in the performance of his duty or emergency functions as a town official.

(Code 1992, § 30.5.04)

Sec. 34-2. Firearms; bows and arrows.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Bow means any device that is intended to shoot an arrow. The term "bow" includes a crossbow.

Firearm means any weapon that is capable of or designed to, or that may be readily converted to expel a projectile by means of an explosion or by compressed air or gas.

(b) *Unlawful use of guns and bow and arrows.* It shall be unlawful for any person to discharge a firearm, BB gun, compressed air or gas gun, pellet gun and bow and arrow within the corporate limits of the town.

(Code 1992, §§ 31.5.01, 31.5.05; Ord. No. 175, §§ 31.5.01, 31.5.02, 10-21-2003)

Sec. 34-3. Diversion of water.

It shall be unlawful for any person to willfully obstruct or impede any public ditch or stream or willfully divert water from its proper channel.

(Code 1992, § 36.0.02)

Chapters 35—37

RESERVED

Chapter 38

SOLID WASTE*

Article I. In General

Secs. 38-1—38-18. Reserved.

Article II. Collection and Disposal

Division 1. Generally

- Sec. 38-19. Definitions.
- Sec. 38-20. Provision of proper containers.
- Sec. 38-21. Placement and removal of garbage and trash for pickup.
- Sec. 38-22. Contract.
- Sec. 38-23. Liability insurance.
- Sec. 38-24. Removal of dead animals.
- Sec. 38-25. Garbage receptacles and rubbish containers for residential collection.
- Sec. 38-26. Payments to contractor.
- Sec. 38-27. Additional terms.
- Secs. 38-28—38-57. Reserved.

Division 2. Rates and Charges

- Sec. 38-58. Charge for garbage, refuse and leaf removal.
- Sec. 38-59. Billings.
- Sec. 38-60. Delinquent accounts.
- Sec. 38-61. Revenue fund.

***State law references**—Solid waste management, IC 13-20-1-1 et seq.; municipal waste collection and transportation requirements, IC 13-20-4-1 et seq.; municipal solid waste disposal, IC 36-9-30-1 et seq.; waste disposal systems, IC 36-9-2-17 et seq.; littering, IC 35-45-3-2.

ARTICLE I. IN GENERAL

Secs. 38-1—38-18. Reserved.

ARTICLE II. COLLECTION AND DISPOSAL

DIVISION 1. GENERALLY

Sec. 38-19. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Rubbish, trash and litter mean dirt, chips, pieces of lumber, sticks, wood, trees and leaves or branches thereof, grass and other clippings, bottles, broken glass, crockery, tin cans, wooden ware, wooden cases, cardboard or other paper boxes, straw, shoes, paper, circulars, newspapers and magazines, and bills, boots, hats, plaster and razor blades, or any other litter or trash whatsoever.

(Code 1992, § 32.5.01)

Sec. 38-20. Provision of proper containers.

It shall be unlawful and shall constitute a penal offense for any person to cause or permit the accumulation of litter, rubbish or trash on their premises. It shall be the duty of all property owners or tenants occupying any premises to provide containers for the retention of any rubbish and trash as defined in this article. Said containers shall be provided with covers to prevent the scattering of trash by the wind or in any other matter.

(Code 1992, § 32.5.02)

Sec. 38-21. Placement and removal of garbage and trash for pickup.

No trash and rubbish, whether in containers or accumulated for weekly garbage collection, shall be placed at the pickup site earlier than 12 hours preceding the scheduled pickup day and said containers shall be removed from the pickup site no later than 8:00 p.m. on the scheduled collection day.

(Code 1992, § 32.5.02a)

Sec. 38-22. Contract.

Garbage and rubbish shall be collected and removed at least once each week. The town council may cause garbage and rubbish to be removed by employees of the town or it may contract with any person for removal of the same. If removal is contracted for, the town council shall advertise for bids. Contracts shall be awarded to the lowest and best bidder and accompanied by a certified check for \$50.00 to secure the bidder's entering into the contract. The town council shall give at least ten days' notice to bidders by publication in "The News-Dispatch" newspaper, the only newspaper of general circulation in the town, published

in the county, and printed in the English language. Upon acceptance of any bid by the town council, the successful bidder shall thereupon enter upon a contract with such town under the terms and conditions of this article for a period of time, the term of which shall not be less than one year. Every person who enters into such contract shall file with the town council a bond for the faithful performance of the contract and of the terms and conditions of this article, with a surety company authorized to do business in the state as surety thereon.

(Code 1992, § 52.01)

Sec. 38-23. Liability insurance.

The contractor shall carry public liability and property damage insurance in a reliable insurance company on each vehicle used in performance of the contract with limits of not less than \$100,000.00 per person and \$300,000.00 per accident.

(Code 1992, § 52.05)

Sec. 38-24. Removal of dead animals.

The contractor shall also be required to remove all dead animals found on any street, road or highway within the limits of the town.

(Code 1992, § 52.06)

Sec. 38-25. Garbage receptacles and rubbish containers for residential collection.

(a) Garbage and rubbish shall be removed from every residence within the town. Each family occupying a residence shall provide a tight, leakproof receptacle with a cover to contain its garbage and shall also provide suitable containers for its rubbish. Such receptacles for garbage and such containers for rubbish shall be placed by each family at a time indicated, in close proximity to the street or roadway adjoining its premises. Failure to comply with this section shall warrant the contractor, or employees of the town, in refusing to remove garbage or rubbish from the premises of such family.

(b) No garbage or rubbish shall be collected by any person except in accordance with the provisions of this article, nor shall any person damage or meddle with any garbage receptacle or rubbish container.

(Code 1992, § 52.07)

Sec. 38-26. Payments to contractor.

The town council may, in its contract for collection of garbage and rubbish, provide for monthly, quarterly or semiannual payments to the contractor in such amounts for such periods as it deems advisable.

(Code 1992, § 52.08)

Sec. 38-27. Additional terms.

The town council may provide additional terms and conditions in such contract as it deems advisable under exigencies that may arise.

(Code 1992, § 52.09)

Secs. 38-28—38-57. Reserved.

DIVISION 2. RATES AND CHARGES

Sec. 38-58. Charge for garbage, refuse and leaf removal.

(a) Beginning January 1, 1990, an equitable charge will be made to each taxpayer of improved real property within the town limits for the expense of garbage, refuse and leaf removal.

(b) A unit charge in the amount established by the town council is hereby established. This rate shall be reviewed annually at budget time and adjusted for the following year. Commercial business and club properties shall contract privately for garbage, refuse and leaf removal.

(Code 1992, § 53.01)

Sec. 38-59. Billings.

Billings for the unit charge will be made by the town to each improved real property owner at their address of record. Billings will be as follows:

- (1) *Yearly.* Billings for the year, in advance, will be submitted to the property owners by February 1 and may be paid in full within one month of the billing date.
- (2) *Quarterly.* Property owners may pay in increments of not less than 25 percent of the total unit charge. Said increments will be due one month from date of billing and billings will be submitted to the property owner by February 1, June 1, September 1 and November 1.

(Code 1992, § 53.02)

Sec. 38-60. Delinquent accounts.

Failure of the property owner to make payment within one month of billing will cause the entire balance of the unit charge to become due and delinquent. Delinquent amounts will be assessed a penalty charge of ten percent of the unit charge and added to the amount. Delinquent accounts which remain delinquent in excess of six months will be certified to the county auditor and collected as taxes are collected.

(Code 1992, § 53.03)

§ 38-61

TRAIL CREEK CODE

Sec. 38-61. Revenue fund.

Revenue from billings will be accrued in a separate fund. Payments of all costs incident to the service will be made from this fund.

(Code 1992, § 53.04)

Chapters 39—41

RESERVED

Chapter 42

TRAFFIC AND VEHICLES*

- Sec. 42-1. Load limit.
- Sec. 42-2. Through streets.
- Sec. 42-3. No passing zones.

***State law references**—Traffic generally, IC 9-13-1-1 et seq.; rules of the road, IC 9-21-8-1 et seq.; powers of local authorities, IC 9-21-1-2, 9-21-1-3.

Sec. 42-1. Load limit.

No truck transporting a load in excess of 10,000 pounds shall be driven on any public roads, streets and highways in the town. This section does not apply to highways in the state highway system or to state-maintained routes.

(Code 1992, § 32.0.02)

State law reference—Load limits authorized, IC 9-20-1-3.

Sec. 42-2. Through streets.

It is hereby declared that Johnson Road, Greenwood Avenue, Coolspring Avenue, Roeske Avenue and Whippoorwill Avenue shall be designated as preferential or through streets, and that all vehicles shall stop and yield the right-of-way to traffic on said streets before entering or crossing said streets.

(Code 1992, § 32.0.04)

State law references—Approaching through streets, IC 9-21-8-29 et seq.; authority to designate through streets, IC 9-21-1-3(1)(6).

Sec. 42-3. No passing zones.

The driver of any vehicle may not overtake and pass another vehicle on the following streets and roadways in the town: Johnson Road, Coolspring Avenue, Greenwood Avenue, Welnetz Road and Whippoorwill Avenue.

(Code 1992, § 32.1.01)

Chapters 43—45

RESERVED

Chapter 46

UTILITIES*

Article I. In General

Secs. 46-1—46-18. Reserved.

Article II. Sewers and Sewage Disposal

- Sec. 46-19. Permit requirement.
- Sec. 46-20. Plans and specifications.
- Sec. 46-21. Administration and bond; inspection; notice of approval.
- Sec. 46-22. Discharge of water and waste.
- Sec. 46-23. Other pollutants prohibited.

***State law reference**—Municipal utilities, IC 8-1.5-3-1 et seq.

ARTICLE I. IN GENERAL

Secs. 46-1—46-18. Reserved.

ARTICLE II. SEWERS AND SEWAGE DISPOSAL***Sec. 46-19. Permit requirement.**

No person shall enter onto the town rights-of-way for the purposes of connecting onto the sanitary sewer system without first obtaining a permit to do so from the building inspector of the town.

(Code 1992, § 25.01)

Sec. 46-20. Plans and specifications.

All excavation work and material used for said connection onto the sanitary sewer system on town property must be in accordance with the plans and specifications of the town. Said plans and specifications are to be kept on file in the office of the clerk-treasurer.

(Code 1992, § 25.02)

Sec. 46-21. Administration and bond; inspection; notice of approval.

(a) Prior to the issuance of a permit, the building inspector must receive from the person or his designated contractor a bond in the sum of \$1,000.00 cash or surety for each connection whereby the town is the obligee and the person or his designated contractor applying is the obligor, said contractual obligation to ensure that the town plans and specifications are adhered to.

(b) It shall be the duty of the building inspector to inspect all excavation work and material on town property and enforce compliance with the town plans and specifications.

(c) Upon completion of the connection to the sanitary sewer system and all construction incidental thereto and approval of the building inspector, said building inspector shall notify the clerk-treasurer of the town of his approval and the clerk-treasurer is then authorized to release said bond.

(d) If the building inspector does not approve the excavation work or material incidental to the connection onto the sanitary sewer system, he shall notify the permit holder and/or the contractor and/or the surety of the bond of his disapproval in writing and said persons shall have 30 days to correct any defects. After said 30-day period, if the defects are not corrected, the town will proceed under the bond to repair town property.

(Code 1992, § 25.03)

***State law references**—Authority to provide for sewage disposal, IC 36-9-2-17, 36-9-2-18; municipal sewage works, IC 36-9-23-1 et seq.

Sec. 46-22. Discharge of water and waste.

Only stormwater and other unpolluted drainage shall be discharged into stormwater runoff systems or into natural outlets and only after approval by the town council.

(Code 1992, § 36.5.01)

Sec. 46-23. Other pollutants prohibited.

All other discharges of any kind and nature of pollutants, wastes and wastewater, either directly or indirectly, into the stormwater runoff systems or natural outlets by any person is strictly prohibited.

(Code 1992, § 36.5.02)

Chapters 47—49

RESERVED

Chapter 50

ZONING*

Article I. In General

- Sec. 50-1. Definitions.
- Sec. 50-2. Purpose and intent.
- Sec. 50-3. Interpretation.
- Secs. 50-4—50-24. Reserved.

Article II. Administration and Enforcement

- Sec. 50-25. Administration.
- Sec. 50-26. Creation, composition and appointment of board of zoning appeals.
- Sec. 50-27. Creation, composition and appointment of plan commission.
- Sec. 50-28. Nonconforming buildings, structures and uses.
- Secs. 50-29—50-59. Reserved.

Article III. Zoning Districts Established; Zoning Map

- Sec. 50-60. Zoning districts designated.
- Sec. 50-61. District map and boundaries.
- Sec. 50-62. Determination and interpretation of district boundaries.
- Sec. 50-63. Procedure relating to annexed or vacated areas.
- Secs. 50-64—50-84. Reserved.

Article IV. District Regulations

- Sec. 50-85. Generally.
- Sec. 50-86. Residential uses.
- Sec. 50-87. Local business uses.
- Sec. 50-88. General office, nonretail (GO).
- Sec. 50-89. Contingent uses.
- Sec. 50-90. Special uses.
- Secs. 50-91—50-108. Reserved.

Article V. Manufactured Housing

- Sec. 50-109. Intent.
- Sec. 50-110. Definitions.
- Sec. 50-111. Standards.
- Sec. 50-112. Penalty for violation.
- Secs. 50-113—50-137. Reserved.

***State law references**—Municipal home rule, IC 36-1-3-1 et seq.; zoning generally, IC 36-7-4-600 et seq.

TRAIL CREEK CODE

Article VI. Signs

- Sec. 50-138. Definitions.
- Sec. 50-139. Prohibition.
- Sec. 50-140. Time limitations for temporary signs.
- Sec. 50-141. Removal.
- Sec. 50-142. Specifications of allowed signs.
- Sec. 50-143. Administration.

ARTICLE I. IN GENERAL**Sec. 50-1. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Accessory use means a use which is incidental to the main use of the premises.

Alley means a public thoroughfare which affords only secondary means of vehicular access to abutting property and is less than 30 feet in width.

Basement means a story partly underground, but having more than one-half of its clean height below ground level which, unless subdivided into rooms and used for tenant purposes, shall not be included as a story for the purpose of height measurements.

Block means property having frontage on one side of a street and lying between the two nearest intersecting or intercepting streets, or nearest intersecting or intercepting street and railroad rights-of-way, waterways or other barriers. When intersecting or intercepting streets and railroad rights-of-way, waterways or other barriers do not exist, the unit of 1,320 feet shall be used and may begin at a quarter section line and terminate each 1,320 feet unless intersected by a street.

Board means the board of zoning appeals.

Boardinghouse means a building not open to transients, where lodging and/or meals are provided for compensation for three or more, but not over 30 persons regularly; a lodginghouse.

Building means a structure having a roof supported by columns or walls, for the shelter, support, enclosure or protection of persons, animals, chattels or property. When separated by party walls, without openings through such walls, each portion of such a building shall be considered a separate structure.

Building, accessory, means a subordinate building, or a portion of a main building, which is located on the lot of the main building, the use of which is incidental to that of the main building but such accessory building shall not be used as a separate family dwelling.

Building area means the maximum horizontal projected area of the principal and accessory building, excluding open steps or terraces, unenclosed porches not exceeding one story in height, or architectural appurtenances projecting not more than two feet.

Building, front line of, means the line of that face of the building nearest the front lot line.

Building, height of, means the vertical distance measured from the lot ground level to the highest point of the roof for a flat roof; to the deck line of a mansard roof; and to the mean height between eaves and ridges for gable, hip and gambrel roofs.

Building, principal, means a building in which is conducted the main or principal use of the lot on which said building is situated. Where a substantial part of the wall of an accessory

building is a part of the wall of the principal building or where an accessory building is attached to the main building in a substantial manner by a roof, such accessory building shall be counted as a part of the principal building.

Business means the engaging in the purchase, sale, barter or exchange of goods, wares, merchandise or services, the maintenance or operation of offices, or recreational and amusement enterprises for profit.

Camp, public, means any area or tract of land used or designed to accommodate two or more automobile house trailers, or two or more camping parties, including cabins, tents or other camping outfits.

Commercial. See *Business*.

District means a section of the town or the jurisdictional area for which uniform regulations governing the use, height, area, size and intensity of use of buildings and land, and open spaces about buildings, are herein established.

Family means a group of one or more persons occupying a building and living as a single housekeeping unit. Except as otherwise provided by law, no unrelated group living as a single housekeeping unit shall consist of more than six persons, as distinguished from a group occupying a lodginghouse or hotel.

Garage, private, means an accessory building with capacity for not more than three motor vehicles for storage only, not more than one which may be a commercial vehicle of not more than three-ton capacity; provided, however, that a garage designed to house one motor vehicle for each family housed in an apartment shall be classed as a private garage.

Garage, public, means any building or premises, except those defined herein as a private garage, used for the storage or care of motor vehicles, or where such vehicles are equipped for operation, repaired or kept for remuneration, hire or sale.

Ground floor area means completed living area not to include basement or cellar space. Any living area where the floor elevation is below the natural grade level of the lot on which the dwelling is constructed shall not be considered ground floor area.

Home occupations means an occupation carried on by a member of the family residing on the premises, in conjunction with which no person is employed other than a member of said family; and no sign, other than a nameplate not exceeding one square foot in area, is displayed and no change in the external appearance of the building shall be caused thereby, and that no accessory building shall be used for such home occupation.

Hotel means a building in which lodging is provided and offered to the public for compensation, and which is open to transient guests, in contradiction to a boardinghouse or lodginghouse.

Improvement location permit means a permit issued by the building inspector for new construction of a principal building or for an accessory building or for the alteration of an existing building. The terms "improvement location permit" and "building permit" are hereby determined to be synonymous and the terms used interchangeably.

Junkyard, including automobile wrecking yard, means a lot or part thereof used for the storage, keeping or abandonment of junk, including scrap metal and/or vehicles, machinery and/or parts thereof.

Jurisdictional area, for planning and zoning, means the area incorporated within the town.

Kennel means any lot or premises on which four or more dogs at least four months of age are kept.

Livestock includes cattle, horses, hogs, pigs, lambs, sheep, goats and any other animal normally designated as a farm animal.

Lodge or *club* means an association of persons for some common purpose, but not including a group organized primarily or which is actually engaged to render a service which is customarily carried on as a business.

Lot means a parcel of land occupied or intended for occupancy by a use permitted in this chapter, including one principal building and its accessory buildings, and the open space required by this chapter, and having its principal frontage on a street, or an officially designated and approved place.

Lot, corner, means a lot abutting upon two or more streets at their intersection.

Lot coverage means the percentage of the lot area covered by the building area.

Lot, depth of, means the mean horizontal distance between the front line and the rear line of the lot, measured in the general direction of the side lot lines.

Lot, ground level, means:

- (1) For buildings having walls adjoining one street only, the elevation of the ground at the center of the wall adjoining the street.
- (2) For buildings having walls adjoining more than one street, the average of the elevation of the ground at the center of all walls adjoining the streets.
- (3) For buildings having no wall adjoining the street, the average level of the ground adjacent to the exterior walls of the building.
- (4) Any wall approximately parallel to and not more than five feet from a street is to be considered as adjoining the street.

Lot, interior, means a lot other than a corner lot or through lot.

Lot line, front, means, in the case of an interior lot, a line separating the lot from the street or place; and in the case of a corner lot, a line separating the narrowest street frontage of the lot from the street, except in cases where deed restrictions in effect specify another line as the front lot line.

Lot line, rear, means a lot line which is opposite and most distant from the front lot line and, in the case of an irregular or triangular shaped lot, a line ten feet in length within the lot, parallel to and at the maximum distance from the front lot line.

Lot line, side, means any lot boundary line not a front lot line or a rear lot line.

Lot, through, means a lot having frontage on two streets at opposite ends of the lot.

Lot, width of, means the distance between the side lot lines at the front building line of building measured at right angles to the depth of the lot.

Mobile home court means any area or tract of land used or designed to accommodate two or more mobile homes for nontransient use meeting the standards established by the state board of health for such park or court.

Motel means a building or group of buildings in which lodging is provided and offered to the public for compensation, and catering primarily to the public traveling by motor vehicle.

Nonconforming use means a building or premises which does not conform in its use or otherwise with all of the regulations of the district in which such building or premises is located.

Nursery, child care or school, means an establishment for the parttime care of five or more children of pre-elementary school age in addition to the members of the family residing therein.

Parking lot means a parcel of land devoted to unenclosed parking space for five or more motor vehicles for compensation or otherwise.

Place means an open unoccupied space other than a street or alley, permanently reserved for use as the principal means of access to abutting property.

Poultry includes ducks, chickens, geese, turkeys and other fowl normally designated as a farm fowl.

Professional office, when conducted in a residential district, shall be incidental to the residential occupation; shall be conducted by a member of the resident family entirely within a residential building and accessory building; and shall include only the offices of doctors or practitioners, ministers, architects, landscape architects, professional engineers, lawyers, authors, musicians and other recognized professional occupations occasionally conducted within residences.

Sanitarium means a private hospital, whether or not such facility is operated for profit.

Story means that portion of a building included between the surface of any floor other than the basement and the surface of the floor next above it. If there is no floor above it, then the space between such floor and the ceiling next above it shall be the story.

Story, half, means that portion of a building under a sloping gable, hip or gambrel roof, the wall plates on at least two opposite exterior walls of which are not more than three feet above the floor level of such half story.

Street means a public thoroughfare 50 feet or more in width between property lines, which affords principal means of vehicular access to abutting property.

Structural alteration means any change in the supporting members of a building such as bearing walls or partitions, columns, beams or girders, or any substantial change in the exterior walls or the roof, excepting such alteration as may be required for the safety of the building.

Structure means anything constructed or erected, the use of which requires more or less permanent location on the ground or which is attached to something permanently located on the ground.

Tourist home means a dwelling in which overnight accommodations for not more than ten transient guests are offered for compensation.

Vehicle parking spaces means the area required for parking one automobile, which in this chapter is held to be an area nine feet wide and 20 feet long plus 70 square feet of maneuver area for each vehicle parking space making a total of 250 square feet.

Vision clearance on corner lots means a triangular space at the street corner of a corner lot free from any kind of obstruction to vision between the height of 3½ feet and 12 feet above established grade, determined by a diagonal line connecting two points measured equidistant from the corner along each property line.

Yard, front, means horizontal space measured at 90 degrees with the property line between the front line of the principal building unoccupied other than by steps, walks, terraces and open, unroofed, unenclosed porches; or architectural appurtenances projecting not more than 24 inches from the building.

Yard, rear, means horizontal space measured at 90 degrees to the rear lot line between the rear of the principal building and the rear line of the lot, unoccupied other than by vehicle parking space, architectural appurtenances or accessory buildings which do not occupy more than 30 percent of the required rear yard.

Yard, side, means horizontal space measured at 90 degrees to the side lot line between the side of a building and the adjacent side line of the lot, unoccupied other than by architectural appurtenances projecting not more than 24 inches, or open or lattice-enclosed fire escapes or fire proof outside stairways, projecting not over four feet.

Zone. See District.
(Code 1992, § 20.08; Ord. No. 138, § 1, 7-?-1992)

Sec. 50-2. Purpose and intent.

(a) *Purpose.* The provisions of this chapter shall be held to be the minimum requirements adopted for the purpose of:

- (1) Promoting the health, safety, comfort, convenience, morals and general public welfare;
- (2) Securing adequate light, air, convenience of access and safety from fire, flood and other dangers;
- (3) Recognizing the needs of business in the future growth of the town;
- (4) Providing healthy surroundings for family life in the residential areas of the town; and
- (5) Promoting the efficient and economical use of public funds in the growth of the town.

(b) *Intent.* To these ends, this chapter is intended to establish and accomplish certain standards and objectives by:

- (1) Classifying, regulating and limiting the height, area, bulk and use of buildings and premises hereinafter to be erected;
- (2) Regulating and determining the area of front, rear and side yards, courts and other open spaces about such buildings;
- (3) Regulating and determining the use and intensity of use of land and lot areas;
- (4) Classifying, regulating and restricting the location of trades, callings, industries, commercial enterprises and the location of buildings designed for specified uses;
- (5) Dividing the town into districts of such kind, character, number, shape and area as may be deemed necessary to carry out the purposes of the master plan;
- (6) Providing controls over additions to and alterations and remodeling of existing buildings and structures;
- (7) Providing controls governing the continuation of those uses, buildings and structures, which are incompatible with the character of the district in which they are located;
- (8) Defining the powers and duties of the administrative officers and bodies for the administration and enforcement of this chapter; and
- (9) Prescribing penalties for the violation of the provisions of this chapter or of any amendment thereof.

(Code 1992, § 20.01)

Sec. 50-3. Interpretation.

In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements for the promotion and protection of the public health, safety, morals and general welfare.

- (1) Where the conditions imposed by any provisions of this chapter upon the use of land, buildings or structures; height of buildings or structures; floor area requirements; lot

area and width requirements; and yard and other open space requirements are either more restrictive or less restrictive than comparable standards imposed by any other provisions of this chapter or of any other law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall govern.

- (2) This chapter is not intended to abrogate any easement, covenant or other private agreement; provided that where the regulations of this chapter are more restrictive or impose higher standards or requirements than such easements, covenants or other private agreements, the requirements of this chapter shall govern.
- (3) No building, structure or use not lawfully existing at the time of the adoption of the ordinance from which this chapter is derived shall become or be made lawful solely by reason of the adoption of the ordinance from which this chapter is derived; and to the extent and in any manner that said unlawful building, structure or use is in conflict with the requirements of this chapter, said building, structure or use remains unlawful hereunder.

(Code 1992, § 20.02)

Secs. 50-4—50-24. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

Sec. 50-25. Administration.

The building inspector is hereby designated and authorized to enforce this chapter.
(Code 1992, § 20.05)

Sec. 50-26. Creation, composition and appointment of board of zoning appeals.

An advisory board of zoning appeals is hereby created pursuant to 900 series, board of zoning appeals (IC 37-7-3-900—36-7-4-924).

- (1) *Chairman.* The chairman of the advisory board of zoning appeals shall call and preside over all meetings whether regular or special.
- (2) *Secretary.* The secretary shall record all activities of the board.
 - a. The secretary shall attest all documents of the advisory board of zoning appeals.
 - b. The secretary shall remove boisterous and disorderly people when requested to do so by either the board chairman or the majority of the board.
- (3) *Local application.*
 - a. *Meetings.*
 1. Meetings of the advisory board of zoning appeals shall be called by the chairman.

2. Decisions of the board shall be by voice vote of the members. All members present shall vote on every question unless they disqualify themselves and are excused from voting by a majority of the members present. If a member of the advisory board of zoning appeals cannot vote on a particular matter due to a direct or indirect financial interest, the board shall then appoint an elector to act as a member during the hearing and determination of that particular petition.
 3. The secretary shall record and keep the official minutes of all proceedings showing the vote of each member on each question presented or indicating that the member is absent or not voting.
 4. The secretary shall keep a record of all proceedings of the board which shall be presented to the board at the next succeeding meeting for approval. When approved, the records shall be signed by the chairman and attested by the secretary.
- b. *Agenda.*
1. Each action to be prepared before the board shall be filed in proper form with the required data; shall be numbered serially and placed on the docket of the board. The docket numbers shall include the year and begin anew on January 1 of each year.
 2. As soon as the case receives a docket number, it shall be placed on the agenda of the board and a date set for public hearing.
 3. Cases shall come before the board in the regular order of their consecutive numbers unless otherwise ordered by the board.
- c. *Variances.*
1. The petitioner who seeks a variance or a special use shall file such petition in the office of the town clerk-treasurer.
 2. If the petition is appealing a decision, requirement or determination made by the building inspector, the petition must be filed within 30 days of the commissioner's decision.
 3. Seven copies of the petition must be submitted to the advisory board of zoning appeals.
 4. All petitions shall be accompanied by a nonrefundable filing fee in the amount established by the plan commission to defray the administrative and investigative expenses of the board made payable to the clerk-treasurer of the town.
 5. The petition must include:
 - (i) The subject of the petition.
 - (ii) The names and addresses of the petitioners.
 - (iii) The names and addresses of the property owners.

- (iv) Legal description of the property and common description (common address).
 - (v) The present zoning of the property.
 - (vi) Covenants running with the property relative to the petition.
 - (vii) The reason of the petition.
- d. *Conduct of public hearings.* The conduct of public hearings shall be as follows:
1. The board chairman shall call for the reading of the petition by the secretary.
 2. The petitioner shall present the facts and arguments in support of his case.
 3. The board may question the petitioner.
 4. The board chairman shall open the public hearing after first explaining the procedures to be followed.
 5. Each of those who opposes the petition shall have one opportunity to speak. To do so, one must address the chair and be recognized before speaking on the subject of the petition. The remonstrator or proponent must give his name and address. The chairman may limit a duly recognized speaker's time.
 6. The chairman shall close the public hearing after the board has adequately heard from the proponents and remonstrators.
 7. The chairman shall call for the reading of written remonstrance by the secretary.
 8. The petitioner may summarize arguments.
 9. The board may question further.
 10. Vote.
 11. In the presentation of a case, the burden shall be upon the petitioner to supply all information including charts, plats, diagrams and other exhibits necessary for a greater understanding of the problem. The board may continue the hearing when, in its judgment, the petitioner has not provided sufficient evidence and information in which to make a determination.
 12. Every person appearing before the board shall abide by the order and directions of the chairman. Discourteous, disorderly or contemptuous conduct shall be regarded as a breach of the privileges of the board and those responsible for the action shall be removed from the premises.
 13. The board, at its discretion, may continue or postpone the hearing of any case upon an affirmative vote of a majority of the members.
 14. All petitioners must share the burden of proof for their respective petitioners.

e. *Final disposition of cases.*

1. The final disposition of any case shall be in the form of an order setting forth the findings and determination of the board, together with any modification, specification or limitation which it makes. The secretary shall provide a written copy of each order to all petitioners within ten days of final disposition.
2. The board may dismiss a case for want of prosecution or lack of jurisdiction. When a petitioner has failed to appear at two consecutive meetings, the case shall be dismissed for want of prosecution.
3. A petitioner may not withdraw a case after a roll call vote has been called by the chairman or requested by the board.
4. A case which has been withdrawn by the petitioner shall not be again placed on the docket within a period of three months after the date of withdrawal.
5. A case which has been decided adversely to the petitioner shall not again be placed on the docket for consideration until one year after the date of decision previously rendered.

(Code 1992, § 20.06(A))

State law reference—Board of zoning appeals, IC 36-7-4-901 et seq.

Sec. 50-27. Creation, composition and appointment of plan commission.

(a) *Establishment.* An advisory plan commission is hereby created pursuant to 200 series, commission establishment and membership (IC 36-7-4-200—35-7-4-299).

(b) *Secretary.*

- (1) The secretary shall attest all documents of the plan commission.
- (2) The secretary shall remove boisterous and disorderly people when requested to do so by either the commission chairman or the majority of the commission.

(Code 1992, § 20.06(B))

State law reference—Plan commission, IC 36-7-4-202 et seq.

Sec. 50-28. Nonconforming buildings, structures and uses.

(a) *Purpose; intent.* The regulations of this section are intended to provide controls over nonconforming uses, buildings and structures, and to specify those circumstances and conditions under which those nonconforming buildings, structures and uses may be continued or shall be discontinued when the nonconforming use ceases by discontinuance or abandonment.

(b) *Authority to continue nonconforming buildings, structures and uses.* Any building, structure or use which existed lawfully at the time of the adoption of the ordinance from which this chapter is derived or of any subsequent amendment thereto may be continued only in accordance with the following regulations:

- (1) *Repairs and alterations.* Ordinary repairs and alterations may be made to a nonconforming building or structure, provided that no structural alterations shall be made in

or to such building or structure, all or substantially all of which is designed and intended for a use not permitted in the district in which it is located, except those required by law, or except to make the building or structure and use thereof conform to the regulations of the district in which it is located. Ordinary repairs and alterations shall be determined by the building inspector.

- (2) *Additions and enlargements.*
 - a. A nonconforming building or structure, all or substantially all of which is designed and intended for a use not permitted in the district in which it is located, shall not be added to or enlarged in any manner unless such nonconforming building or structure and use thereof, including all additions and enlargements thereto, is made to conform to all the regulations of the district in which it is located.
 - b. A building or structure, all or substantially all of which is designed and intended for a use permitted in the district in which it is located but is nonconforming only as to bulk, may be added to or enlarged for a use permitted in the district, provided that such addition conforms to all bulk regulations of the district in which it is located.
- (3) *Moving.* No building or structure shall be moved in whole or in part to any other location unless every portion of such building or structure and the use thereof is designed and used for a use permitted in the district to which it is moved and there is conformance with all other regulations of such district.
- (4) *Restoration of damaged nonconforming buildings or structures.* A building, structure or portion thereof, all or substantially all of which is designed or intended for a use which is not permitted in the district in which it is located, and which is destroyed or damaged by fire or other casualty or act of God to the extent that the cost of restoration to the condition in which it was before the occurrence will exceed 150 percent of its assessed value, shall not be restored unless said building or structure and the use thereof shall conform to all regulations herein for the district in which it is located. In the event that the cost of restoration is less than 150 percent of such assessed value and restoration has not started within one year from the date of the partial destruction and diligently prosecuted to completion, such partially destroyed nonconforming building shall not thereafter be restored unless such building or structure and the use thereof is made to conform with the regulation herein for the district in which it is located. Assessed valuation shall be the dollar valuation upon which real estate taxes are assessed for the year in which such building or structure is destroyed or damaged.
- (5) *Discontinuance of use of nonconforming building or structure.* A building, structure or portion thereof, all or substantially all of which is designed or intended for a use which is not permitted in the district in which it is located, and in which the use has ceased by discontinuance or abandonment, on the effective date of the ordinance from which

this chapter is derived, or thereafter is abandoned and remains unoccupied, or is not used for a continuous period of one year, shall not thereafter be occupied or used except by a use which conforms to the use regulations of the district in which it is located.

- (6) *Change of use in nonconforming building or structure.* The nonconforming use of a building or structure, all or substantially all of which is designed or intended for a use not permitted in the district in which it is located, may be changed to a use permitted in the district in which the building or structure is located.
- (7) *Nonconforming use of conforming buildings or structures.* The existing nonconforming use of a part or all of a conforming building or structure may be continued subject to the following provisions:
 - a. The nonconforming use of a part of a conforming building or structure shall not be expanded or extended into any other portion of such building or structure, or the use of such building or part thereof, or structure shall not be changed to any other nonconforming use.
 - b. If a nonconforming use of such a building or structure is discontinued or abandoned for a period of one year, it shall not be renewed and any subsequent use of such building or structure shall conform to the use regulations of the district in which the premises are located.
 - c. In all residence districts, any lawful nonconforming use existing on the effective date of the ordinance from which this chapter is derived, or any application amendment to this chapter that is located in a building which is all or substantially all designed and intended for a use allowed in any residence district, and such nonconforming use is a use that is not permitted in any residence district, shall be terminated not more than ten years after the effective date of the ordinance from which this chapter is derived or any future amendment.
- (8) *Nonconforming use of land.* The nonconforming use of land not involving a building or structure, or in connection with which any building or structure thereon is incidental or accessory to the principal use of land, may be continued subject to the following provisions:
 - a. Such nonconforming use of land and accessory buildings or structures thereon shall not be expanded, extended or enlarged.
 - b. If such a nonconforming use of land is discontinued or abandoned for a period of six consecutive months, it shall not thereafter be renewed, and subsequent use of land shall conform to the regulations of the district in which the land is located.
 - c. A nonconforming use of land shall not be changed to another nonconforming use.

(Code 1992, § 20.04)

Secs. 50-29—50-59. Reserved.

ARTICLE III. ZONING DISTRICTS ESTABLISHED; ZONING MAP

Sec. 50-60. Zoning districts designated.

The town is hereby divided into four districts in order to carry out the purposes of this chapter. The districts shall be known and designated throughout this chapter as follows:

<i>Name of district</i>	<i>Designation hereinafter</i>
A, Single-family residential district	A
B, Two-family and group house residential district	B
GO, General office—Nonretail	GO
LB, Local business district	LB

(Code 1992, § 20.03(A))

Sec. 50-61. District map and boundaries.

The districts and their boundaries are shown on the map entitled "Zoning District Map—Town of Trail Creek, Indiana," dated April 18, 1978, the map of which and all amendments thereto and all notations, references and other information shown thereon are hereby incorporated and made a part of this chapter. The zoning district map properly attested is on file in the office of the clerk-treasurer of the town.

(Code 1992, § 20.03(B))

Sec. 50-62. Determination and interpretation of district boundaries.

In determining the boundaries of districts and establishing the regulations applicable to each district, due and careful consideration has been given to existing conditions, the character of buildings erected in each district, the most desirable use for which the land in each district may be adapted, and the conservation of property values throughout the town. Where uncertainty exists as to the exact boundaries of any district as shown on the zone map, the following rules shall apply:

- (1) Where district boundaries are indicated as following street, alley or lot lines, or approximately along such lines, such lines shall be construed to be the district boundaries.
- (2) In unsubdivided areas, or where a district boundary subdivided a lot, the exact location of the boundary shall be determined by use of the scale of the zone map.
- (3) Where a district boundary line divides a lot in single ownership, the district regulations of either portion of the lot may, at the owner's discretion, extend to the entire area of the lot, provided that the portion of the lot in the other zoning district does not extend more than 25 feet from the district boundary line.

(4) In the case of further uncertainty, the board of zoning appeals shall interpret the intent of the zone map as to the location of the boundary in question.
 (Code 1992, § 20.03(C))

Sec. 50-63. Procedure relating to annexed or vacated areas.

(a) Territory which may hereafter be annexed to the town shall remain as zoned by the county unless changed by amendment of this chapter.

(b) Whenever any street, alley, public way, railroad right-of-way, waterway or other similar area is vacated by proper authority, the districts adjoining each side of such street, alley, public way, railroad right-of-way, waterway or similar areas shall be extended automatically to the center of such vacation and all areas included in the vacation shall then and thenceforth be subject to all appropriate regulation of the extended districts.
 (Code 1992, § 20.03(D))

Secs. 50-64—50-84. Reserved.

ARTICLE IV. DISTRICT REGULATIONS

Sec. 50-85. Generally.

(a) *Control over use.*

(1) *Establishment of new uses.* The use of a structure or tract of land established after the effective date of the ordinance from which this chapter is derived shall be for a use which is herein specified as a permitted or special use in the district regulations applicable to the district in which such building, structure or land is located.

(2) *Existing building permits and existing uses.*

a. Where a building permit for a building or structure has been issued in accordance with law prior to the effective date of the ordinance from which this chapter is derived, and where construction has been begun within six months of such effective date and is being prosecuted to completion, said building or structure may be completed in accordance with the approved plans, and may further, upon completion, be occupied under a certificate of occupancy by the use originally designated.

b. Where the use of a structure or the use of land existing at the time of the adoption of this chapter is rendered nonconforming under the provisions of this chapter, the provisions of section 50-25 shall apply to such use.

(b) *Control over bulk.*

(1) *Establishment of new structures.* New structures shall conform with the bulk regulations established herein for the district in which each such structure is located.

- (2) *Existing structures.* Existing structures shall not be enlarged, reconstructed, structurally altered, converted or relocated in such a manner as to conflict or further conflict with the bulk regulations of this chapter for the district in which such structures are located.
- (3) *Existing residential lots of record.* A lot of record, at the time of the adoption of the ordinance from which this chapter is derived, in a residence district which is unable to meet the requirements of this chapter as to area and yard requirements may be used for a single-family detached dwelling, provided that it shall meet all the other requirements of this chapter and the following additional requirements:
 - a. The applicant shall furnish with the application for a building permit a survey showing the lot upon which he proposes to erect a single-family detached dwelling and also showing the lots on either side of the lot with all improvements thereon and widths of adjoining side yards and any projections of buildings or structures therein duly plotted on said survey.
 - b. An affidavit shall be provided by the owner of record of the lot described in the application for a building permit which states that the applicant is not holding title to a contiguous lot and that the applicant has not been the owner of a contiguous lot at any time following the effective date of the ordinance from which this chapter is derived.
- (4) *Structure height.*
 - a. No structure shall be erected, converted, enlarged, reconstructed or structurally altered to exceed the height limit herein established for the district in which the structure is located, except that penthouses or roof structures for the housing of elevators, stairways, tanks, ventilating fans or similar equipment required to operate and maintain the structure, and fire or parapet walls, skylights, towers, steeples, flagpoles, chimneys, smokestacks, radio and television aerials, wireless masts, electric and telephone service poles, water tanks, silos, storage hoppers, elevators or similar structures may be erected above the height limits herein prescribed. No such structure shall be erected to exceed by more than 25 feet the height limits of the district in which it is located.
 - b. Grade from which structure height is measured shall be the existing or established grade at the building setback line midway between the two side lot lines, except that where the buildable area has an average slope of ten percent or more between any two corners, the building inspector shall establish the grade from which the building height is measured.
- (5) *Minimum lot area; two or more uses on a lot.* Wherever two or more permitted or special uses, each requiring a minimum lot area, are provided in the same building or on the same lot, the required lot area shall be the sum of the areas required for each use individually. When one or more use has a required minimum lot area and is located

on a lot with a use which does not have a required lot area, the total lot area shall equal the sum of the required lot areas plus an additional area equivalent to that devoted to the use which does not have a required minimum lot area.

(c) *Control over yards and other open areas.*

- (1) Yards and other open spaces, as required by this chapter, shall be located on the same lot as the principal structure or use and shall have not less than the minimum width, depth or area as herein required for the district in which such structure or use is located except as otherwise provided for setbacks and for planned developments.
- (2) On a corner lot, the front lot line shall be the lot line having the shortest dimension along a street right-of-way line unless otherwise determined by the building inspector.
- (3) No legally required yards, open spaces or lot areas for any building, structure or use shall be used to satisfy yard, open space or lot area requirements for any other building, structure or use.
- (4) No yards allocated to a building, structure or use existing on the effective date of the ordinance from which this chapter is derived shall be subsequently reduced or further reduced below the yard requirements of this chapter, except a yard adjoining a street may be reduced in depth in the event the right-of-way width of such street is subsequently increased.

(d) *Control over access.*

- (1) Yards and other open spaces, as required by this chapter, shall be located on the same lot as the principal structure or use, and shall have not less than the minimum width, depth or area as herein required for the district in which such structure or use is located except as otherwise provided for setbacks and for planned developments.
- (2) On a corner lot, the front lot line shall be the lot line having the shortest dimension along a street right-of-way line unless otherwise determined by the building inspector.
- (3) No legally required yards, open spaces or lot areas for any building, structure or use shall be used to satisfy yard, open space or lot area requirements for any other building, structure or use.
- (4) No yards allocated to a building, structure or use existing on the effective date of the ordinance from which this chapter is derived shall be subsequently reduced or further reduced below the yard requirements of this chapter, except a yard adjoining a street may be reduced in depth in the event the right-of-way width of such street is subsequently increased.

(e) *Control over accessory structures and uses.*

- (1) *Permitted.* Accessory structures and uses are permitted in the various districts.
- (2) *Compatibility with principle use.* Accessory structures and uses shall be compatible with the principal use, and shall not be established prior to the establishment of the principal use.

- (3) *Keeping of animals prohibited.* Accessory uses shall not include the keeping, propagation or culture of pigeons, poultry, rabbits, bees, livestock or other nonhousehold animals, whether or not for profit.
- (4) *Conformance with regulation.* Except as otherwise regulated for specific principal uses, an accessory structure hereafter erected, altered, enlarged or moved on a lot shall conform with the following:
 - a. A detached accessory structure, not including open fences, solid fences and sheds and storage buildings for garden equipment and household items, set forth in the table in subsection (e)(5) of this section, shall not be nearer than ten feet from the nearest wall of the principal building.
 - b. Detached accessory structures, not including open fences and solid fences, set forth in the table in subsection (e)(5) of this section, in a rear yard shall:
 - 1. Not be more than one story or 15 feet in height, whichever is lower;
 - 2. Cover not more than 30 percent of the area of the rear yard; and
 - 3. Be located not less than four feet from the nearest lot line.
 Items, open fences and solid fences may be built on the rear property line.
- (5) *Permitted accessory structures and uses in yards.* A detached or attached accessory structure shall not be located in a front yard, interior side yard or side yard adjoining a street except as otherwise regulated herein for a specific permitted or special use. However, the following accessory structures and uses are permitted and may be obstructions in yards and courts as follows:

- "F" denotes front yards and side yards adjoining streets
- "S" denotes interior side yards
- "R" denotes rear yards
- "C" denotes open courts

Awnings or canopies, attached, projecting not more than 25 percent of the width or depth of a yard or not more than three feet into a court	F S R C
Arbors or trellises, detached	R C
Arbors or trellises, attached	F S R C
Air conditioning equipment shelters	R C
Balconies	R
Bay windows projecting not more than three feet into a yard	F R
Chimneys, attached, projecting not more than 24 inches into a yard or court	F S R C
Eaves and gutters projecting not more than four feet into a front and rear yard and not more than 24 inches into a side yard, or court	F S R C
Fallout shelters, attached or detached	R

Fences, open, located in:	
Residence districts—not more than six feet in height	S R
Business districts—not more than ten feet in height	S R
Fences, solid, located in:	
Residence districts—not more than six feet in height	S R
Business districts—not more than ten feet in height	S R
Fire escapes, open or enclosed, or fire towers projecting into a front yard or side yard adjoining a street not more than five feet and into an interior side yard or court not more than 3½ feet	F S R C
Flagpoles	F S R C
Garages or carports, attached or detached	R
Growing of farm and garden crops in the open	S R
Lawn furniture, such as benches, sun dials, bird baths and similar architectural features	F S R C
Open, off-street loading spaces	R
Open, off-street parking spaces which shall be located not less than 2½ feet from a lot line, or not less than ten feet from a building wall in courts	S R C
Ornamental light standards	F S R C
Playground and laundry drying equipment	R C
Playhouses and open-sided summer houses	R
Sheds and storage buildings for garden equipment and household items	R
Signs and nameplates as herein regulated	F S R C
Sills, belt courses, cornices and ornamental features of the principal building, projecting not more than 18 inches into a yard or court	F S R C
Steps, open, necessary for access to and from the dwelling or an accessory building, steps as access to the lot from the street, and in gardens or terraces	F S R C
Swimming pools, private, when conforming also with other codes or ordinances of the town	R
Terraces, patios and outdoor fireplaces	R
Tennis courts, private	R
Trees, shrubs and flowers	F S R C
Other accessory buildings, structures and other uses as herein permitted in district regulations as accessory to a specific permitted, conditional permitted or special use	Not allowed in yards

(f) *Lot divisions.* No lot shall hereafter be divided into two or more lots unless all lots resulting from each such division shall have lot areas and widths as required in this chapter.

(g) *Trailers, mobile homes, tents and boats.*

- (1) Semitrailers pulled by tractor-trailers are not permitted to park within the town residential areas.

- (2) Mobile homes, trailers, travel trailers, motor homes, recreational vehicles or camping trailers shall not be occupied for dwelling except in a lawfully established mobile home park or tourist camp.
 - (3) Mobile homes, trailers, travel trailers, motor homes, camping trailers, jet skis, all-terrain vehicles, utility trailers, snowmobiles, boats or other watercraft or recreational vehicles shall not be parked or stored in a public right-of-way or on any lot other than a lawfully established mobile home park, tourist camp or trailer sales except in compliance with this section.
 - (4) Temporary parking and use of trailers shall be permitted when a permit has been issued by the building inspector for the following purposes: parking and use of trailers for temporary office or storage use incidental to and only for the period of time of construction of a building development, provided that such trailers are located on the same or contiguous lots as the building development.
 - (5) Tents shall not be erected, used or maintained on any lot except such tents that are customarily used for recreational purposes and are located on the same lot as a dwelling. Temporary use of tents for religious, amusement or recreation, business or manufacturing purposes shall be permitted when a permit has been issued by the building inspector in accordance with provisions herein set forth in section 50-25.
 - (6) The items regulated under this section shall be utility trailers, travel trailers, camping trailers, recreational vehicles, snowmobiles, all-terrain vehicles, boats, jet skis or other watercraft. A total of three items or any combination of items covered in this section may be stored in or part in a side yard or rear yard of a lot as long as the lot contains a residence. A trailer and one other item mentioned in this section may be considered as one item if the item is on the trailer.
 - (7) From April 1 to November 1 of each year, the items listed in subsection (g)(5) of this section may be parked temporarily on the driveway portion or turnaround portion of the lot, as long as homeowner utilizes the item a minimum of every two weeks.
 - (8) At no time shall any of the items regulated under this section be parked in the public right-of-way or easements of the town.
 - (9) In the event of a conflict between this section and article V of this chapter, article V of this chapter will control.
- (h) *Storage of junk, refuse and disabled or damaged motor vehicles.* The open storage of junk, refuse, scrap, disabled or damaged motor vehicles, whether awaiting repair or not is prohibited in all zoning districts.
(Code 1992, § 20.07; Ord. No. 163, 5-18-1999)

Sec. 50-86. Residential uses.

(a) *Single-family dwelling.*

(1) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection (a)(1), except where the context clearly indicates a different meaning:

Single-family dwelling means a detached building designed for or occupied by one family exclusively.

(2) *Location permitted.* Single-family dwellings are permitted in all districts, provided that they are located:

- a. On a lot which was a single ownership or included in a subdivision recorded in the office of the recorder of the county on or before the date of passage of the ordinance from which this chapter is derived; or
- b. On any lot with a minimum area in square feet and width in feet as follows:

<i>District</i>	<i>Lot area</i>	<i>Lot width</i>
A, B, GO, LB	15,000 sq. ft.	100 ft. frontage
1. When water and sewage are provided:		
<i>Lot area</i>	<i>Lot width</i>	
8,000 sq. ft.	80 × 100	
2. When sewage, no water is provided:		
<i>Lot area</i>	<i>Lot width</i>	
12,000 sq. ft.	100 × 120	
3. When water, no sewage is provided:		
<i>Lot area</i>	<i>Lot width</i>	
15,000 sq. ft.	100 × 150	

(3) *Bulk standards.*

- a. *Height of buildings.*
 - 1. *Principal building.* Normal maximum, 35 feet or 2½ stories.
 - 2. *Conditional exception.* Height of principal building may be increased above 35 feet but no higher than 45 feet or three stories if two side yards of 15 feet each are provided.
- b. *Front yard and side yard adjoining street.* Twenty percent of the average depth of lots in the block with a minimum depth of 25 feet and need not exceed 40 feet in depth in incorporated areas and a minimum depth of 50 feet and need not exceed 75 feet in unincorporated areas.

- c. *Side yard.* The sum of the side yards shall equal not less than 20 percent of the lot width with a minimum width of ten feet for either side yard.
 - d. *Rear yard.* Twenty percent of the depth of the lot, with a minimum depth of 15 feet and need not exceed 25 feet in depth.
 - e. *Ground floor area.* Of single-family dwelling structures, exclusive of one story open porches and garages, shall be as follows:
 - 1. One story dwellings: not less than 1,500 square feet.
 - 2. Multiple level dwellings: not less than 1,100 square feet with a total completed living area, counting all levels, of not less than 1,800 square feet.
 - f. *Lot coverage.* Thirty-five percent maximum on corner lot; 30 percent maximum on interior lot.
- (4) *Accessory buildings; uses permitted.* Private garage, storage, exclusive of industrial or commercial use.
- (b) *Two-family dwelling.*
- (1) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection (b)(1), except where the context clearly indicates a different meaning:
- Two-family dwelling* means a detached building designed for or occupied by two families. A double dwelling has one family above the other. A duplex dwelling has one family beside the other.
- (2) *Location permitted.* Two-family dwellings are permitted on a lot 15,000 square feet in a district B.
- (3) *Bulk standards.*
- a. *Height of buildings.*
 - 1. *Principal building.* Normal maximum, 35 feet or 2½ stories.
 - 2. *Conditional exception.* Height of principal building may be increased above 35 feet but not higher than 45 feet or three stories if two side yards of 15 feet each are provided.
 - b. *Front yard and side yard adjoining a street.* Twenty-five percent of the average depth of lots in the block with a minimum depth of 25 feet and need not exceed 40 feet in depth in incorporated areas.
 - c. *Side yard.* The sum of the side yards shall equal not less than 20 percent of the lot width with a minimum width of ten feet for each side yard.
 - d. *Rear yard.* Twenty percent of the depth of the lot, with a minimum depth of 15 feet and need not exceed 40 feet in depth.

e. *Ground floor area.* Not less than the following:

<i>District</i>	<i>Ground floor area</i>
B	Duplex—1,500 square feet per duplex Double—750 square feet per double

f. *Lot coverage.* Forty percent maximum on a corner lot; 35 percent maximum on an interior lot.

(4) *Accessory building; uses permitted.* Private garage, storage, exclusive of industrial or commercial use.

(c) *Group house and garden apartment.*

(1) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection (c)(1), except where the context clearly indicates a different meaning:

Group house and garden apartment means a building designed for or occupied by three or more families, exclusively for dwelling purposes, not exceeding 2½ stories in height.

(2) *Location permitted.*

a. Group houses and garden apartments are permitted only in the district designated below, on any lot with a minimum area in square feet and a minimum width in feet as follows:

<i>District</i>	<i>Lot area per family</i>	<i>Lot size</i>
B	3,000 sq. ft.	15,000 sq. ft.

b. When water and sewage are provided:

<i>District</i>	<i>Lot area per family</i>	<i>Lot size</i>
B	3,000 sq. ft.	12,000 sq. ft.

(3) *Bulk standards.*

- a. *Height of buildings.* Principal building, maximum of 35 feet.
- b. *Front yard.* Twenty percent of the average depth of lots in the block with a minimum depth of 25 feet but need not exceed 40 feet in depth in incorporated areas and a minimum depth of 50 feet and need not exceed 50 feet in unincorporated areas.
- c. *Side yard.* The sum of the side yards shall equal not less than 25 percent of the lot width with a minimum width of ten feet.
- d. *Rear yard.* Twenty percent of the depth of lot, with a minimum depth of 15 feet and need not exceed 25 feet in depth.
- e. *Ground floor area.* Minimum of 450 square feet for each first floor family.

f. *Lot coverage.* Fifty percent maximum on corner lots, 40 percent maximum on interior lots.

(4) *Accessory building; uses permitted.* Private garage, storage, exclusive of industrial or commercial use.

(d) *Apartment house.*

(1) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection (d)(1), except where the context clearly indicates a different meaning:

Apartment house means a building designed for or occupied by three or more families, exclusively for dwelling purposes, three or more stories in height.

(2) *Location permitted.* Apartment houses are permitted only in the districts designated below, on any lot with a minimum area in square feet as follows:

<i>District</i>	<i>Lot area per family</i>
B	2,000 square feet
LB	2,000 square feet

(3) *Bulk standards.*

a. *Front yard.* Twenty percent of the average depth of lots in the block with a minimum depth of 25 feet.

b. *Side yard.* The sum of the side yards shall equal not less than 20 percent of the lot width with a minimum width of ten feet for either side yard.

c. *Rear yard.* Twenty percent of the depth of the lot, with a minimum depth of 20 feet.

d. *Ground floor area.* Not less than 1,200 square feet.

e. *Lot coverage.* Sixty percent maximum on corner lots, 50 percent maximum on interior lots.

(4) *Accessory buildings; uses permitted.* Private garage, exclusive of industrial or commercial use.

(e) *Mobile dwelling unit.*

(1) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection (e)(1), except where the context clearly indicates a different meaning:

Mobile dwelling unit means living quarters such as house trailers, truck bodies, tents, bus bodies, railroad cars, shacks and improvised shelters which may be moved by tractor, truck automobile or horses or can be carried, transported or towed from one place to another without the use of regular house moving equipment; that use for such living quarters shall include the acts of sleeping, preparation of meals, or any sanitary

measure such as bathing, dish washing or laundering clothing or any natural or performed operation which provides waste material objectionable from a nuisance standpoint.

- (2) *Location permitted.* Only in mobile home courts, trailer camps, trailer courts or public camps approved by the state board of health and except as otherwise stipulated in the provisions of this chapter.
- (3) *General provisions and conditional exceptions applicable to mobile dwelling units.*
 - a. All mobile dwelling units occupied as temporary or permanent living quarters at the time of passage of the ordinance from which this chapter is derived must be discontinued for such use or moved to a mobile home court, trailer camp, trailer court or public camp approved by the state board of health, on or before July 1, 1978.
 - b. One house trailer as distinguished from other mobile dwelling units defined herein may be temporarily parked on a residential or commercial lot and occupied by the house trailer's owner and the owner's family for the purpose of using same as a temporary living quarters for a period not to exceed 15 days, after which such house trailer must be moved to a trailer camp approved by the state board of health.
 1. Upon authorization of the board of zoning appeals after public hearing, the building inspector may grant a temporary permit for a house trailer to be used during the construction of a residence by the trailer owner. The trailer shall be used at the site of construction and the permit shall be valid for a period not to exceed one year.
 2. In both of the above uses, a temporary permit must be obtained from the building inspector on the first day that the trailer is so parked. In all cases, house trailers must conform to the prescribed setback requirements for accessory buildings.
 - c. One house trailer, as distinguished from other mobile dwelling units as defined herein, may be stored on a residential or commercial lot for an indefinite period of time, provided that such house trailer will not be occupied for the purpose of using the same as temporary or permanent living quarters, and provided that it meets the requirements of this section. Such unoccupied house trailers are to be stored behind the principal structure and in conformance with the prescribed setback requirements of accessory buildings.
 - d. Structural or lean-to additions are not permitted other than those which are temporary and collapsible.
- (f) *General provisions and conditional exceptions applicable to all residential uses in districts where permitted.*
 - (1) *Generally.*
 - a. *Lot dimensions.* In no case shall the width of a lot be less than 80 feet at the setback line, and the depth be less than 100 feet, and the depth-to-width ratio of the usable area of a lot shall be not greater than three to one except by approval of the board of zoning appeals after public hearing.

- b. *Front yard.* No fences shall be hereafter built or erected between the front setback line of the building and the front lot line except natural fences of hedges, trees and shrubbery.
 - c. *Rear yard.* One-half of an alley abutting the rear lot may be included in the required rear yard.
 - d. *Vision clearance on corner lots.* Eight feet from the intersection of property lines.
 - e. *Vehicle parking space.* One space on the lot for each family housed in the principal building.
 - f. *Accessory buildings.*
 - 1. No accessory building shall be permitted prior to the erection of the principal building except for strictly storage purposes and not for human occupancy except by approval of the board of zoning appeals after public hearing, for a period of not more than one year from the date of such permit.
 - 2. The normal maximum height permitted shall be 18 feet or 1½ stories.
 - 3. No accessory building shall be located closer to the rear lot line than four feet if no easement is located along such rear lot line.
- (2) *Conditional exceptions.*
- a. *Front yard.*
 - 1. Where 25 percent or more of the lots in a block are occupied by buildings, the average setback of such buildings determines the dimension of the front yard in the block, but the maximum front yard need not exceed 40 feet in A and B districts or 25 feet in other districts.
 - 2. Front yard or setback lines established in recorded subdivisions establish the dimensions of front yards in such blocks, except when such setback lines may be less restrictive as provided in this chapter.
 - 3. On lots extending through from one street to another, a front yard is required on each street.
 - 4. On four lane federal and state highways, a distance of 60 feet is required on lots not included in a recorded subdivision.
 - 5. On two lane federal and state highways, a distance of 75 feet is required on lots not included in a recorded subdivision.
 - b. *Tapered yard.* Where a reversed interior lot abuts a corner lot, or on an alley separating such lots, any accessory building located on the rear lot line of a corner lot shall set back from the side street as far as the dwelling on the reversed interior lot; for each foot that such accessory building is placed from the rear line towards the front line of the corner lot, the accessory building may be set four inches closer to the side street line, but in no case closer than five feet in incorporated areas; and 25 feet in unincorporated areas on lots not included in a recorded subdivision.

- c. *Accessory buildings.* The height of accessory buildings may be increased to 25 feet or two stories provided the minimum required three foot distance from side lot lines is increased one foot for each two feet above the normal maximum height permitted.

(Code 1992, § 20.09; Ord. No. 139, §§ 1—5, 7-21-1992)

Sec. 50-87. Local business uses.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Local business uses means commercial uses primarily of a retail or service nature which are conducted within enclosed buildings.

(b) *Interpretation.* The named uses pursuant to subsection (c) of this section shall be deemed to include those uses or buildings in general keeping with and appropriate to the uses hereinafter specified.

(c) *Location permitted.* The following classifications of business uses specifically stated or implied are permitted in the LB district:

- (1) *Automobile service.*
 - a. Filling station.
 - b. Commercial garage, provided that all activities, including storage, are conducted within an enclosed facility.
 - c. Commercial parking lot.
 - d. Salesroom.
 - e. Automobile repair, entirely within enclosed buildings.
- (2) *Business service.*
 - a. Bank.
 - b. Office.
 - c. Postal station.
 - d. Telegraph office.
- (3) *Clothing service.*
 - a. Laundry agency.
 - b. Self-service laundry.
 - c. Laundry and dry cleaning establishment using not more than two clothes cleaning units, neither of which shall have a rated capacity of more than 40 pounds using cleaning fluid which is nonexplosive and noninflammable.
 - d. Dressmaking.

- e. Millinery.
 - f. Tailor and pressing shop.
 - g. Shoe repair shop.
- (4) *Equipment service.*
- a. Radio shop.
 - b. Electric appliance shop.
 - c. Record shop.
 - d. Locksmith shop.
 - e. Upholstering shop.
- (5) *Food service.*
- a. Grocery.
 - b. Meat market.
 - c. Supermarket.
 - d. Restaurant and taverns.
 - e. Cold storage lockers for individual use.
 - f. Roadside sales stand.
 - g. Delicatessen.
 - h. Catering establishments.
- (6) *Personal service.*
- a. Barbershop.
 - b. Beauty shop.
 - c. Reducing shop.
 - d. Photographic studio.
- (7) *Retail service; retail stores.*
- a. Drugstore.
 - b. Hardware.
 - c. Stationery.
 - d. Newsdealer.
 - e. Showroom for articles.
 - f. Commercial greenhouse, not exceeding 1,000 square feet in area.
 - g. Apparel shop.
 - h. Flower shop.
 - i. Painting and decorating shop.

- j. Printing shops.
 - k. Department stores.
 - l. Furniture stores.
- (8) *Commercial recreational uses.* Conducted only within buildings so constructed that no noise of any kind produced therein shall be audible beyond the confines of the building.
- a. Theater.
 - b. Bowling alley.
 - c. Billiard room.
 - d. Dancing academy.
- (9) *Miscellaneous.*
- a. Hotels or motels.
 - b. Private club or lodge.
 - c. Advertising sign or billboard.
 - d. Veterinary hospitals (excluding kennels).

(d) *Bulk standards.*

(1) *Maximum height of buildings.*

<i>District</i>	<i>Height</i>
LB	45 feet or 4 stories

(2) *Front yard and side yard adjoining street.*

- a. Buildings: 25 feet.
- b. Parking area: ten feet.

(3) *Minimum lot area.* The minimum lot area shall be 15,000 square feet.

(4) *Minimum lot width.* The minimum lot width shall be 100 feet.

(5) *Side yard.* Where an interior side yard adjoins an A or B district, there shall be provided a side yard equivalent to that required in the residence district from the common line and a dense hedge or landscaping.

(6) *Rear yard.* The rear yard shall be ten percent of the depth of the lot with a minimum depth of 15 feet and need not exceed 25 feet in depth. Where a rear yard adjoins an A or B district, there shall also be provided a three-foot-solid hedge or landscaping screen.

(7) *Lot coverage.* Lot coverage shall be 90 percent, but this shall not waive provisions of yards where required.

(e) *General provisions and conditional exceptions applicable to all business uses.*

(1) *Generally.*

a. *Vehicle parking space.* Parking spaces shall be provided on the lot or within 300 feet thereof on a site approved by the board of zoning appeals, as follows:

<i>Uses</i>	<i>No. of parking spaces</i>
Uses listed in local business categories (c)(3)— (7) of this section	1 for each 125 sq. ft. of floor area
Commercial recreational uses, other than theaters, listed in local business category (c)(8) of this section	1 for each 125 sq. ft. of floor area
Private club or lodge	1 for each 125 sq. ft. of floor area
Department store or other commercial uses	1 for each 125 sq. ft. of floor area
Business service uses listed in category (c)(2) of this section	1 for each 3 employees
Wholesale establishments	1 for each 3 employees
Theaters	1 for each 6 seats
Hotels - motels	1 for each sleeping room plus additional use as above

b. *Loading/unloading berths.* Loading and unloading berths shall be provided on the lot as follows:

<i>Use</i>	<i>Gross floor area (sq. ft.)</i>	<i>No. of berths</i>
Retail stores, department stores, wholesale establishments, storage uses, other commercial uses	3,000 to 15,000 15,001 to 40,000 Each 25,000 additional	1 2 1 additional
Hotels, office buildings	100,000 or less 100,001 to 336,000 Each 200,000 additional	1 2 1 additional

1. *Paving.* Open parking area and unloading and loading berths shall be paved with dustproof or hard surface meeting the standard specifications of the town.
2. *Front yard.* No fences shall be hereafter built or erected between the front setback line of the buildings and the front lot line except natural fences of hedges, trees or shrubbery.
3. *Vision clearance on corner lots.* Eight feet from the intersection of the property lines.

4. *Incidental use.* Any building primarily used for any of the uses enumerated under local business uses and not specifically stated or implied elsewhere in this chapter and complying with the definition of commercial uses under general business uses may have not more than 40 percent of the floor area devoted to industry or storage purpose strictly incidental to such primary use; provided that not more than five employees shall be engaged at any time on the premises in any such incidental use.
5. *Lighting facilities.* Outside lighting facilities, if provided, shall be so arranged as to not direct rays of light onto adjacent lots and streets.
6. *Performance standard.* No commercial use and/or incidental use associated with the commercial use will be permitted which is injurious to health or safety of humans or animals, or injurious to vegetation; and which is noxious or offensive by reason of the emission of smoke, dust, gas fumes, odors, noises (including music) or vibrations beyond the limits of the premises upon which such use is conducted.

(2) *Conditional exceptions.*

- a. *Maximum height.* The normal maximum height of structures may be increased as follows:
 1. Buildings may be erected higher than the normal maximum if they are set back from the front and rear property lines one foot for each two feet of additional height above the normal height maximum.
 2. Chimneys, cooling towers, elevator bulkheads, fire towers, penthouses, stacks, tanks, water towers, transmission towers or essential mechanical appurtenances may be erected to any height not prohibited by other laws or codes.
- b. *Front yard.*
 1. Where 25 percent or more of the lots in a block are occupied by buildings, the average setback of such buildings determines the dimension of the front yard in the block, but the maximum front yard need not exceed 25 feet in incorporated areas.
 2. On four-lane federal and state highways, the front yard shall be a distance of 60 feet on lots or parcels of land not included in any existing recorded subdivision.
 3. On two-lane federal and state highways, the front yard shall be a distance of 75 feet on lots or parcels of land not included in an existing recorded subdivision.
- c. *Vehicle parking space.*
 1. Groups of uses requiring vehicle parking spaces may join in establishing group parking areas with capacity aggregating that required for each participating use.

2. Vehicle parking requirements shall not apply in a block, 50 percent or more of the area of which was occupied by business or industrial structures at the time of passage of the ordinance from which this chapter is derived.
 - d. *Use variances.* Any commercial use not specifically stated or implied elsewhere in this chapter and complying with the definition in this chapter may be permitted after public hearing and favorable finding of the advisory zoning board of appeals.
- (Code 1992, § 20.10)

Sec. 50-88. General office, nonretail (GO).

(a) *Purpose.* The purpose of the general office district is to provide a restrictive commercial area which will blend with the predominate residential uses in the town. The strict regulations are designed to eliminate all retail, service and/or warehousing activity while providing a desirable setting for professional business and administrative office.

(b) *General provisions.*

(1) *Permitted uses.* General, professional, governmental and administrative offices.

(2) *Bulk regulations.*

a. Minimum yards.

1. Front yard and side yard adjoining a street: 15 feet.
2. Interior side yard: 15 feet.
3. Rear yard: 15 feet.
4. Rear yard or side yard adjoining residential district: 15 feet and a three-foot high solid hedge shall be provided.

b. Minimum lot area: 15,000 square feet.

c. Minimum lot width: 100 feet.

d. Maximum height of building structures: 38 feet.

e. Maximum floor to area ratio: two to ten.

f. Minimum off-street parking: one space for each 300 square feet of floor space.

(3) *Open space requirements.* Any off-street parking area visible from a residential area shall be effectively screened.

(4) *Procedures.* The application for an improvement location permit processed by the building inspector of the town, shall be predicated upon the following:

- a. The establishment for maintenance or operation of the proposed use will not be detrimental to or endanger the public health, safety, comfort or general welfare.
- b. The proposed use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted or substantially diminish and impair property values within the neighborhood.

- c. The establishment of the proposed use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- d. Adequate utilities, access roads, drainage and/or necessary site improvements have been or are being provided.
- e. Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- f. Conformance to all conditions outlined in this article for the use being requested.

(Code 1992, § 20.11)

Sec. 50-89. Contingent uses.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection (a), except where the context clearly indicates a different meaning:

Contingent uses means uses which are likely or liable, but not certain, to occur, and which are not inappropriate to the principal use of the district in which located.

(b) *Location permitted and vehicle parking space required.* Contingent uses, as listed herein, are permitted in the district indicated below. Each use shall provide on the lot, or within 300 feet thereof on a site approved by the board of zoning appeals, parking spaces, open or enclosed, as follows:

<i>Contingent use</i>	<i>Location permitted</i>	<i>Parking space required</i>
Boardinghouse or lodginghouse	B, LB	1 for each 3 occupants
Church or temple	A, B	1 for each 6 seats in main auditorium
Community center	A, B, LB	1 for each 6 seats
Farm, vegetable or flower garden, or plant nursery, anywhere, but without raising of livestock and poultry within town limits	All	
Home occupation	A, B	1 additional
Mortuary	B, LB	1 for each 6 seats in chapel
Municipal or governmental building	All	1 for each 125 sq. ft. ground floor area
Nursing home or homes for the aged	B, LB	1 for each 7 persons
Professional office in residence of practicing professional person	A, B	2 additional
Public library or museum	All	1 for each 125 sq. ft. ground floor area

<i>Contingent use</i>	<i>Location permitted</i>	<i>Parking space required</i>
Public park or public recreational facility	All	1 for each 125 sq. ft. ground floor area.
Public utilities building or right-of-way, including purposes essential to utilities operation, but not including commercial or industrial structures	All	1 for each 3 employees in the building
Roadside stands, for the sale by the producer of agricultural and plant nursery products raised on the premises	All	
School, public or parochial	A, B	1 for each 3 members of the staff plus one for each 8 seats in the auditorium
Tourist home	B, LB	1 for each sleeping room

(c) *Permits for parking lots in residential zones.*

- (1) In order to meet requirements for vehicle parking space, where such space is not available on the lot occupied by a building, the board of zoning appeals may, after receipt of a favorable report from the town plan commission on the proposal, and after public notice and hearing, grant a permit for the establishment of a parking lot in an A or B district, provided that the entire area of the parking lot is within 300 feet of an LB district, or in the case of church or other place of congregation in an A or B district, immediately adjacent to such church or other place of congregation, and provided further that:
 - a. There shall be no sales, dead storage, repair work, dismantling or servicing of any kind on said parking lot.
 - b. Entrances and exits shall be approved as to location by the town plan commission.
 - c. No parking shall be permitted nearer than ten feet from the front or four feet from the side line.
 - d. Except for otherwise approved entrances and exits, a curb or rail not more than two feet in height and not less than eight inches in height shall be erected so as to conform with the required front lot line, and may be required along boundaries of the parking lot as determined by the town plan commission for the protection of adjoining residentially zoned or used property.
 - e. The lot shall be surfaced with a dust proof or hard surface meeting the standard specifications of the town.

- f. Lighting facilities, if provided, shall be so arranged as to be reflected away from property residentially zoned or used.
 - g. If at any time after the issuance of the required permits any of the provisions of this section are not complied with the permits shall be revoked.
- (d) *Unit development plan.*
- (1) *Residential development plan.*
- a. The owner of any tract of land comprising an area of not less than ten acres may submit to the town council a plan for the use and development of the land, primarily for residential purposes. The proposed development plan shall be submitted to the plan commission for examination, study and report and for a public hearing in conformance with the recommendation of the plan commission, which shall be embodied in a report to the town council, stating the reasons for the approval or disapproval of the plan and application and specific evidence and facts showing that the proposed residential development plan has or has not considered and made provision for the following essential elements:
 - 1. That the appropriate use of property adjacent to the area included in the plan will be fully safeguarded.
 - 2. That the plan is consistent with the intent of this chapter to promote public health, safety and general welfare.
 - 3. That the buildings shall be used primarily for single-family dwellings, apartments or group houses, and the usual accessory uses such as garages, storage space and community activities.
 - 4. That the area of the tract, excluding street area but including the area to be devoted to parks, parkways and other open spaces, will provide the minimum lot area per family, counting all families to be housed under the unit development plan, which is required for the most intensive use normally permitted in the district in which such development is to be located.
 - b. If the town council approves the proposed residential development plan, improvement location permits and certificates of occupancy shall be issued, even though the use of the land, the location of the buildings to be erected in the area, and the yards and open spaces provided in the plan do not conform in certain respects to the regulations for the district in which the development is to be located.
- (2) *Community shopping center development plan.*
- a. The owner of any tract of land comprising an area of not less than four acres may submit in a similar manner a development plan for a community shopping center which shall be processed in the manner prescribed in subsection (d)(1)a of this section. The plan, together with the recommendations of the plan commission, shall be embodied in a report to the town council stating the reason for the approval or disapproval of the plan and application and specific evidence and

facts showing that the proposed community shopping center development plan has or has not considered and made provision for the following essential elements:

1. The commercial uses included in the plan are limited to those permitted in the LB district.
 2. The entire development is designed as a single architectural unit, with appropriate landscape architectural treatment of the entire unit area.
 3. That at least twice the gross floor area of the stores to be included within the development, plus one vehicle parking space for each six seats in any theater or place of congregation included within the plan, is provided in off-street parking areas, which are integral parts of the design of the unit plan.
 4. That the appropriate use of property adjacent to the area included in the plan will be fully safeguarded.
 5. That the plan is consistent with the intent of this chapter to promote the public health, safety and general welfare.
- b. If the town council approves the proposed development for a community shopping center, improvement location permits and certificates of occupancy shall be issued as prescribed in subsection (d)(1)b of this section.

(Code 1992, § 20.12)

Sec. 50-90. Special uses.

(a) *Purpose.* The development and execution of this section is based upon the division of the town into districts, within which districts the use of land and buildings and the bulk and location of buildings and structures in relation to the land are substantially uniform. It is recognized, however, that there are certain uses which because of their unique characteristics, cannot be properly classified in any particular district, without consideration, in each case, of the impact of those uses upon neighboring land and of the public need for the particular use of the particular location. Such special uses fall into two categories:

- (1) Uses publicly operated or traditionally affected with a public interest.
- (2) Uses entirely private in character but of such an unusual nature that their operation may give rise to unique problems with respect to their impact upon neighboring property or public facilities.

(b) *Initiation.* Any person having a freehold interest, a possessory interest entitled to exclusive possession, a contractual interest which may become a freehold interest or an exclusive possessory interest and which is specifically enforceable in a parcel of land may file an application to use such land for one or more of the special uses provided for in this section in the zoning district in which the land is located.

(c) *Procedures and decisions.* Application for a special use shall be processed as provided by law and ordinance. The decision of the board of zoning appeals submitted shall be predicated upon the following:

- (1) The special use being requested is specified in this section as a permissible special use within the zoning district which is applicable to the property in question.
- (2) The establishment, maintenance or operation of the special use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.
- (3) The special uses will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purpose already permitted, or substantially diminish and impair property values within the neighborhood.
- (4) The establishment of the special use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- (5) Adequate utilities, access roads, drainage and/or other necessary site improvements have been or are being provided.
- (6) Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- (7) Conformance to special conditions outlined in the ordinance for the use being requested.

(Ord. No. 137, § 1(20.13), ?-?-?)

Secs. 50-91—50-108. Reserved.

ARTICLE V. MANUFACTURED HOUSING

Sec. 50-109. Intent.

It is the intent of this article to encourage provisions of alternative modest income housing in general residential areas by permitting the use of certain manufactured homes, as defined herein, in all districts in which similar dwellings constructed on site are permitted, subject to the requirements set forth herein to ensure acceptable similarity in exterior appearance between such manufactured homes and dwellings that have been or might be constructed under these and other lawful regulations on adjacent or nearby lots in the same district.

(Code 1992, § 23.01)

Sec. 50-110. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Expando room means an expandable manufactured housing unit.

Manufactured home means a manufactured home as defined in IC 36-7-4-1106(a).

Manufactured housing construction and safety standards code means Title IV of the 1974 Housing and Community Development Act (42 USC 5401 et seq.), as amended (previously known as the federal Mobile Home Construction and Safety Act), rules and regulations adopted thereunder, which include HUD-approved information supplied by the home manufacturer, and regulations and interpretations of said code by the state administrative building council.

One- and two-family dwelling code, Indiana, means the mandatory statewide building code adopted by the state for one- and two-family residential dwellings.

Special exception permit means a device for permitting a use within a district other than a principally permitted use.
(Code 1992, § 23.02)

Sec. 50-111. Standards.

(a) *Permitted placement.* The establishment, location and use of manufactured homes manufactured after January 1, 1981, as scattered-site residences shall be permitted in any zone permitting installation of a dwelling unit subject to requirements and limitations applying generally to such residential use in the district, and provided that such homes shall meet the following requirements and limitations:

- (1) The home shall meet all requirements applicable to single-family dwellings and possess all necessary improvement location, building and occupancy permits and other certifications required by the code.
- (2) The home shall be larger than 960 square feet of occupied space or meet the minimum square footage requirements for the appropriate zone.
- (3) The home shall be attached and anchored to a permanent foundation in conformance with the regulations in the state one- and two-family dwelling code and with the manufacturer's installation specifications.
- (4) The home shall be covered with an exterior material customarily used on site-built residential dwellings, and such material shall extend over the top of the foundation.
- (5) The home shall have a roof composed of a material customarily used on site-built residential dwellings, such as fiberglass, shake, asphalt or tile, which shall be installed onto a surface appropriately pitched for the materials used.

(b) *Structural alteration.* Due to its integral design, any structural alteration or modification of a manufactured home after it is placed on the site must be approved by the authorized building inspector or other designee of the town.
(Code 1992, § 23.03)

State law reference—Manufactured homes, IC 36-7-4-1106.

Sec. 50-112. Penalty for violation.

(a) *Subject to removal.* A home, sited upon property in violation of this article, shall be subject to removal from such property. However, the homeowner must be given a reasonable opportunity to bring the property into compliance before action for removal can be taken. If action is finally taken by the appropriate authority to bring compliance, the expenses involved may be made a lien against the property.

(b) *Removal method.* The plan commission or its designated administrator may institute a suit in an appropriate court for injunctive relief to cause such violation to be prevented, abated or removed.

(Code 1992, § 23.05)

Secs. 50-113—50-137. Reserved.

ARTICLE VI. SIGNS

Sec. 50-138. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Permanent sign means and includes, but is not limited to, any and all signs attached to a building, canopy, awning or other item. A permanent sign shall also include any and all freestanding signs which are not to be removed within a predetermined amount of time.

Temporary sign means and includes, but is not limited to, any and all signs set up for a pre-determined amount of time. A temporary sign shall include but not be limited to "For Sale" signs, political signs, and signs advertising a special event.

(Ord. No. 160, 10-20-1998)

Sec. 50-139. Prohibition.

(a) This article shall prohibit constructing, erecting, placing or affixing any new signs anywhere within the town except as allowed by this article.

(b) Signs such as "No trespassing" shall be allowed in all areas; however, such signs shall not exceed 1½ square feet per sign and must be a minimum of four feet above ground level.

(c) This article shall apply to signs of a temporary nature, including, but not limited to, "For sale" signs such as those used by a real estate agent, political signs and signs advertising a special event.

(d) Any and all temporary signs shall not exceed dimensions of four feet by eight feet; however, to erect temporary signs of larger dimensions, special application to the board of zoning appeals may be made.

(e) Attention-getting devices such as valances, banners, propellers, spinners, streamers, balloons, blimps, searchlights, three dimensional displays (statues), or similar devices or ornamentation are prohibited in all areas of the town. Banners affixed as a wall sign may be displayed for two 20-day periods in a calendar year upon issuance of a permit and payment of a permit fee in the amount established in section 26-50(1), which will serve as a registration of the banner's use.

(f) Mobile reader board or trailer-type signs, whether classified as identification, advertising, special signs and devices, illuminated or nonilluminated, shall not be permitted in any zoning district.

(g) Reader boards are permitted when structurally incorporated into the self-supported identification sign or the building facade; however, the square footage of the reader board shall be considered a part of the identification display.

(h) One identification sign shall be permitted on each building face having frontage on a publicly dedicated street or alleyway in accordance with the relevant zoning ordinances. (Ord. No. 160, 10-20-1998)

Sec. 50-140. Time limitations for temporary signs.

(a) Temporary signs shall be removed within three days after the purpose of the sign is completed.

(b) Signs advertising a special event shall not be displayed for longer than 60 days prior to or ten days after the advertised event.

(c) Signs designating new developments shall be removed within nine months following the first occupancy in the development or within six months after completion of the development, whichever is sooner. (Ord. No. 160, 10-20-1998)

Sec. 50-141. Removal.

(a) From and after the passage of the ordinance from which this chapter is derived, no signs shall be constructed, erected, placed or substantially repaired anywhere within the town that violate any of the provisions of this article.

(b) Subject to subsection (a) of this section, any sign existing at the time of adoption of the ordinance from which this section is derived may continue as a nonconforming use pursuant to the existing standards. (Ord. No. 160, 10-20-1998)

Sec. 50-142. Specifications of allowed signs.

(a) No sign attached to a building shall extend further than 18 inches over a street, public sidewalk, dedicated right-of-way, public property or required side yard; provided that where a sign extends more than three inches from the face of the building the sign shall be at least ten feet from the ground level.

(b) No sign, or part of any sign, whether freestanding, pylon, temporary or permanent, shall extend over any part or portion of the street, public sidewalk, dedicated right-of-way or public property.

(c) No sign of any kind located anywhere in the town, whether permanent or portable, shall be lighted by means of a flashing or intermittent illumination which changes more frequently than every five seconds; provided that for the purpose of this section, all signs located on one parcel of real estate or on one building that face or are visible from any street shall be considered as constituting one sign.

(d) Any illumination in the line of vision of approaching vehicular traffic shall not be red, amber or green in color.

(e) No permanent sign of any kind or nature located anywhere in the town, whether freestanding, pylon or of any other kind, shall extend more than 18 feet above ground level but must be a minimum of ten feet above ground level, except a sign attached to a building, commonly known as a fascia mounted sign, may extend more than 18 feet above ground level so long as it does not extend above the roof of the building to which it is attached.

(f) Where a building has a canopy or marquee constructed as an integral part of the building, signs may be placed upon the canopy if the sign is parallel to the front of the building.

(g) Where otherwise permitted in this article, marquees and canopies shall be permitted only when approved by the zoning board of the town after finding that:

- (1) The marquee or canopy is structurally safe and will not impair or endanger public safety; and
- (2) The marquee or canopy either:
 - a. Is uniform in design and extends along one side of a street for the entire distance between two intersecting streets; or
 - b. Is accessory to a use such as hotel, restaurant or office building which, by the nature of its operations, is likely to have a high frequency of customers dropped off or picked up by private passenger vehicle or taxi, and where a no-parking zone to facilitate this movement will be located in front of the canopy or marquee.

(h) On corner lots, permitted ground signs shall not be located within 25 feet of the intersection of the street rights-of-way unless located over ten feet in height so as not to obstruct the vision of motorists. Permitted projecting signs, awnings or marquees shall not project into the required front yard or side yard adjoining a street, or into the street right-of-way below a height of ten feet.

(i) In addition to the permitted signs specified, a subdivision containing more than 25 lots and a unified business development five acres or more in area may display one additional sign not more than 150 square feet in the area that designates the name of the development.

(j) Pennants in good condition may be displayed for two 20-day periods, not consecutively, in any calendar year upon the issuance of a permit and payment of the fee established in section 26-50(2) which will serve as a registration of the pennant's use. Pennants must conform to the following standards:

- (1) The pennant shall not exceed 15 feet above the ground.
 - (2) The pennant on display shall be maintained in good condition, shall be properly secured and not run to the ground, and shall consist of heavy-duty material only.
 - (3) Failure to comply with any of the above provisions cancels the right to display pennants for a period of three years.
- (Ord. No. 160, 10-20-1998)

Sec. 50-143. Administration.

(a) Permits are required for the installation of all signs. No sign shall be installed until plans showing the details of the work proposed, accompanied by specifications of materials to be used and an acceptable plot plan has been submitted to the board of zoning appeals. These drawings and specifications shall be subject to all applicable provisions of the building and zoning codes. All signs subject to the provisions of this article erected without the permit and not in conformity with this Code shall be removed.

(b) If a violation is detected of a temporary sign, the town clerk-treasurer shall notify the owner of the sign of its violation and necessary removal. The owner of the signs shall be given 48 hours to remove the sign in violation. If the sign is not removed within the 48-hour period, the town shall remove the same. The town may recover the expense as noted in subsection (e) of this section.

(c) At the time of application, a fee shall be paid in accordance with section 26-50(3). In addition:

- (1) Illuminated signs. A licensed electrical contractor shall obtain an electrical permit in accordance with the town building code.
- (2) Nonilluminated signs containing less than 25 square feet. Nonilluminated signs containing less than 25 square feet shall not be subject to any fee. However, within 30 days of installation, the installer shall provide the board of zoning appeals with a statement indicating the type of sign, the size, location and all setback information.

(d) All signs shall be constructed in accordance with the town building code, and the following additional requirements shall apply:

- (1) Moisture resisting wire shall be used on all flexible sign connections.
- (2) All signs shall be provided with outlet or junction boxes or a compartment in the sign to facilitate the running of conduit through the sign and the making of the connection in the boxes or compartments.

(3) For swinging signs, flexible metal conduit shall be used from the last support on the building to the sign.

(4) Signs, fixtures and outline lighting shall be protected by their own cutouts.

(e) Whenever any sign within the town shall, by reason of its dilapidated, decayed or rotten condition, become or be liable to become dangerous to public or private property, the town council shall have authority to require its abatement as a nuisance and authorize its removal by the owner thereof after ten days' written notice. Upon failure of the owner to so remove and abate the nuisance within the prescribed time, the board may cause its removal and charge the expense of the removal to the owner and collect the expense by causing it to be placed on the tax duplicate of the city. The following procedures shall apply:

(1) The building commissioner or any other officer of the town may be designated by the town council to make such inspections and reports thereon.

(2) Whenever any inspecting officer finds that a sign is in violation of the provisions of this article or any other law or ordinance, he shall make a report of the conditions, including a description of the real estate on which the sign is located, the particulars in which the sign is dangerous or insecure, the chapter, law or ordinance violated, and the name of the owner or agent. The report shall be transmitted to the town council who shall notify the owner or agent.

(3) The town council shall issue and notify the owner of the sign to appear before the council at a time and date specified and show cause why the sign should not be changed, maintained or repaired so as to comply, or to be condemned and demolished.

(4) The order to appear shall be served by posting the structure and delivering a copy to the owner or agent in person or by leaving a copy at the last usual place of residence, or by sending a copy by registered mail.

(5) After having served written notice upon the owner or agent the town council shall conduct a public hearing to determine the assurance of any report made and shall determine the assurance of any report made and shall determine whether the sign is in violation of this article or any other law or ordinance. After conducting the hearing, the council may make such orders as shall require the owner or agent to make repairs, alterations or corrections such as to place the sign within the ordinances of the town. If the owner or agent fails to do so within a reasonable time set by the council, the council may make a further order causing the sign or any part thereof to be condemned and demolished in the manner provided by law.

(6) The town council may, in its discretion, order electricity disconnected from any sign until it is placed in proper condition to use the utility safely in compliance with any code or ordinance in the town.

(Ord. No. 160, 10-20-1998)

CODE COMPARATIVE TABLE

1992 CODE

This table gives the location within this Code of those sections of the 1992 Code, as updated through July 15, 1991, that are included herein.

1992 Code Section	Section this Code	1992 Code Section	Section this Code
12.01—12.06	14-21—14-26	45.01	2-149
12.07	14-1	46.01	2-167
13.01—13.04	2-111—2-114	52.01	38-22
20.01, 20.02	50-2, 50-3	52.05—52.09	38-23—38-27
20.03(A)—		53.01—53.04	38-58—38-61
20.03(D)	50-60—50-63	61.01	2-168
20.04	50-28		
20.05	50-25		
20.06(A),			
20.06(B)	50-26, 50-27		
20.07	50-85		
20.08	50-1		
20.09—20.12	50-86—50-89		
22.02—22.08	10-19—10-25		
22.10—22.18	10-26—10-34		
23.01—23.03	50-109—50-111		
23.05	50-112		
25.01—25.03	46-19—46-21		
30.5.04	34-1		
30.5.06	18-24		
30.5.05(A)—			
30.5.05(E)	18-19—18-23		
31.0.01—31.0.03	10-91—10-93		
31.0.04	10-90		
31.5.01	34-2		
31.5.05	34-2		
32.0.02	42-1		
32.0.04	42-2		
32.1.01	42-3		
32.5.01, 32.5.02	38-19, 38-20		
32.5.02a	38-21		
32.5.03	22-120		
33.0.01, 33.0.02	22-1		
33.5.01	22-84		
33.5.02	22-83		
33.5.03—33.5.06	22-85—22-88		
34.0.02, 34.0.03	22-54		
36.0.02	34-3		
36.5.01, 36.5.02	46-22, 46-23		
40.01—40.04	30-81—30-84		
41.01	30-1		
42.01—42.03	30-59—30-61		

CODE COMPARATIVE TABLE

ORDINANCES

This table gives the location within this Code of those ordinances adopted since the 1992 Code, as updated through July 15, 1991, that are included herein. Ordinances adopted prior to such date were incorporated into the 1992 Code, as supplemented.

Ordinance Number	Date	Section	Section this Code
	?- ?-(Ord.)	1.1—1.3	22-139—22-141
		1.5	22-142
		2	22-143
		3.1—3.5	22-170—22-174
		4.1—4.3	22-202—22-204
		5	22-232
		6.1—6.7	22-258—22-264
		7.1—7.4	22-292—22-295
		8.1—8.3	22-324—22-326
		9.1—9.7	22-356—22-362
		10.1, 10.2	22-383, 22-384
137	?- ?- ?	1(20.13)	50-90
138	7- ?-1992	1	50-1
139	7-21-1992	1—5	50-86
		8	10-24
		10	10-26
140	9-18-1992	1, 2	2-170
		4	2-170
152	1-21-1997		22-82, 22-83
			22-86—22-88
160	10-20-1998		50-138—50-143
163	5-18-1999		50-85
173	9-16-2003	1—5	22-21—22-25
175	10-21-2003	31.5.01, 31.5.02	34-2
180	9-20-2005	35.01	6-1
		35.02—35.22	6-3—6-23
		35.23—35.29	6-50—6-56
		35.31, 35.32	6-57, 6-58
		35.99	6-2
181	9-20-2005	34.5—34.11	2-142—2-148
182	?- ?-2005		10-57, 10-58

STATE LAW REFERENCE TABLE

This table shows the location within the Code, either in the text or notes following the text, of references to the Indiana Code of 1971.

IC Section	Section this Code	IC Section	Section this Code
1-1-4-1 et seq.	1-2	36-5-2-5	14-1
3-5-1-1 et seq.	Ch. 14	36-5-3-1 et seq.	Ch. 2, Art. V
5-2-8-1—		36-5-3-2	Ch. 2, Art. III
5-2-8-6	2-167	36-7-2-3 et seq.	Ch. 10
tit. 7.1	30-1	36-7-4-200—	
7.1-1-1- et seq.	30-1	35-7-4-299	50-27
8-1.5-3-1 et seq.	Ch. 46	36-7-4-202 et seq.	50-27
9-13-1-1 et seq.	Ch. 42	36-7-4-600 et seq.	Ch. 50
9-20-1-3	42-1	36-7-4-901 et seq.	
9-21-1-2,		36-7-4-1106	50-26
9-21-1-3	Ch. 42	36-7-4-1106(a)	50-111
9-21-1-3(1)(6)	42-2	36-7-9	2-147
9-21-8-1 et seq.	Ch. 42	36-7-9-8	2-147
9-21-8-29 et seq.	42-2	36-8-2-4	Ch. 22
10-14-1-1 et seq.	Ch. 18		Ch. 22, Art. III
13-20-1-1 et seq.	Ch. 38	36-8-2-6	Ch. 6
13-20-4-1 et seq.	Ch. 38	36-9-2-17	Ch. 46, Art. II
15-2.1-2-15	6-1	36-9-2-17 et seq.	Ch. 38
15-2.1-6-1—		36-9-2-18	Ch. 46, Art. II
15-2.1-6-13	6-12	36-9-15.5-1 et seq.	2-170
22-13-2-1 et seq.	Ch. 10, Art. II	36-9-16-2,	
22-13-2-2	10-22	36-9-16-3	2-170
22-13-2-7	10-34	36-9-16-4,	
25-37-1-1 et seq.	Ch. 30, Art. IV	36-9-16-5	2-169, 2-170
25-37-1-11	Ch. 30, Art. IV	36-9-16.5	2-170
34-4-16.5-4	6-50	36-9-23-1 et seq.	Ch. 46, Art. II
35-45-3-2	Ch. 38	36-9-26	2-170
35-46-3-1	6-13	36-9-27-100	2-170
	6-53	36-9-30-1 et seq.	Ch. 38
35-46-3-8 et seq.	6-54	36-10-3-1 et seq.	2-91
35-47-11-5	18-22	36-10-3-20	2-168
36-1-3	2-91	37-7-3-900—	
36-1-3-1 et seq.	Ch. 6	36-7-4-924	50-26
	Ch. 10	37-7-10.1-1 et seq.	Ch. 22, Art. V
	Ch. 22	37-25-3-1 et seq.	30-82
	Ch. 50		
36-1-3-8(9),			
36-1-3-8(10)	1-11		
36-1-5-3	1-1		
36-1-5-4	10-22		
36-1-6-1 et seq.	1-11		
36-1-6-2	2-146		
36-1-6-10	Ch. 14, Art. II		
36-5-2-1 et seq.	Ch. 2, Art. II		
36-5-2-4.1	Ch. 14, Art. II		

CODE INDEX

Section

A

ABANDONED VEHICLES. See: WRECKED AND ABANDONED VEHICLES

ABANDONMENT

Animals and fowl

General animal care requirements..... 6-3

Wrecked and abandoned vehicles..... 22-82 et seq.

See: WRECKED AND ABANDONED VEHICLES

ABATEMENT

Brush and weeds

Growth and disposition of weeds..... 22-120

Finance 2-144 et seq.

See: FINANCE

Solid waste..... 38-21 et seq.

See: SOLID WASTE

Zoning 50-112 et seq.

See: ZONING

ABUSE OR NEGLECT

Animals and fowl

General animal care requirements..... 6-3

ACCESS

Building code

Right of entry 10-29

Stormwater management

Maintenance and repair of stormwater facilities

Right of entry for inspection 22-360

Zoning

Access, control over..... 50-85(d)

ACCESSORY BUILDINGS, STRUCTURES AND USES

Zoning 50-85 et seq.

See: ZONING

ACCIDENTS

Animals and fowl

Motor vehicle accidents involving animals..... 6-5

AD VALOREM

Finance

Specific funds

Cumulative capital development fund

Tax levy imposed..... 2-170(b)

ADMINISTRATION

Boards, commissions and committees..... 2-67 et seq.

See: BOARDS, COMMISSIONS AND COMMITTEES

Departments and other authorities of town 2-67 et seq.

See: DEPARTMENTS AND OTHER AUTHORITIES OF TOWN

TRAIL CREEK CODE

	Section
ADMINISTRATION (Cont'd.)	
Finance	2-142 et seq.
See: FINANCE	
Officers and employees	2-40 et seq.
See: OFFICERS AND EMPLOYEES	
Town council	2-19 et seq.
See: COUNCIL	
Zoning	50-25
ADULT ENTERTAINMENT	
Culpable mental state required to establish liability.....	30-34
Decisions and findings	
Hearing on permit denial, suspension or revocation; ap- peal.....	30-30(c)
Location and distance requirements subject to certain objective criteria promoting purpose and findings	30-23
Purpose and findings	30-21
Definitions	30-22
Exhibition of sexually explicit films or videos on premises..	30-33
Expiration of permit	30-27
Failure of official to meet time frame not risk rights of applicant or permittee	30-35
Hearing on permit denial, suspension or revocation; appeal	30-30
Appeal and provisional permit	30-30(d)
Decision	30-30(c)
Hearing	30-30(b)
Notice	30-30(a)
Hours of operation	30-32
Issuance and renewal of permit	30-25
Permit term and restrictions	30-25(c)
Reasons for refusal to grant a permit	30-25(b)
Renewal of permit	30-25(d)
Temporary permit.....	30-25(a)
Licenses and permits	
Expiration of permit.....	30-27
Failure of official to meet time frame not risk rights of applicant or permittee.....	30-35
Hearing on permit denial, suspension or revocation; ap- peal.....	30-30
Appeal and provisional permit.....	30-30(d)
Issuance and renewal of permit. See herein that subject	
Permit required	30-24
Revocation of permit.....	30-29
Suspension of permit	30-28
Location and distance requirements subject to certain objec- tive criteria promoting purpose and findings	30-23
Minors not permitted on premises	30-31
Periodic inspection	30-26
Permit required.....	30-24

CODE INDEX

	Section
ADULT ENTERTAINMENT (Cont'd.)	
Purpose and findings	30-21
Findings.....	30-21(b)
Purpose	30-21(a)
Revocation of permit	30-29
Suspension of permit.....	30-28
ADVERTISING	
Garage sales	
Advertising signs	30-61
Noise	
Prohibited acts	22-22
Zoning	
Local business uses	
Location permitted	
Miscellaneous	50-87(c)(9)
Signs	
Prohibition	50-139
AFFIRMATION. See: OATH, AFFIRMATION, SWEAR OR SWORN	
AGENCIES. See: DEPARTMENTS AND OTHER AUTHORITIES OF TOWN	
AGREEMENTS. See: CONTRACTS AND AGREEMENTS	
AIRBORNE PARTICLES. See: DUST, ODORS, SMOKE AND OTHER AIRBORNE PARTICLES	
ALCOHOLIC BEVERAGES	
Civil emergencies	
Additional regulations.....	18-22
Emergency powers.....	18-23(1)
Licenses and permits	
Issuance of permits	30-1
ALLEYS	
Certain ordinances not affected by Code	1-5
AMENDMENTS	
Amendments to Code; effect of new ordinances; amendatory language.....	1-9
Certain ordinances not affected by Code	1-5
AMUSEMENTS AND ENTERTAINMENT	
Adult entertainment	30-21 et seq.
See: ADULT ENTERTAINMENT	
Animals and fowl	
Licenses and permits	
Performing animal license.....	6-50
Zoning	
Local business uses	

TRAIL CREEK CODE

	Section
AMUSEMENTS AND ENTERTAINMENT (Cont'd.)	
Location permitted	
Commercial recreational uses	50-87(c)(8)
ANIMAL SHELTER	
Animals and fowl	
Breaking into animal shelter prohibited	6-17
ANIMALS AND FOWL	
Acreage requirements for certain domestic animals; prohibi-	
tion of swine	6-10
Bites, animal.....	6-12
Breaking into animal shelter prohibited.....	6-17
Breeding, breeders	
General animal care requirements.....	6-3
Licenses and permits. See herein that subject	
Businesses	
Exclusion of service dogs prohibited	6-15
Licenses and permits	
Pet shop permit.....	6-52
Sale of animals as novelties or use as prize prohibited;	
exceptions.....	6-4
Confinement by other than town officials; notice required ..	6-16
Damage, defacement, destruction, injury, etc.	
Bites, animal	6-12
Poisoning of animals.....	6-7
Serious injury or death.....	6-23
Dangerous and poisonous animals prohibited.....	6-18
Dangerous or vicious animals	
Dangerous and poisonous animals prohibited	6-18
General animal care requirements.....	6-3
Keeping certain animals prohibited	6-21
Licenses and permits	
Breeder permit	
Breeding of dangerous animals	6-53(d)
Dangerous animal/attack dog permit	6-54
Definitions	6-1
Exclusion of service dogs prohibited	6-15
Fees	26-6
General animal care requirements	6-3
Harbor or possess	
Dangerous and poisonous animals prohibited	6-18
Protected animals.....	6-20
Seizure of certain animals	6-22
Health, sanitation, safety and welfare	
General animal care requirements.....	6-3
Keeping certain animals prohibited	6-21
Licenses and permits	
Breeder permit	
Housing of animals; caretaking	6-53(c)
Required; information provided to customers.....	6-53(a)

CODE INDEX

	Section
ANIMALS AND FOWL (Cont'd.)	
Impoundment procedures	6-19
Interference with humane officer prohibited	6-14
Keeping certain animals prohibited	6-21
Licenses and permits	
Breeder permit	6-53
Breeding of dangerous animals	6-53(d)
Housing of animals; caretaking	6-53(c)
Required; information provided to customers	6-53(a)
Statement of registration and licensing requirements; fee	6-53(b)
Dangerous animal/attack dog permit	6-54
Exemptions, permit	6-55
General animal care requirements	6-3
Inspection	6-58
Issuance of permits; additional requirements	6-56
Penalty	
Warning notices for pet registration and permits	6-2(a)
Performing animal license	6-50
Pet shop permit	6-52
Register, registration	
Breeder permit	
Statement of registration and licensing requirements; fee	6-53(b)
Registration/permit revocation	6-57
Registration, pet	6-51
Registration/permit revocation	6-57
Registration, pet	6-51
Maximum number of dogs or cats	6-9
Motor vehicle accidents involving animals	6-5
Motor vehicles, animals in	6-6
Noise	
Prohibited acts	22-22
Owners or agents responsible for removing animal wastes and dead animals	6-11
Penalty	6-2
Citations and/or hearings before the town council; fines payable through the ordinance violations bureau	6-2(b)
Fines	6-2(c)
Warning notices for pet registration and permits	6-2(a)
Poison or toxic	
Dangerous and poisonous animals prohibited	6-18
Keeping certain animals prohibited	6-21
Poisoning of animals	6-7
Poisoning of animals	6-7
Protected animals	6-20
Register, registration	
Licenses and permits. See herein that subject	
Penalty	
Warning notices for pet registration and permits	6-2(a)

TRAIL CREEK CODE

	Section
ANIMALS AND FOWL (Cont'd.)	
Sale of animals as novelties or use as prize prohibited; exceptions	6-4
Sales	
Licenses and permits	
Breeder permit	6-53
Protected animals.....	6-20
Sale of animals as novelties or use as prize prohibited; exceptions.....	6-4
Seizure of certain animals.....	6-22
Serious injury or death	6-23
Solid waste	
Collection and disposal	
Removal of dead animals.....	38-24
Trapping of animals restricted.....	6-8
Vaccination of dogs and cats required.....	6-13
Vaccines, vaccinations	
General animal care requirements.....	6-3
Licenses and permits	
Breeder permit	
Required; information provided to customers.....	6-53(a)
Vaccination of dogs and cats required	6-13
Veterinarians	
General animal care requirements.....	6-3
Licenses and permits	
Breeder permit	
Required; information provided to customers.....	6-53(a)
Exemptions, permit	6-55
Zoning	
Accessory structures and uses, control over	
Keeping of animals prohibited	50-85(e)(3)
ANNEXATION	
Certain ordinances not affected by Code	1-5
Zoning	
Zoning districts established; zoning map	
Procedure relating to annexed or vacated areas	50-63
APPEALS	
Adult entertainment	
Hearing on permit denial, suspension or revocation; ap- peal.....	30-30
Building code	
Right of appeal	10-34
Finance	2-147
APPOINTMENTS AND REMOVALS	
Police department advisory board.....	2-113
Zoning	
Board of zoning appeals	
Creation, composition and appointment	50-26

CODE INDEX

	Section
APPOINTMENTS AND REMOVALS (Cont'd.)	
Plan commission	
Creation, composition and appointment	50-27
APPROPRIATIONS	
Certain ordinances not affected by Code	1-5
Finance	
Appropriation of funds	2-149
AREA	
Animals and fowl	
Acreage requirements for certain domestic animals; prohibition of swine	6-10
Civil emergencies	
Emergency powers	
Restricted areas	18-23(4)
Stormwater management	
General performance criteria for stormwater management	
Sites one acre or greater.....	22-232
Zoning	50-1 et seq.
See: ZONING	
ARRESTS	
Noise	
Remedies.....	22-25
ARROWS. See: FIREARMS AND WEAPONS	
ASSAULT. See: ATTACK OR ASSAULT	
ASSEMBLIES	
Civil emergencies.....	18-19 et seq.
See: CIVIL EMERGENCIES	
ASSESSMENTS	
Certain ordinances not affected by Code	1-5
ATHLETIC OR SPORTING EVENTS	
Noise	
Exceptions	22-23
ATTACK OR ASSAULT	
Animals and fowl	
Licenses and permits	
Dangerous animal/attack dog permit	6-54
AUDIO OR VIDEO RECORDINGS	
Adult entertainment	
Exhibition of sexually explicit films or videos on premises	30-33
Noise	
Prohibited acts	22-22
Zoning	
Local business uses	
Location permitted	
Personal service.....	50-87(c)(6)

TRAIL CREEK CODE

	Section
AUTHORITIES. See: DEPARTMENTS AND OTHER AUTHORITIES OF TOWN	
AWNINGS AND CANOPIES	
Zoning	
Signs	
Specifications of allowed signs	50-142
B	
BANKS. See: FINANCIAL INSTITUTIONS	
BARBERS AND BEAUTICIANS	
Zoning	
Local business uses	
Location permitted	
Personal service	50-87(c)(6)
BARS, CLUBS, PUBS AND TAVERNS	
Civil emergencies	
Additional regulations	18-22
Zoning	
Local business uses	
Location permitted	
Miscellaneous	50-87(c)(9)
BB GUNS	
Firearms and weapons	
Unlawful use of guns and bow and arrows	34-2(b)
BEAUTICIANS. See: BARBERS AND BEAUTICIANS	
BENEFITS, COMPENSATION AND SALARIES	
Certain ordinances not affected by Code	1-5
Police department advisory board	
Compensation	2-114
BICYCLES	
Nuisances	22-54
BILLBOARDS. See: SIGNS AND BILLBOARDS	
BILLIARDS	
Zoning	
Local business uses	
Location permitted	
Commercial recreational uses	50-87(c)(8)
BINS, CONTAINERS AND RECEPTACLES	
Civil emergencies	
Additional regulations	18-22
Solid waste	
Collection and disposal	
Garbage receptacles and rubbish containers for residential collection	38-25

CODE INDEX

	Section
BINS, CONTAINERS AND RECEPTACLES (Cont'd.)	
Provision of proper containers	38-20
BOARD OF ZONING APPEALS	
Noise	
Permits for special exceptions	22-24
Zoning	
Provisions re.....	50-26
Signs	
Administration.....	50-143
BOARDS, COMMISSIONS AND COMMITTEES	
Definitions and rules of construction.....	1-2
Police department advisory board	2-111 et seq.
See: POLICE DEPARTMENT ADVISORY BOARD	
Zoning	
Board of zoning appeals.....	50-26
Plan commission	50-27
BOATS, VESSELS AND WATERCRAFT	
Noise	
Prohibited acts	22-22
Zoning	
Trailers, mobile homes, tents and boats.....	50-85(g)
BONDS, SURETY OR PERFORMANCE	
Certain ordinances not affected by Code	1-5
Stormwater management	
Approval plan, requirements for stormwater management	
Performance bond/security	22-295
Water and sewers	
Sewers and sewage disposal	
Administration and bond; inspection; notice of approval	46-21
BOUNDARIES	
Certain ordinances not affected by Code	1-5
Zoning	
Zoning districts established; zoning map	
Determination and interpretation of district boundaries	50-62
District map and boundaries.....	50-61
BOWLING ALLEYS	
Zoning	
Local business uses	
Location permitted	
Commercial recreational uses	50-87(c)(8)
BOWS AND ARROWS. See: FIREARMS AND WEAPONS	
BREAKING AND ENTERING	
Animals and fowl	
Breaking into animal shelter prohibited	6-17

TRAIL CREEK CODE

	Section
BREEDING, BREEDERS	
Animals and fowl	6-3 et seq.
See: ANIMALS AND FOWL	
BRIDGES AND CULVERTS	
Diversion of water	34-3
BRUSH AND WEEDS	
Growth and disposition of weeds	22-120
BUDGET. See: FINANCE	
BUILDING CODE	
Adoption of regulations by reference	10-22
Application for permits	10-23
Authority	10-20
Certificate of occupancy	10-31
Compliance with other codes	10-25
Fees	10-26
Inspections	10-28
Permit required	10-24
Purpose	10-19
Review of application	10-27
Right of appeal	10-34
Right of entry	10-29
Scope	10-21
Standards and practices	10-32
Stop work order	10-30
Violations	10-33
BUILDING INSPECTOR	
Building code	
Authority	10-20
Zoning	
Administration	50-25
BUILDINGS AND BUILDING REGULATIONS	
Barbed wire fences	10-90 et seq.
See: FENCES, HEDGES, WALLS AND ENCLOSURES	
Building code	10-19 et seq.
See: BUILDING CODE	
Contractors	10-57 et seq.
See: CONTRACTORS	
Fees	26-10
Finance	
Specific funds	
Cumulative capital development fund	
Accumulative funds use	2-170(c)
Storage of building materials	2-148
Noise	
Prohibited acts	22-22
Zoning	50-1 et seq.
See: ZONING	

CODE INDEX

	Section
BULK	
Zoning	50-85 et seq.
See: ZONING	
BURNING. See: OPEN BURNING	
BUSINESSES	
Adult entertainment	30-21 et seq.
See: ADULT ENTERTAINMENT	
Animals and fowl	6-4 et seq.
See: ANIMALS AND FOWL	
Civil emergencies	
Additional regulations	18-22
Contractors	
General building contractor registration and revocation of registration procedures	10-58
Fees	26-30
Garage sales	30-59 et seq.
See: GARAGE SALE	
Licenses and permits	
Issuance of permits	30-1
Transient merchants	30-81 et seq.
See: PEDDLERS, SOLICITORS AND TRANSIENT MER- CHANTS	
Zoning	50-87 et seq.
See: ZONING	

C

CAMPING, CAMPS	
Zoning	
Mobile dwelling unit	50-86(e)
Trailers, mobile homes, tents and boats	50-85(g)
CANOPIES. See: AWNINGS AND CANOPIES	
CARNIVALS OR CIRCUSES	
Animals and fowl	
Keeping certain animals prohibited	6-21
CATS. See: ANIMALS AND FOWL	
CELEBRATIONS AND FESTIVALS	
Noise	
Permits for special exceptions	22-24
CERTIFICATES, CERTIFICATION	
Building code	
Certificate of occupancy	10-31
CHURCHES. See: RELIGIOUS INSTITUTIONS	
CIRCUSES. See: CARNIVALS OR CIRCUSES	

TRAIL CREEK CODE

	Section
CITATIONS. See: WRITS, WARRANTS AND OTHER PROCESSES	
CIVIL EMERGENCIES	
Additional regulations	18-22
Definitions	18-19
Emergency powers	18-23
Alcoholic beverages	18-23(1)
Incendiary missiles	18-23(3)
Restricted areas	18-23(4)
Weapons	18-23(2)
Imposition of curfew	18-21
Penalty	18-24
Proclamation of president	18-20
CLEANERS AND LAUNDROMATS	
Zoning	
Local business uses	
Location permitted	
Clothing service	50-87(c)(3)
CLERK-TREASURER	
Contractors	
General building contractor registration and revocation of registration procedures.....	10-58
Noise	
Remedies.....	22-25
Water and sewers	
Sewers and sewage disposal	
Plans and specifications	46-20
CLUBS. See: BARS, CLUBS, PUBS AND TAVERNS	
CODE OF ORDINANCES*	
Amendments to Code; effect of new ordinances; amendatory language.....	1-9
Certain ordinances not affected by Code	1-5
Code does not affect prior offenses or rights	1-7
Definitions and rules of construction.....	1-2
Designation and citation of Code	1-1
Effect of repeal of ordinances	1-4
General penalty; continuing violations.....	1-11
Provisions deemed continuation of existing ordinances.....	1-6
Section catchlines and other headings; history notes; references	1-3
Severability of parts of Code	1-8
Supplementation of Code	1-10

***Note**—The adoption, amendment, repeal, omissions, effective date, explanation of numbering system and other matters pertaining to the use, construction and interpretation of this Code are contained in the adopting ordinance and preface which are to be found in the preliminary pages of this volume.

CODE INDEX

	Section
CODES	
Amendments to Code; effect of new ordinances; amendatory language.....	1-9
Building code	10-19 et seq.
See: BUILDING CODE	
Certain ordinances not affected by Code	1-5
Code does not affect prior offenses or rights	1-7
Definitions and rules of construction.....	1-2
Designation and citation of Code	1-1
Severability of parts of Code	1-8
Supplementation of Code	1-10
COMBUSTIBLES OR FLAMMABLES	
Civil emergencies	
Additional regulations.....	18-22
COMMISSIONS. See: BOARDS, COMMISSIONS AND COMMITTEES	
COMMITTEES. See: BOARDS, COMMISSIONS AND COMMITTEES	
COMPENSATION. See: BENEFITS, COMPENSATION AND SALARIES	
COMPREHENSIVE PLAN	
Certain ordinances not affected by Code	1-5
COMPUTATION OF TIME	
Definitions and rules of construction.....	1-2
CONCERTS	
Noise	
Permits for special exceptions	22-24
CONDITIONAL USES	
Zoning	50-86 et seq.
See: ZONING	
CONFINEMENT, RESTRAINT	
Animals and fowl	
Confinement by other than town officials; notice required	6-16
General animal care requirements.....	6-3
Civil emergencies	
Emergency powers	
Restricted areas	18-23(4)
CONJUNCTION	
Definitions and rules of construction.....	1-2
CONTAINERS. See: BINS, CONTAINERS AND RECEPTACLES	
CONTINGENT USES	
Zoning	50-89

TRAIL CREEK CODE

	Section
CONTRACTORS	
Building code	10-19 et seq.
See: BUILDING CODE	
Definitions	10-57
Finance	
Storage of building materials.....	2-148
General building contractor registration and revocation of registration procedures	10-58
Solid waste	
Collection and disposal	
Payments to contractor	38-26
CONTRACTS AND AGREEMENTS	
Certain ordinances not affected by Code	1-5
Solid waste	
Collection and disposal	
Contract	38-22
Stormwater management	
Approval plan, requirements for stormwater management	
Final stormwater management plan requirements	
Maintenance agreement.....	22-294(8)
Basic stormwater management design criteria	
Maintenance agreements.....	22-263
COUNCIL	
Animals and fowl	
Penalty	
Citations and/or hearings before the town council; fines payable through the ordinance violations bureau ..	6-2(b)
Definitions and rules of construction.....	1-2
Elections.....	14-1 et seq.
See: ELECTIONS	
Police department advisory board	
Establishment.....	2-111
COUNTY	
Definitions and rules of construction.....	1-2
COURT	
Noise	
Remedies.....	22-25
COVENANTS	
Stormwater management	
Maintenance and repair of stormwater facilities	
Covenants, maintenance.....	22-357
CREDIT UNIONS. See: FINANCIAL INSTITUTIONS	
CULVERTS. See: BRIDGES AND CULVERTS	
CURFEW	
Civil emergencies	
Imposition of curfew	18-21

CODE INDEX

	Section
D	
DAMAGE, DEFACEMENT, DESTRUCTION, INJURY, ETC.	
Animals and fowl.....	6-7 et seq.
See: ANIMALS AND FOWL	
Civil emergencies.....	18-19 et seq.
See: CIVIL EMERGENCIES	
Noise	
Exceptions	22-23
Loud noises prohibited	22-21
Zoning	
Nonconforming buildings, structures and uses	
Authority to continue nonconforming buildings, structures and uses	
Restoration of damaged nonconforming buildings or structures.....	50-28(b)(4)
Storage of junk, refuse and disabled or damaged motor vehicles.....	50-85(h)
DANCES AND DANCE HALLS	
Zoning	
Local business uses	
Location permitted	
Commercial recreational uses	50-87(c)(8)
DANGEROUS CONDITIONS	
Noise	
Prohibited acts	22-22
DANGEROUS OR VICIOUS ANIMALS	
Animals and fowl.....	6-3 et seq.
See: ANIMALS AND FOWL	
DEANNEXATION	
Certain ordinances not affected by Code	1-5
DECISIONS AND FINDINGS	
Adult entertainment	30-21 et seq.
See: ADULT ENTERTAINMENT	
Zoning	
Board of zoning appeals	
Creation, composition and appointment	
Local application	
Final disposition of cases	50-26(3)(e)
Special uses	
Procedures and decisions.....	50-90(c)
DEDICATING, DEDICATIONS	
Certain ordinances not affected by Code	1-5
Stormwater management	
Waivers to stormwater management requirements	
Dedication of land	22-204

TRAIL CREEK CODE

	Section
DEEDS AND TITLES	
Certain ordinances not affected by Code	1-5
DEFACEMENT. See: DAMAGE, DEFACEMENT, DESTRUCTION, INJURY, ETC.	
DELEGATION OF AUTHORITY	
Definitions and rules of construction.....	1-2
DEMOLITIONS	
Noise	
Prohibited acts	22-22
DEPARTMENT OF PARKS AND RECREATION	
Established.....	2-91
DEPARTMENTS AND OTHER AUTHORITIES OF TOWN	
Definitions and rules of construction.....	1-2
Department of parks and recreation	2-91 et seq.
See: DEPARTMENT OF PARKS AND RECREATION	
Police department advisory board.....	2-111 et seq.
See: POLICE DEPARTMENT ADVISORY BOARD	
Zoning	
Board of zoning appeals.....	50-26
Plan commission	50-27
DESIGNATE, DESIGNATION	
Designation and citation of Code	1-1
Zoning	
Zoning districts established; zoning map	
Zoning districts designated.....	50-60
DESTRUCTION. See: DAMAGE, DEFACEMENT, DESTRUCTION, INJURY, ETC.	
DEVELOPMENT. See: PLANNING AND DEVELOPMENT	
DIESEL. See: PETROLEUM PRODUCTS	
DISABLED OR HANDICAPPED	
Animals and fowl	
Exclusion of service dogs prohibited	6-15
Licenses and permits	
Exemptions, permit	6-55
DISASTERS. See: NATURAL DISASTERS	
DISCLOSURE	
Animals and fowl	
Licenses and permits	
Breeder permit	
Required; information provided to customers.....	6-53(a)
DISEASE OR ILLNESS	
Animals and fowl	
General animal care requirements.....	6-3

CODE INDEX

	Section
DISPLAY OR EXHIBIT	
Adult entertainment	
Exhibition of sexually explicit films or videos on premises	30-33
Animals and fowl	
Licenses and permits	
Performing animal license.....	6-50
DISTRICTS	
Elections.....	14-1 et seq.
See: ELECTIONS	
Zoning	50-86 et seq.
See: ZONING	
DITCHES	
Diversion of water.....	34-3
DOGS. See: ANIMALS AND FOWL	
DRAINAGE, DRAINS	
Diversion of water.....	34-3
Finance	
Specific funds	
Cumulative capital development fund	
Accumulative funds use	2-170(c)
Stormwater management.....	22-139 et seq.
See: STORMWATER MANAGEMENT	
DUST, ODORS, SMOKE AND OTHER AIRBORNE PARTICLES	
Open burning	22-1
DUTIES. See: POWERS AND DUTIES	
E	
EASEMENTS	
Stormwater management	
Approval plan, requirements for stormwater management	
Final stormwater management plan requirements	
Maintenance easements.....	22-294(7)
Maintenance and repair of stormwater facilities	
Easement, maintenance	22-356
EDUCATION AND TRAINING	
Zoning	
Local business uses	
Location permitted	
Commercial recreational uses	50-87(c)(8)
ELECTIONS	
Council districts	
District No. 1	14-22
District No. 2	14-23
District No. 3	14-24

TRAIL CREEK CODE

	Section
ELECTIONS (Cont'd.)	
District No. 4	14-25
District No. 5	14-26
Redistricting of districts.....	14-21
Councilmember for districts.....	14-1
Zoning	
Signs	
Prohibition	50-139
EMERGENCIES	
Civil emergencies.....	18-19 et seq.
See: CIVIL EMERGENCIES	
Noise	
Exceptions	22-23
EMERGENCY MANAGEMENT AND EMERGENCY SERVICES	
Civil emergencies.....	18-19 et seq.
See: CIVIL EMERGENCIES	
EMPLOYEES. See: OFFICERS AND EMPLOYEES	
ENCLOSURES. See: FENCES, HEDGES, WALLS AND ENCLOSURES	
ENDANGERED SPECIES	
Animals and fowl	
Protected animals.....	6-20
ENTERING. See: BREAKING AND ENTERING	
ENTERTAINMENT. See: AMUSEMENTS AND ENTERTAINMENT	
ENVIRONMENT	
Fees	26-22
Noise.....	22-21 et seq.
See: NOISE	
Nuisances	22-54 et seq.
See: NUISANCES	
Open burning	22-1 et seq.
See: OPEN BURNING	
Stormwater management.....	22-139 et seq.
See: STORMWATER MANAGEMENT	
Weeds.....	22-120 et seq.
See: BRUSH AND WEEDS	
Wrecked and abandoned vehicles.....	22-82 et seq.
See: WRECKED AND ABANDONED VEHICLES	
EQUIPMENT AND MACHINERY	
Finance	
Storage of building materials.....	2-148
Zoning	
Local business uses	

CODE INDEX

	Section
EQUIPMENT AND MACHINERY (Cont'd.)	
Location permitted	
Equipment service	50-87(c)(4)
EROSION. See: SOIL EROSION AND SEDIMENTATION CONTROL	
EXCAVATIONS	
Noise	
Prohibited acts	22-22
Water and sewers	
Sewers and sewage disposal	
Plans and specifications	46-20
EXCREMENT	
Animals and fowl	
General animal care requirements.....	6-3
Owners or agents responsible for removing animal wastes and dead animals	6-11
EXHAUST	
Noise	
Prohibited acts	22-22
EXHIBIT. See: DISPLAY OR EXHIBIT	
EXPLOSIVES	
Civil emergencies.....	18-19 et seq.
See: CIVIL EMERGENCIES	
F	
FARMING, FARMS	
Peddlers, solicitors and transient merchants	
Exceptions	30-84
FEES	
Animals and fowl	
Licenses and permits	
Breeder permit	
Statement of registration and licensing requirements; fee	6-53(b)
Provisions re.....	26-6
Building code	10-26
Buildings and building regulations.....	26-10
Environment	26-22
Licenses, permits and miscellaneous business regulations ..	26-30
Nuisances	
Bicycles	
Storage fee	22-54(a)
Stormwater management	
Permit procedures and requirements	
Application	
Review fees	22-172

TRAIL CREEK CODE

	Section
FEES (Cont'd.)	
Waivers to stormwater management requirements	
Fee in lieu of stormwater management practices.....	22-203
Zoning	26-50
FENCES, HEDGES, WALLS AND ENCLOSURES	
Animals and fowl	
Confinement by other than town officials; notice required	6-16
General animal care requirements.....	6-3
Barbed wire fences	
Definition	10-90
Request for special permit	10-93
Safety hazard.....	10-91
Use by special permit	10-92
Wrecked and abandoned vehicles	
Prohibition.....	22-84
FESTIVALS. See: CELEBRATIONS AND FESTIVALS	
FILM. See: AUDIO OR VIDEO RECORDINGS	
FINANCE	
Abatement by the town.....	2-146
Appeals	2-147
Failure to pay bill.....	2-147(b)
Generally	2-147(a)
Appropriation of funds.....	2-149
Certain ordinances not affected by Code	1-5
Conditions constituting public nuisances	2-142
Failure to comply with notice to abate.....	2-145
Fees	26-6 et seq.
See: FEES	
Notice prior to abatement by town	2-144
Solid waste	38-58 et seq.
See: SOLID WASTE	
Specific funds	
Cumulative capital development fund.....	2-170
Accumulative funds use	2-170(c)
Established.....	2-170(a)
Tax levy imposed	2-170(b)
Cumulative capital improvement fund	2-169
Establishment.....	2-167
Establishment of fund.....	2-168
Storage of building materials	2-148
Violations; issuance of citations.....	2-143
FINANCIAL INSTITUTIONS	
Zoning	
Local business uses	
Location permitted	
Business service.....	50-87(c)(2)
FINDINGS. See: DECISIONS AND FINDINGS	

CODE INDEX

	Section
FINES, FORFEITURES AND OTHER PENALTIES	
Animals and fowl	
Penalty	
Citations and/or hearings before the town council; fines payable through the ordinance violations bureau ..	6-2(b)
Fines	6-2(c)
Building code	
Violations	10-33
Civil emergencies.....	18-24
Finance	
Violations; issuance of citations	2-143
General penalty; continuing violations.....	1-11
Noise	
Remedies.....	22-25
Zoning	
Manufactured housing	
Penalty for violation	50-112
FIRE PREVENTION AND PROTECTION	
Open burning	22-1
FIREARMS AND WEAPONS	
Civil emergencies	
Additional regulations.....	18-22
Emergency powers	
Weapons	18-23(2)
Definitions	34-2(a)
Unlawful use of guns and bow and arrows.....	34-2(b)
FISHING, HUNTING OR TRAPPING	
Animals and fowl	
Trapping of animals restricted	6-8
FLOORING, FLOORS	
Zoning	50-86 et seq.
See: ZONING	
FOOD OR FOOD SERVICES	
Animals and fowl	
General animal care requirements.....	6-3
Peddlers, solicitors and transient merchants	
Exceptions	30-84
Zoning	
Local business uses	
Location permitted	
Food service	50-87(c)(5)
FORFEITURES. See: FINES, FORFEITURES AND OTHER PENALTIES	
FOWL. See: ANIMALS AND FOWL	
FRANCHISES	
Certain ordinances not affected by Code	1-5

TRAIL CREEK CODE

	Section
FRONTAGE	
Zoning	
Signs	
Prohibition	50-139
FUEL. See: PETROLEUM PRODUCTS	
FUEL OR SERVICE STATIONS	
Civil emergencies	
Additional regulations.....	18-22
Wrecked and abandoned vehicles	
Exclusion.....	22-86
Zoning	
Local business uses	
Location permitted	
Automobile service.....	50-87(c)(1)
FUNDS. See: FINANCE	
G	
GARAGE SALES	
Advertising signs	30-61
Definitions	30-59
License requirements	30-60
GARAGES	
Garage sales	30-59 et seq.
See: GARAGE SALES	
Wrecked and abandoned vehicles	
Exclusion.....	22-86
Zoning	
Local business uses	
Location permitted	
Automobile service.....	50-87(c)(1)
GARBAGE. See: SOLID WASTE	
GASOLINE. See: PETROLEUM PRODUCTS	
GENDER	
Definitions and rules of construction.....	1-2
GENERALLY	
Definitions and rules of construction.....	1-2
GOODS AND MERCHANDISE	
Peddlers, solicitors and transient merchants.....	30-81 et seq.
See: PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS	
GRADING, GRADES	
Certain ordinances not affected by Code	1-5
GRASS, LEAVES AND YARD WASTE	
Solid waste	

CODE INDEX

	Section
GRASS, LEAVES AND YARD WASTE (Cont'd.)	
Collection and disposal	
Rates and charges	
Garbage, refuse and leaf removal, charge for.....	38-58
GUNS. See: FIREARMS AND WEAPONS	
H	
HANDICAPPED. See: DISABLED OR HANDICAPPED	
HARBOR OR POSSESS	
Animals and fowl.....	6-18 et seq.
See: ANIMALS AND FOWL	
HARDSHIP	
Noise	
Permits for special exceptions.....	22-24
HAZARD, HAZARDOUS	
Fences, hedges, walls and enclosures	
Barbed wire fences	
Safety hazard.....	10-91
HEALTH, SANITATION, SAFETY AND WELFARE	
Adult entertainment	
Culpable mental state required to establish liability.....	30-34
Animals and fowl.....	6-3 et seq.
Building code	
Purpose.....	10-19
Civil emergencies.....	18-19 et seq.
See: CIVIL EMERGENCIES	
Fences, hedges, walls and enclosures	
Barbed wire fences	
Safety hazard.....	10-91
Noise	
Loud noises prohibited.....	22-21
Water and sewers.....	42-19 et seq.
See: WATER AND SEWERS	
Zoning.....	50-1 et seq.
See: ZONING	
HEARINGS	
Adult entertainment	
Hearing on permit denial, suspension or revocation; appeal.....	30-30
Animals and fowl	
Penalty	
Citations and/or hearings before the town council; fines payable through the ordinance violations bureau ..	6-2(b)
Zoning	
Board of zoning appeals	
Creation, composition and appointment	

TRAIL CREEK CODE

	Section
HEARINGS (Cont'd.)	
Local application	
Conduct of public hearings	50-26(3)(d)
HEDGES. See: FENCES, HEDGES, WALLS AND ENCLOSURES	
HEIGHT	
Zoning	50-85 et seq.
See: ZONING	
HOOTING. See: YELLING, HOOTING, WHISTLING OR SINGING	
HORNS	
Noise	
Prohibited acts	22-22
HOTELS AND MOTELS	
Noise	
Prohibited acts	22-22
Zoning	
Local business uses	
Location permitted	
Miscellaneous	50-87(c)(9)
HOURS	
Adult entertainment	
Hours of operation	30-32
Noise	
Prohibited acts	22-22
Solid waste	
Collection and disposal	
Placement and removal of garbage and trash for pickup	38-21
HUNTING. See: FISHING, HUNTING OR TRAPPING	

I

IC	
Definitions and rules of construction.....	1-2
IDENTIFICATION	
Animals and fowl	
General animal care requirements.....	6-3
Licenses and permits	
Breeder permit	
Required; information provided to customers.....	6-53(a)
Stormwater management	
Approval plan, requirements for stormwater management	
Final stormwater management plan requirements	
Contact information	22-294(1)
ILLNESS. See: DISEASE OR ILLNESS	

CODE INDEX

	Section
IMPOUNDMENT	
Animals and fowl	
Impoundment procedures	6-19
IMPROVEMENTS. See: PUBLIC WORKS AND IMPROVEMENTS	
INCLUDES	
Definitions and rules of construction.....	1-2
INDIANA, STATE OF. See: STATE	
INJURY. See: DAMAGE, DEFACEMENT, DESTRUCTION, INJURY, ETC.	
INSPECTIONS	
Adult entertainment	
Periodic inspection.....	30-26
Animals and fowl	
Licenses and permits	6-58
Building code	10-28
Stormwater management.....	32-324 et seq.
See: STORMWATER MANAGEMENT	
Water and sewers	
Sewers and sewage disposal	
Administration and bond; inspection; notice of approval	46-21
INSURANCE	
Animals and fowl	
Licenses and permits	
Performing animal license.....	6-50
Solid waste	
Collection and disposal	
Liability insurance	38-23
INTERFERENCE	
Animals and fowl	
Interference with humane officer prohibited	6-14
Interference with officials	34-1
Noise	
Prohibited acts	22-22

J

JOINT AUTHORITY	
Definitions and rules of construction.....	1-2
JUNK. See: SALVAGE OR SCRAP YARDS	

K

KEROSENE. See: PETROLEUM PRODUCTS

TRAIL CREEK CODE

L

Section

LAND

Stormwater management

Waivers to stormwater management requirements

Dedication of land 22-204

Zoning

Nonconforming buildings, structures and uses

Authority to continue nonconforming buildings, structures and uses

Land, nonconforming use of 50-28(b)(8)

LANDSCAPING

Stormwater management..... 22-262 et seq.

See: STORMWATER MANAGEMENT

LAPORTE, COUNTY OF. See: COUNTY

LAUNDROMATS. See: CLEANERS AND LAUNDROMATS

LAW ENFORCEMENT

Peddlers, solicitors and transient merchants

Exceptions 30-84

LEAVES. See: GRASS, LEAVES AND YARD WASTE

LEVIES, LEVYING

Certain ordinances not affected by Code 1-5

Finance

Specific funds

Cumulative capital development fund

Tax levy imposed..... 2-170(b)

LIABILITY

Adult entertainment

Culpable mental state required to establish liability 30-34

Solid waste

Collection and disposal

Liability insurance 38-23

LICENSES AND PERMITS

Adult entertainment 30-21 et seq.

See: ADULT ENTERTAINMENT

Animals and fowl..... 6-2 et seq.

See: ANIMALS AND FOWL

Building code

Application for permits..... 10-23

Permit required 10-24

Fees 26-30

Fences, hedges, walls and enclosures

Barbed wire fences

Request for special permit..... 10-93

Use by special permit..... 10-92

CODE INDEX

	Section
LICENSES AND PERMITS (Cont'd.)	
Garage sales	30-59 et seq.
See: GARAGE SALE	
Issuance of permits	30-1
Noise	
Permits for special exceptions	22-24
Stormwater management	22-141 et seq.
See: STORMWATER MANAGEMENT	
Transient merchants	30-81 et seq.
See: PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS	
Water and sewers	
Sewers and sewage disposal	
Permit requirement	46-19
Wrecked and abandoned vehicles	
Permit	22-87
Scope of coverage	22-83
Zoning	
Contingent uses	
Permits for parking lots in residential zones	50-89(c)
Use, control over	
Existing building permits and existing uses	50-85(a)(2)
LIGHTING, LIGHTS	
Zoning	
Signs	
Specifications of allowed signs	50-142
LOADING, UNLOADING	
Traffic and vehicles	
Load limit	42-1
Zoning	
Local business uses	
General provisions and conditional exceptions applicable to all business uses	
Generally	
Loading/unloading berths	50-87(e)(1)b
LOCATION	
Adult entertainment	
Location and distance requirements subject to certain objective criteria promoting purpose and findings	30-23
Certain ordinances not affected by Code	1-5
Solid waste	
Collection and disposal	
Placement and removal of garbage and trash for pickup	38-21
Zoning	50-86 et seq.
See: ZONING	
LOTS	
Zoning	50-85 et seq.
See: ZONING	

TRAIL CREEK CODE

Section

M

MAINTENANCE

Building code

Scope 10-21

Stormwater management..... 22-256 et seq.

See: STORMWATER MANAGEMENT

MANUFACTURED HOMES AND MANUFACTURED HOME
PARKS

Zoning 50-85 et seq.

See: ZONING

MAPS. See: SURVEYS, MAPS AND PLATS

MAY

Definitions and rules of construction..... 1-2

MEASURES. See: WEIGHTS AND MEASURES

MEETINGS

Zoning

Board of zoning appeals

Creation, composition and appointment

Local application 50-26(3)(a)

MERCHANDISE. See: GOODS AND MERCHANDISE

METEOROLOGICAL CONDITIONS (Hail, ice, rain, snow,
wind, etc.)

Animals and fowl

General animal care requirements..... 6-3

MINORS (Children, juveniles, etc.)

Adult entertainment

Minors not permitted on premises 30-31

Fences, hedges, walls and enclosures

Barbed wire fences

Safety hazard 10-91

MISCELLANEOUS PROVISIONS. See: OFFENSES AND MIS-
CELLANEOUS PROVISIONS

MISSILES, ROCKETS AND OTHER PROJECTILES

Civil emergencies

Emergency powers

Incendiary missiles..... 18-23(3)

MOBILE HOMES AND MOBILE HOME PARKS. See: MAN-
UFACTURED HOMES AND MANUFACTURED HOME
PARKS

MONTH

Definitions and rules of construction..... 1-2

MOTELS. See: HOTELS AND MOTELS

CODE INDEX

	Section
MOTOR VEHICLES. See: TRAFFIC AND VEHICLES	
MOVING BUILDINGS	
Zoning	
Nonconforming buildings, structures and uses	
Authority to continue nonconforming buildings, structures and uses	
Moving	50-28(b)(3)
MUFFLERS	
Noise	
Prohibited acts	22-22
MUSIC AND MUSICAL INSTRUMENTS	
Noise	
Prohibited acts	22-22
MUST	
Definitions and rules of construction.....	1-2
N	
NAMING, NAMES	
Certain ordinances not affected by Code	1-5
NATURAL DISASTERS	
Civil emergencies.....	18-19 et seq.
See: CIVIL EMERGENCIES	
NEGLECT. See: ABUSE OR NEGLECT	
NOISE	
Exceptions.....	22-23
Loud noises prohibited.....	22-21
Permits for special exceptions	22-24
Prohibited acts.....	22-22
Remedies	22-25
NONCONFORMITIES	
Zoning	
Accessory structures and uses, control over	
Conformance with regulation	50-85(e)(4)
Nonconforming buildings, structures and uses.....	50-28
NOTICE, NOTIFICATION	
Adult entertainment	
Hearing on permit denial, suspension or revocation; appeal.....	30-30(a)
Animals and fowl	
Confinement by other than town officials; notice required	6-16
Penalty	
Warning notices for pet registration and permits.....	6-2(a)
Brush and weeds	
Growth and disposition of weeds.....	22-120

TRAIL CREEK CODE

	Section
NOTICE, NOTIFICATION (Cont'd.)	
Finance	
Failure to comply with notice to abate	2-145
Notice prior to abatement by town.....	2-144
Stormwater management	
Construction inspection	
Notice of construction commencement	22-324
Enforcement and penalties	
Notice of violation	22-384
Water and sewers	
Sewers and sewage disposal	
Administration and bond; inspection; notice of approval	46-21
Wrecked and abandoned vehicles	
Enforcement	22-88
NUISANCES	
Adult entertainment	
Location and distance requirements subject to certain objective criteria promoting purpose and findings	30-23
Animals and fowl	
General animal care requirements.....	6-3
Bicycles	
Public sale	22-54(b)
Storage fee.....	22-54(a)
Brush and weeds	
Growth and disposition of weeds.....	22-120
Finance	
Conditions constituting public nuisances	2-142
Wrecked and abandoned vehicles.....	22-85
NUMBER, NUMBERING	
Animals and fowl	
Maximum number of dogs or cats.....	6-9
Definitions and rules of construction.....	1-2
O	
OATH, AFFIRMATION, SWEAR OR SWORN	
Definitions and rules of construction.....	1-2
OBSTRUCTIONS	
Diversion of water.....	34-3
Zoning	
Signs	
Specifications of allowed signs	50-142
OCCUPANT. See: TENANT AND OCCUPANT	
ODORS. See: DUST, ODORS, SMOKE AND OTHER AIR- BORNE PARTICLES	
OFFENSES AND MISCELLANEOUS PROVISIONS	
Code does not affect prior offenses or rights	1-7

CODE INDEX

	Section
OFFENSES AND MISCELLANEOUS PROVISIONS (Cont'd.)	
Diversions of water.....	34-3
Firearms; bows and arrows	34-2 et seq.
See: FIREARMS AND WEAPONS	
Interference with officials	34-1
OFFICERS AND EMPLOYEES	
Animals and fowl	
Confinement by other than town officials; notice required	6-16
Interference with humane officer prohibited	6-14
Building code	
Authority.....	10-20
Certain ordinances not affected by Code	1-5
Civil emergencies	
Proclamation of president.....	18-20
Definitions and rules of construction.....	1-2
Elections	
Councilmember for districts	14-1
Interference with officials	34-1
Water and sewers	
Sewers and sewage disposal	
Administration and bond; inspection; notice of approval	46-21
Zoning	50-26 et seq.
See: ZONING	
OIL. See: PETROLEUM PRODUCTS	
OPEN BURNING	
Definitions	22-1(a)
Unlawful	22-1(b)
OPEN SPACES. See: YARDS AND OPEN SPACES	
ORDINANCES, RESOLUTIONS, ETC.	
Amendments to Code; effect of new ordinances; amendatory language.....	1-9
Animals and fowl	
Penalty	
Citations and/or hearings before the town council; fines payable through the ordinance violations bureau ..	6-2(b)
Building code	
Adoption of regulations by reference	10-22
Certain ordinances not affected by Code	1-5
Effect of repeal of ordinances	1-4
Provisions deemed continuation of existing ordinances.....	1-6
Stormwater management	
Compatibility with other permit and ordinance requirements.....	22-141
OWNER	
Animals and fowl	
Owners or agents responsible for removing animal wastes and dead animals	6-11

TRAIL CREEK CODE

	Section
OWNER (Cont'd.)	
Brush and weeds	
Growth and disposition of weeds.....	22-120
Definitions and rules of construction.....	1-2
P	
PARADES AND PROCESSIONS	
Noise	
Permits for special exceptions.....	22-24
PARKING	
Certain ordinances not affected by Code	1-5
Zoning	50-86 et seq.
See: ZONING	
PARKS AND RECREATION	
Adult entertainment	
Location and distance requirements subject to certain objective criteria promoting purpose and findings	30-23
Certain ordinances not affected by Code	1-5
Department of parks and recreation	2-91 et seq.
See: DEPARTMENT OF PARKS AND RECREATION	
Zoning	
Mobile dwelling unit.....	50-86(e)
PAVING AND SURFACING	
Certain ordinances not affected by Code	1-5
PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS	
Application procedure.....	30-83
Definitions	30-81
Exceptions.....	30-84
License requirements	30-82
Noise	
Prohibited acts	22-22
PENALTIES. See: FINES, FORFEITURES AND OTHER PEN- ALTIES	
PERFORMANCE BONDS. See: BONDS, SURETY OR PER- FORMANCE	
PERMITS. See: LICENSES AND PERMITS	
PERMITTED USES	
Zoning	
Accessory structures and uses, control over	50-85(e)(1)
General office, nonretail (GO)	50-88(b)(1)
PERSON	
Definitions and rules of construction.....	1-2
PERSONAL PROPERTY	
Definitions and rules of construction.....	1-2

CODE INDEX

	Section
PET SHOPS	
Animals and fowl	
Licenses and permits	
Pet shop permit.....	6-52
PETROLEUM PRODUCTS (Gasoline, diesel, oil, kerosene, etc.)	
Civil emergencies	
Additional regulations.....	18-22
PHONOGRAPHS, RADIOS, SPEAKERS AND STEREO	
Noise	
Prohibited acts	22-22
PIGS. See: SWINE	
PLAN COMMISSION	
Zoning	50-27
PLANNING AND DEVELOPMENT	
Finance	
Specific funds	
Cumulative capital development fund	2-170
Stormwater management.....	22-262 et seq.
See: STORMWATER MANAGEMENT	
Water and sewers	
Sewers and sewage disposal	
Plans and specifications	46-20
Zoning	50-1 et seq.
See: ZONING	
PLATS. See: SURVEYS, MAPS AND PLATS	
POISON OR TOXIC	
Animals and fowl.....	6-7 et seq.
See: ANIMALS AND FOWL	
POLICE DEPARTMENT	
Police department advisory board.....	2-111 et seq.
See: POLICE DEPARTMENT ADVISORY BOARD	
POLICE DEPARTMENT ADVISORY BOARD	
Appointment	2-113
Compensation.....	2-114
Duties.....	2-112
Establishment	2-111
POLLUTION	
Stormwater management	
Basic stormwater management design criteria	
Conveyance issues.....	22-260
Water and sewers	
Sewers and sewage disposal	
Other pollutants prohibited	46-23

TRAIL CREEK CODE

	Section
POSSESS. See: HARBOR OR POSSESS	
POWERS AND DUTIES	
Civil emergencies	
Emergency powers	18-23
Police department advisory board	2-112
PRACTICES. See: STANDARDS AND PRACTICES	
PREMISES	
Adult entertainment	
Exhibition of sexually explicit films or videos on premises	30-33
Minors not permitted on premises	30-31
Definitions and rules of construction.....	1-2
PRINCIPAL USES	
Zoning	
Accessory structures and uses, control over	
Compatibility with principle use	50-85(e)(2)
PRIZES AND PROMOTIONS	
Animals and fowl	
Sale of animals as novelties or use as prize prohibited; exceptions.....	6-4
PROCESSES. See: WRITS, WARRANTS AND OTHER PRO- CESSES	
PROCESSIONS. See: PARADES AND PROCESSIONS	
PROJECTILES. See: MISSILES, ROCKETS AND OTHER PROJECTILES	
PROMOTIONS. See: PRIZES AND PROMOTIONS	
PROPERTY	
Brush and weeds	
Growth and disposition of weeds.....	22-120
Building code	
Scope	10-21
Certain ordinances not affected by Code	1-5
Civil emergencies	
Additional regulations.....	18-22
Definitions and rules of construction.....	1-2
Finance	
Specific funds	
Cumulative capital development fund	
Tax levy imposed.....	2-170(b)
Zoning	50-1 et seq.
See: ZONING	
PUBLIC PEACE AND ORDER	
Noise	
Loud noises prohibited	22-21

CODE INDEX

	Section
PUBLIC PLACES. See: STREETS, SIDEWALKS AND OTHER PUBLIC PLACE	
PUBLIC WORKS AND IMPROVEMENTS	
Finance	
Specific funds	
Cumulative capital development fund	
Accumulative funds use	2-170(c)
Cumulative capital improvement fund.....	2-169
Zoning	50-1 et seq.
See: ZONING	
PUBLICATIONS	
Stormwater management	
Development of a stormwater design manual	22-142
PUBS. See: BARS, CLUBS, PUBS AND TAVERNS	
R	
RADIOS. See: PHONOGRAPHS, RADIOS, SPEAKERS AND STEREOS	
REAL PROPERTY	
Definitions and rules of construction.....	1-2
Finance	
Specific funds	
Cumulative capital development fund	
Tax levy imposed.....	2-170(b)
RECEPTACLES. See: BINS, CONTAINERS AND RECEPTACLES	
RECORDINGS. See: AUDIO OR VIDEO RECORDINGS	
RECORDS AND REPORTS	
Section catchlines and other headings; history notes; references	1-3
Stormwater management	
Development of a stormwater design manual	22-142
Maintenance and repair of stormwater facilities	
Records of installation and maintenance activities.....	22-361
Zoning	
Bulk, control over	
Residential lots of record, existing	50-85(b)(3)
RECREATION. See: PARKS AND RECREATION	
RECREATIONAL VEHICLES	
Zoning	
Mobile dwelling unit.....	50-86(e)
REFUSE. See: SOLID WASTE	

TRAIL CREEK CODE

	Section
REGISTER, REGISTRATION	
Animals and fowl	6-2 et seq.
See: ANIMALS AND FOWL	
Contractors	
General building contractor registration and revocation of registration procedures.....	10-58
RELIGIOUS INSTITUTIONS	
Adult entertainment	
Location and distance requirements subject to certain objective criteria promoting purpose and findings	30-23
Noise	
Prohibited acts	22-22
REMOVALS. See: APPOINTMENTS AND REMOVALS	
RENOVATIONS, REPAIRS AND RESTORATIONS	
Building code	
Scope	10-21
Certain ordinances not affected by Code	1-5
Noise	
Prohibited acts	22-22
Stormwater management.....	22-357 et seq.
See: STORMWATER MANAGEMENT	
Zoning	50-28 et seq.
See: ZONING	
REPAIRS. See: RENOVATIONS, REPAIRS AND RESTORATIONS	
REPORTS. See: RECORDS AND REPORTS	
REPTILES	
Animals and fowl	
Keeping certain animals prohibited	6-21
RESEARCH, STUDIES AND TESTS	
Stormwater management	
Approval plan, requirements for stormwater management	
Final stormwater management plan requirements	
Soils information.....	22-294(4)
RESIDENCE, RESIDENT	
Adult entertainment	
Location and distance requirements subject to certain objective criteria promoting purpose and findings	30-23
Noise	
Prohibited acts	22-22
Solid waste	
Collection and disposal	
Garbage receptacles and rubbish containers for residential collection.....	38-25
Zoning	50-85 et seq.
See: ZONING	

CODE INDEX

	Section
RESOLUTIONS. See: ORDINANCES, RESOLUTIONS, ETC.	
RESTORATIONS. See: RENOVATIONS, REPAIRS AND RESTORATIONS	
RESTRAINT. See: CONFINEMENT, RESTRAINT	
RETAIL, RETAILER	
Licenses and permits	
Issuance of permits	30-1
Zoning	
Local business uses	
Location permitted	
Retail service; retail stores	50-87(c)(7)
REVIEWS	
Building code	
Review of application	10-27
Stormwater management	
Permit procedures and requirements	
Application	
Review fees	22-172
RIGHTS	
Adult entertainment	
Failure of official to meet time frame not risk rights of applicant or permittee.....	30-35
Certain ordinances not affected by Code	1-5
Code does not affect prior offenses or rights	1-7
RIOTS	
Civil emergencies	18-19 et seq.
See: CIVIL EMERGENCIES	
ROCKETS. See: MISSILES, ROCKETS AND OTHER PROJECTILES	

S

SAFETY. See: HEALTH, SANITATION, SAFETY AND WELFARE	
SALARIES. See: BENEFITS, COMPENSATION AND SALARIES	
SALES	
Animals and fowl	6-4 et seq.
See: ANIMALS AND FOWL	
Civil emergencies	
Additional regulations.....	18-22
Garage sales	30-59 et seq.
See: GARAGE SALES	
Noise	
Prohibited acts	22-22

TRAIL CREEK CODE

	Section
SALES (Cont'd.)	
Nuisances	
Bicycles	
Public sale.....	22-54(b)
Peddlers, solicitors and transient merchants.....	30-81 et seq.
See: PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS	
Zoning	
Signs	
Prohibition	50-139
SALVAGE OR SCRAP YARDS	
Wrecked and abandoned vehicles.....	22-82 et seq.
See: WRECKED AND ABANDONED VEHICLES	
Zoning	
Storage of junk, refuse and disabled or damaged motor vehicles.....	50-85(h)
SANITATION. See: HEALTH, SANITATION, SAFETY AND WELFARE	
SCHOOLS	
Adult entertainment	
Location and distance requirements subject to certain objective criteria promoting purpose and findings	30-23
Noise	
Exceptions	22-23
SCRAP YARDS. See: SALVAGE OR SCRAP YARDS	
SEDIMENTATION CONTROL. See: SOIL EROSION AND SEDIMENTATION CONTROL	
SERVICE STATIONS. See: FUEL OR SERVICE STATIONS	
SEWERS. See: WATER AND SEWERS	
SEXUALLY ORIENTED BUSINESS	
Adult entertainment	30-21 et seq.
See: ADULT ENTERTAINMENT	
SHALL	
Definitions and rules of construction.....	1-2
SIDEWALKS. See: STREETS, SIDEWALKS AND OTHER PUBLIC PLACES	
SIGNALING DEVICES	
Noise	
Prohibited acts	22-22
SIGNATURE AND SUBSCRIPTION	
Definitions and rules of construction.....	1-2

CODE INDEX

	Section
SIGNS AND BILLBOARDS	
Garage sales	
Advertising signs	30-61
Zoning	50-87 et seq.
See: ZONING	
SINGING. See: YELLING, HOOTING, WHISTLING OR SINGING	
SMOKE. See: DUST, ODORS, SMOKE AND OTHER AIRBORNE PARTICLES	
SOIL EROSION AND SEDIMENTATION CONTROL	
Stormwater management	
Approval plan, requirements for stormwater management	
Final stormwater management plan requirements	
Erosion and sediment control plans for construction of stormwater management measures.....	22-294(9)
SOLICITORS. See: PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS	
SOLID WASTE	
Abatement	
Collection and disposal. See herein that subject	
Collection and disposal	
Abatement	
Placement and removal of garbage and trash for pickup	38-21
Rates and charges	
Garbage, refuse and leaf removal, charge for.....	38-58
Removal of dead animals	38-24
Additional terms	38-27
Contract.....	38-22
Definitions	38-19
Finance	
Rates and charges. See within this subheading that subject	
Garbage receptacles and rubbish containers for residential collection	38-25
Liability insurance.....	38-23
Payments to contractor.....	38-26
Placement and removal of garbage and trash for pickup..	38-21
Provision of proper containers.....	38-20
Rates and charges	
Billings	38-59
Quarterly	38-59(2)
Yearly	38-59(1)
Delinquent accounts	38-60
Finance	
Billings.....	38-59
Garbage, refuse and leaf removal, charge for.....	38-58
Revenue fund.....	38-61

TRAIL CREEK CODE

	Section
SOLID WASTE (Cont'd.)	
Garbage, refuse and leaf removal, charge for	38-58
Revenue fund	38-61
Removal of dead animals	38-24
Finance	
Collection and disposal. See herein that subject	
Zoning	
Storage of junk, refuse and disabled or damaged motor vehicles.....	50-85(h)
SOUND AMPLIFYING DEVICES	
Noise	
Prohibited acts	22-22
SPEAKERS. See: PHONOGRAPHS, RADIOS, SPEAKERS AND STEREOS	
SPECIAL EVENTS	
Noise	
Permits for special exceptions.....	22-24
Zoning	
Signs	
Prohibition	50-139
SPECIAL USES	
Zoning	50-90
SPORTING EVENTS. See: ATHLETIC OR SPORTING EVENTS	
STANDARDS AND PRACTICES	
Building code	10-32
Stormwater management.....	22-142 et seq.
See: STORMWATER MANAGEMENT	
Zoning	50-88 et seq.
See: ZONING	
STATE	
Definitions and rules of construction.....	1-2
STEREOS. See: PHONOGRAPHS, RADIOS, SPEAKERS AND STEREOS	
STORAGE	
Finance	
Storage of building materials.....	2-148
Nuisances	
Bicycles	
Storage fee	22-54(a)
Zoning	
Storage of junk, refuse and disabled or damaged motor vehicles.....	50-85(h)
STORMWATER MANAGEMENT	
Applicability	22-140

CODE INDEX

	Section
STORMWATER MANAGEMENT (Cont'd.)	
Approval plan, requirements for stormwater management	
Concept plan requirements stormwater management	22-293
Final stormwater management plan requirements	22-294
Calculations	22-294(3)
Contact information	22-294(1)
Erosion and sediment control plans for construction of stormwater management measures	22-294(9)
Landscaping plan	22-294(6)
Maintenance agreement	22-294(8)
Maintenance and repair plan	22-294(5)
Maintenance easements	22-294(7)
Other permits	22-294(10)
Soils information	22-294(4)
Topographic base map	22-294(2)
Maintenance	
Final stormwater management plan requirements. See within this subheading that subject	
Performance bond/security	22-295
Plan required for all developments, stormwater manage- ment	22-292
Planning and development	
Concept plan requirements stormwater management ..	22-293
Final stormwater management plan requirements	22-294
Plan required for all developments, stormwater manage- ment	22-292
Basic stormwater management design criteria	
Conveyance issues	22-260
Landscaping plans required	22-262
Maintenance agreements	22-263
Minimum control requirements	22-258
Nonstructural stormwater practices	22-264
Site design feasibility	22-259
Treatment/geometry conditions	22-261
Compatibility with other permit and ordinance require- ments	22-141
Construction inspection	
As-built plans	22-325
Landscaping and stabilization requirements	22-326
Notice of construction commencement	22-324
Definitions	22-143
Development of a stormwater design manual	22-142
Enforcement and penalties	
Notice of violation	22-384
Violations	22-383
General performance criteria for stormwater management	
Sites one acre or greater	22-232
Inspections	
Construction inspection. See herein that subject	

TRAIL CREEK CODE

	Section
STORMWATER MANAGEMENT (Cont'd.)	
Maintenance and repair of stormwater facilities	
Inspection of stormwater facilities	22-359
Right of entry for inspection	22-360
Landscaping	
Approval plan, requirements for stormwater management	
Final stormwater management plan requirements	
Landscaping plan	22-294(6)
Basic stormwater management design criteria	
Landscaping plans required.....	22-262
Construction inspection	
Landscaping and stabilization requirements.....	22-326
Licenses and permits	
Approval plan, requirements for stormwater management	
Final stormwater management plan requirements	
Other permits	22-294(10)
Compatibility with other permit and ordinance require- ments.....	22-141
Permit procedures and requirements. See herein that subject	
Maintenance	
Approval plan, requirements for stormwater manage- ment. See herein that subject	
Basic stormwater management design criteria	
Maintenance agreements.....	22-263
Maintenance and repair of stormwater facilities. See herein that subject	
Maintenance and repair of stormwater facilities	
Covenants, maintenance	22-357
Easement, maintenance.....	22-356
Failure to maintain practices.....	22-362
Inspection of stormwater facilities.....	22-359
Records of installation and maintenance activities	22-361
Requirements for maintenance covenants	22-358
Right of entry for inspection.....	22-360
Permit procedures and requirements	
Application	
Procedure.....	22-173
Requirements	22-171
Review fees.....	22-172
Permit duration.....	22-174
Permit required	22-170
Planning and development	
Approval plan, requirements for stormwater manage- ment. See herein that subject	
Basic stormwater management design criteria	
Landscaping plans required.....	22-262
Construction inspection	
As-built plans	22-325
Purpose	22-139

CODE INDEX

	Section
STORMWATER MANAGEMENT (Cont'd.)	
Renovations, repairs and restorations	
Approval plan, requirements for stormwater management	
Final stormwater management plan requirements	
Maintenance and repair plan.....	22-294(5)
Maintenance and repair of stormwater facilities. See herein that subject	
Standards and practices	
Basic stormwater management design criteria. See herein that subject	
Development of a stormwater design manual	22-142
General performance criteria for stormwater management	
Sites one acre or greater.....	22-232
Waivers	
Waivers to stormwater management requirements. See herein that subject	
Waivers to stormwater management requirements	
Dedication of land	22-204
Fee in lieu of stormwater management practices	22-203
Waivers for providing stormwater management	22-202
Water and sewers	
Sewers and sewage disposal	
Discharge of water and waste.....	46-22
Other pollutants prohibited	46-23
Weights and measures	
Approval plan, requirements for stormwater management	
Final stormwater management plan requirements	
Calculations	22-294(3)
Basic stormwater management design criteria	
Minimum control requirements.....	22-258
Treatment/geometry conditions	22-261
STREAMS. See: WATERCOURSES AND WATERWAYS	
STREETS, SIDEWALKS AND OTHER PUBLIC PLACES	
Certain ordinances not affected by Code	1-5
Definitions and rules of construction.....	1-2
Finance	
Specific funds	
Cumulative capital development fund	
Accumulative funds use	2-170(c)
Noise	
Prohibited acts	22-22
Traffic and vehicles	
Through streets	42-2
Zoning	50-86 et seq.
See: ZONING	
STUDIES. See: RESEARCH, STUDIES AND TESTS	
SUBSCRIPTION. See: SIGNATURE AND SUBSCRIPTION	

TRAIL CREEK CODE

	Section
SURETY BONDS. See: BONDS, SURETY OR PERFORMANCE	
SURFACE WATER	
Stormwater management.....	22-139 et seq.
See: STORMWATER MANAGEMENT	
SURFACING. See: PAVING AND SURFACING	
SURVEYS, MAPS AND PLATS	
Certain ordinances not affected by Code	1-5
Stormwater management	
Approval plan, requirements for stormwater management	
Final stormwater management plan requirements	
Topographic base map.....	22-294(2)
Zoning	
Zoning districts established; zoning map	
District map and boundaries.....	50-61
SWEAR OR SWORN. See: OATH, AFFIRMATION, SWEAR OR SWORN	
SWINE	
Animals and fowl	
Acreage requirements for certain domestic animals; prohibition of swine	6-10
SYNAGOGUES. See: RELIGIOUS INSTITUTIONS	
T	
TAVERNS. See: BARS, CLUBS, PUBS AND TAVERNS	
TAXATION	
Certain ordinances not affected by Code	1-5
Finance	
Specific funds	
Cumulative capital development fund	
Tax levy imposed.....	2-170(b)
TELECOMMUNICATIONS	
Zoning	
Local business uses	
Location permitted	
Business service.....	50-87(c)(2)
TEMPLES. See: RELIGIOUS INSTITUTIONS	
TENANT AND OCCUPANT	
Building code	
Certificate of occupancy	10-31
Definitions and rules of construction.....	1-2
TENSE	
Definitions and rules of construction.....	1-2

CODE INDEX

	Section
TENTS	
Zoning	
Mobile dwelling unit.....	50-86(e)
Trailers, mobile homes, tents and boats.....	50-85(g)
TESTS. See: RESEARCH, STUDIES AND TESTS	
THEATERS	
Zoning	
Local business uses	
Location permitted	
Commercial recreational uses	50-87(c)(8)
TITLES. See: DEEDS AND TITLES	
TOWN	
Definitions and rules of construction.....	1-2
TOWN COUNCIL. See: COUNCIL	
TOWN MARSHAL	
Civil emergencies	
Proclamation of president.....	18-20
Police department advisory board	
Establishment.....	2-111
Wrecked and abandoned vehicles	
Enforcement	22-88
TOXIC. See: POISON OR TOXIC	
TRAFFIC AND VEHICLES	
Animals and fowl	
Motor vehicle accidents involving animals.....	6-5
Motor vehicles, animals in.....	6-6
Certain ordinances not affected by Code	
Load limit	42-1
No passing zones	42-3
Noise	
Prohibited acts	22-22
Through streets.....	42-2
Wrecked and abandoned vehicles.....	22-82 et seq.
See: WRECKED AND ABANDONED VEHICLES	
Zoning	50-85 et seq.
See: ZONING	
TRAIL CREEK, TOWN OF. See: TOWN	
TRAILERS. See: TRUCKS AND TRAILERS	
TRAINING. See: EDUCATION AND TRAINING	
TRANSIENT MERCHANTS. See: PEDDLERS, SOLICITORS AND TRANSIENT MERCHANTS	
TRAPPING. See: FISHING, HUNTING OR TRAPPING	
TRASH. See: SOLID WASTE	

TRAIL CREEK CODE

	Section
TREASURER. See: CLERK-TREASURER	
TRESPASSING	
Zoning	
Signs	
Prohibition	50-139
TRUCKS AND TRAILERS	
Traffic and vehicles	
Load limit	42-1
Zoning	
Mobile dwelling unit	50-86(e)
Trailers, mobile homes, tents and boats.....	50-85(g)
U	
UTILITIES	
Sewers and sewage disposal	46-19 et seq.
See: WATER AND SEWERS	
V	
VACANT, VACATING	
Certain ordinances not affected by Code	1-5
Zoning	
Zoning districts established; zoning map	
Procedure relating to annexed or vacated areas	50-63
VACCINES, VACCINATIONS	
Animals and fowl.....	6-3 et seq.
See: ANIMALS AND FOWL	
VARIANCES	
Zoning	
Board of zoning appeals	
Creation, composition and appointment	
Local application	50-26(3)(c)
Local business uses	
General provisions and conditional exceptions applica- ble to all business uses	
Conditional exceptions	
Use variances	50-87(e)(2)d
VEGETATION	
Brush and weeds	
Growth and disposition of weeds.....	22-120
VEHICLES. See: TRAFFIC AND VEHICLES	
VESSELS. See: BOATS, VESSELS AND WATERCRAFT	
VETERINARIANS	
Animals and fowl.....	6-3 et seq.
See: ANIMALS AND FOWL	

CODE INDEX

	Section
VETERINARIANS (Cont'd.)	
Zoning	
Local business uses	
Location permitted	
Miscellaneous	50-87(c)(9)
VICIOUS ANIMALS. See: DANGEROUS OR VICIOUS ANIMALS	
VIDEO RECORDINGS. See: AUDIO OR VIDEO RECORDINGS	
VISIBILITY	
Wrecked and abandoned vehicles	
Prohibition.....	22-84
Zoning	
Residential uses	
General provisions and conditional exceptions applicable to all residential uses in districts where permitted	
Generally	
Vision clearance on corner lots.....	50-86(f)(1)d
Signs	
Specifications of allowed signs.....	50-142
VOTING. See: ELECTIONS	
W	
WAIVERS	
Noise	
Remedies.....	22-25
Stormwater management.....	22-202 et seq.
See: STORMWATER MANAGEMENT	
WALLS. See: FENCES, HEDGES, WALLS AND ENCLOSURES	
WARNINGS	
Animals and fowl	
Penalty	
Warning notices for pet registration and permits.....	6-2(a)
Noise	
Prohibited acts	22-22
WARRANTS. See: WRITS, WARRANTS AND OTHER PROCESSES	
WATER AND SEWERS	
Finance	
Specific funds	
Cumulative capital development fund	
Accumulative funds use.....	2-170(c)

TRAIL CREEK CODE

	Section
WATER AND SEWERS (Cont'd.)	
Sewers and sewage disposal	
Administration and bond; inspection; notice of approval..	46-21
Discharge of water and waste	46-22
Other pollutants prohibited.....	46-23
Permit requirement.....	46-19
Plans and specifications.....	46-20
Stormwater management.....	22-139 et seq.
See: STORMWATER MANAGEMENT	
WATERCOURSES AND WATERWAYS	
Diversion of water.....	34-3
WATERCRAFT. See: BOATS, VESSELS AND WATERCRAFT	
WATERWAYS. See: WATERCOURSES AND WATERWAYS	
WEAPONS. See: FIREARMS AND WEAPONS	
WEEDS. See: BRUSH AND WEEDS	
WEEK	
Definitions and rules of construction.....	1-2
WEIGHTS AND MEASURES	
Adult entertainment	
Location and distance requirements subject to certain objective criteria promoting purpose and findings	30-23
Stormwater management.....	22-258 et seq.
See: STORMWATER MANAGEMENT	
Zoning	50-1 et seq.
See: ZONING	
WELFARE. See: HEALTH, SANITATION, SAFETY AND WEL- FARE	
WHISTLING. See: YELLING, HOOTING, WHISTLING OR SINGING	
WILDLIFE	
Animals and fowl	
Keeping certain animals prohibited	6-21
Seizure of certain animals	6-22
WRECKED AND ABANDONED VEHICLES	
Definitions	22-82
Enforcement	22-88
Exclusion	22-86
Nuisance.....	22-85
Permit	22-87
Prohibition	22-84
Scope of coverage	22-83
Zoning	
Storage of junk, refuse and disabled or damaged motor vehicles.....	50-85(h)

CODE INDEX

	Section
WRITING, WRITTEN	
Definitions and rules of construction.....	1-2
WRITS, WARRANTS AND OTHER PROCESSES	
Animals and fowl	
Penalty	
Citations and/or hearings before the town council; fines payable through the ordinance violations bureau ..	6-2(b)
Brush and weeds	
Growth and disposition of weeds.....	22-120
Building code	
Stop work order	10-30
Civil emergencies	
Additional regulations.....	18-22
Finance	
Violations; issuance of citations	2-143
Noise	
Remedies.....	22-25

Y

YARD WASTE. See: GRASS, LEAVES AND YARD WASTE

YARDS AND OPEN SPACES

Animals and fowl	
General animal care requirements.....	6-3
Brush and weeds	
Growth and disposition of weeds.....	22-120
Wrecked and abandoned vehicles	
Prohibition.....	22-84
Zoning	50-85 et seq.
See: ZONING	

YEAR

Definitions and rules of construction.....	1-2
--	-----

YELLING, HOOTING, WHISTLING OR SINGING

Noise	
Prohibited acts	22-22

Z

ZONING (Generally)

Certain ordinances not affected by Code	1-5
Fees	26-50
Finance	
Storage of building materials.....	2-148
Stormwater management.....	22-139 et seq.
See: STORMWATER MANAGEMENT	
Traffic and vehicles	
No passing zones.....	42-3

TRAIL CREEK CODE

	Section
ZONING	
Abatement	
Manufactured housing	
Penalty for violation	
Removal method	50-112(b)
Subject to removal	50-112(a)
Signs	
Removal	50-141
Access, control over	50-85(d)
Accessory buildings, structures and uses	
Accessory structures and uses, control over. See herein that subject	
Apartment house.....	50-86(d)(4)
Group house and garden apartment.....	50-86(c)(4)
Residential uses	
General provisions and conditional exceptions applica- ble to all residential uses in districts where permit- ted	
Conditional exceptions	50-86(f)(2)c
Generally	50-86(f)(1)f
Single-family dwelling.....	50-86(a)(4)
Two-family dwelling	50-86(b)(4)
Accessory structures and uses, control over.....	50-85(e)
Compatibility with principle use.....	50-85(e)(2)
Conformance with regulation.....	50-85(e)(4)
Keeping of animals prohibited	50-85(e)(3)
Permitted	50-85(e)(1)
Permitted accessory structures and uses in yards	50-85(e)(5)
Administration.....	50-25
Administration and enforcement. See herein specific sub- jects	
Apartment house	
Accessory buildings; uses permitted	50-86(d)(4)
Bulk standards.....	50-86(d)(3)
Front yard.....	50-86(d)(3)a
Ground floor area	50-86(d)(3)d
Lot coverage.....	50-86(d)(3)e
Rear yard.....	50-86(d)(3)c
Side yard	50-86(d)(3)b
Definitions	50-86(d)(1)
Location permitted.....	50-86(d)(2)
Area. See herein specific subjects	
Board of zoning appeals	
Creation, composition and appointment.....	50-26
Chairman.....	50-26(1)
Local application	50-26(3)
Agenda	50-26(3)(b)
Conduct of public hearings	50-26(3)(d)
Final disposition of cases	50-26(3)(e)
Meetings	50-26(3)(a)

CODE INDEX

	Section
ZONING (Cont'd.)	
Variances.....	50-26(3)(c)
Secretary	50-26(2)
Buildings and building regulations. See herein specific subjects	
Bulk	
Apartment house.....	50-86(d)(3)
Bulk, control over. See herein that subject	
General office, nonretail (GO)	50-88(b)(2)
Group house and garden apartment.....	50-86(c)(3)
Local business uses	50-87(d)
Single-family dwelling.....	50-86(a)(3)
Two-family dwelling	50-86(b)(3)
Bulk, control over	50-85(b)
Establishment of new structures.....	50-85(b)(1)
Minimum lot area; two or more uses on a lot	50-85(b)(5)
Residential lots of record, existing.....	50-85(b)(3)
Structure height	50-85(b)(4)
Structures, existing.....	50-85(b)(2)
Businesses	
Contingent uses	
Unit development plan	
Community shopping center development plan	50-89(d)(2)
General office, nonretail (GO)	50-88
Local business uses.....	50-87
Signs	
Prohibition	50-139
Specifications of allowed signs.....	50-142
Conditional uses	
Local business uses	
General provisions and conditional exceptions applicable to all business uses	50-87(e)
Mobile dwelling unit	
General provisions and conditional exceptions applicable to mobile dwelling units.....	50-86(e)(3)
Residential uses	
General provisions and conditional exceptions applicable to all residential uses in districts where permitted.....	50-86(f)
Contingent uses	
Definitions	50-89(a)
Location permitted and vehicle parking space required...	50-89(b)
Permits for parking lots in residential zones	50-89(c)
Unit development plan	50-89(d)
Community shopping center development plan.....	50-89(d)(2)
Residential development plan.....	50-89(d)(1)
Definitions	50-1
District regulations. See also herein specific subjects	
Contingent uses	50-89
General office, nonretail (GO)	50-88

TRAIL CREEK CODE

	Section
ZONING (Cont'd.)	
Generally. See herein specific subjects	
Local business uses	80-87
Residential uses	50-86
Special uses	50-90
Flooring, floors	
Apartment house	
Bulk standards	
Ground floor area	50-86(d)(3)d
Group house and garden apartment	
Bulk standards	
Ground floor area	50-86(c)(3)e
Single-family dwelling	
Bulk standards	
Ground floor area	50-86(a)(3)e
Two-family dwelling	
Bulk standards	
Ground floor area	50-86(b)(3)e
General office, nonretail (GO)	
Bulk regulations	50-88(b)(2)
Open space requirements	50-88(b)(3)
Permitted uses	50-88(b)(1)
Procedures	50-88(b)(4)
Purpose	50-88(a)
Group house and garden apartment	
Accessory building; uses permitted	50-86(c)(4)
Bulk standards	50-86(c)(3)
Front yard	50-86(c)(3)b
Ground floor area	50-86(c)(3)e
Height of buildings	50-86(c)(3)a
Lot coverage	50-86(c)(3)f
Rear yard	50-86(c)(3)d
Side yard	50-86(c)(3)c
Definitions	50-86(c)(1)
Location permitted	50-86(c)(2)
Health, sanitation, safety and welfare. See herein specific subjects	
Height	
Bulk, control over	
Structure height	50-85(b)(4)
Group house and garden apartment	
Bulk standards	
Height of buildings	50-86(c)(3)a
Local business uses	
Bulk standards	
Height of buildings, maximum	50-87(d)(1)
General provisions and conditional exceptions applicable to all business uses	
Conditional exceptions	
Maximum height	50-87(e)(2)a

CODE INDEX

	Section
ZONING (Cont'd.)	
Signs	
Specifications of allowed signs	50-142
Single-family dwelling	
Bulk standards	
Height of buildings	50-86(a)(3)a
Two-family dwelling	
Bulk standards	
Height of buildings	50-86(b)(3)a
Interpretation	50-3
Local business uses	
Bulk standards	50-87(d)
Front yard and side yard adjoining street	50-87(d)(2)
Height of buildings, maximum	50-87(d)(1)
Lot area, minimum	50-87(d)(3)
Lot coverage	50-87(d)(7)
Lot width, minimum	50-87(d)(4)
Rear yard	50-87(d)(6)
Side yard	50-87(d)(5)
Definitions	50-87(a)
General provisions and conditional exceptions applicable to all business uses	50-87(e)
Conditional exceptions	50-87(e)(2)
Front yard	50-87(e)(2)b
Maximum height	50-87(e)(2)a
Use variances	50-87(e)(2)d
Vehicle parking space	50-87(e)(2)c
Generally	50-87(e)(1)
Loading/unloading berths	50-87(e)(1)b
Vehicle parking space	50-87(e)(1)a
Interpretation	50-87(b)
Location permitted	50-87(c)
Automobile service	50-87(c)(1)
Business service	50-87(c)(2)
Clothing service	50-87(c)(3)
Commercial recreational uses	50-87(c)(8)
Equipment service	50-87(c)(4)
Food service	50-87(c)(5)
Miscellaneous	50-87(c)(9)
Personal service	50-87(c)(6)
Retail service; retail stores	50-87(c)(7)
Parking	
General provisions and conditional exceptions applica- ble to all business uses. See within this subheading that subject	
Conditional exceptions	
Vehicle parking space	50-87(e)(2)c
Generally	
Vehicle parking space	50-87(e)(1)a

TRAIL CREEK CODE

	Section
ZONING (Cont'd.)	
Location permitted	
Automobile service.....	50-87(c)(1)
Location	
Apartment house.....	50-86(d)(2)
Contingent uses	
Location permitted and vehicle parking space required	50-89(b)
Group house and garden apartment.....	50-86(c)(2)
Local business uses.....	50-87(c)
Manufactured housing	
Standards	
Permitted placement	50-111(a)
Mobile dwelling unit.....	50-86(e)(2)
Single-family dwelling.....	50-86(a)(2)
Two-family dwelling	50-86(b)(2)
Lot divisions	50-85(f)
Lots	
Apartment house	
Bulk standards	50-86(d)(3)e
Bulk, control over	
Minimum lot area; two or more uses on a lot.....	50-85(b)(5)
Residential lots of record, existing	50-85(b)(3)
Group house and garden apartment	
Bulk standards	50-86(c)(3)f
Local business uses	
Bulk standards	50-87(d)
Lot divisions.....	50-85(f)
Residential uses	
General provisions and conditional exceptions applica- ble to all residential uses in districts where permit- ted	
Generally	
Lot dimensions	50-86(f)(1)
Vision clearance on corner lots.....	50-86(f)(1)d
Single-family dwelling	
Bulk standards	50-86(a)(3)f
Two-family dwelling	
Bulk standards	50-86(b)(3)f
Manufactured homes and manufactured home parks	
Manufactured housing. See herein that subject	
Mobile dwelling unit.....	50-86(e)
Trailers, mobile homes, tents and boats.....	50-85(g)
Manufactured housing	
Definitions	50-110
Intent.....	50-109
Penalty for violation	50-112
Removal method.....	50-112(b)
Subject to removal.....	50-112(a)
Standards.....	50-111
Permitted placement	50-111(a)

CODE INDEX

	Section
ZONING (Cont'd.)	
Structural alteration	50-111(b)
Mobile dwelling unit	
Definitions	50-86(e)(1)
General provisions and conditional exceptions applicable to mobile dwelling units.....	50-86(e)(3)
Location permitted.....	50-86(e)(2)
Nonconforming buildings, structures and uses	
Authority to continue nonconforming buildings, structures and uses.....	50-28(b)
Additions and enlargements	50-28(b)(2)
Change of use in nonconforming building or structure .	50-28(b)(6)
Conforming buildings or structures, nonconforming use of	50-28(b)(7)
Discontinuance of use of nonconforming building or structure.....	50-28(b)(5)
Land, nonconforming use of.....	50-28(b)(8)
Moving.....	50-28(b)(3)
Renovations, repairs and restorations	
Additions and enlargements.....	50-28(b)(2)
Repairs and alterations	50-28(b)(1)
Restoration of damaged nonconforming buildings or structures.....	50-28(b)(4)
Repairs and alterations.....	50-28(b)(1)
Restoration of damaged nonconforming buildings or structures	50-28(b)(4)
Purpose; intent.....	50-28(a)
Renovations, repairs and restorations	
Authority to continue nonconforming buildings, structures and uses. See within this subheading that subject	
Officers and employees	
Board of zoning appeals	
Creation, composition and appointment	
Chairman	50-26(1)
Secretary.....	50-26(2)
Plan commission	
Creation, composition and appointment	
Secretary.....	50-27(b)
Parking	
Contingent uses	
Location permitted and vehicle parking space required	50-89(b)
Permits for parking lots in residential zones.....	50-89(c)
Local business uses. See herein that subject	
Residential uses	
General provisions and conditional exceptions applicable to all residential uses in districts where permitted	
Generally	
Vehicle parking space	50-86(f)(1)e

TRAIL CREEK CODE

	Section
ZONING (Cont'd.)	
Plan commission	
Creation, composition and appointment.....	50-27
Establishment	50-27(a)
Secretary	50-27(b)
Planning and development. See herein specific subjects	
Property. See herein specific subjects	
Public works and improvements. See herein specific subjects	
Purpose and intent.....	50-2
Intent.....	50-2(b)
Purpose	50-2(a)
Renovations, repairs and restorations	
Manufactured housing	
Standards	
Structural alteration	50-111(b)
Nonconforming buildings, structures and uses. See herein that subject	
Residence, resident	
Bulk, control over	
Residential lots of record, existing	50-85(b)(3)
Contingent uses	
Permits for parking lots in residential zones.....	50-89(c)
Unit development plan	
Residential development plan	50-89(d)(1)
Residential uses. See herein that subject	
Residential uses. See also herein specific subjects	
Apartment house.....	50-86(d)
General provisions and conditional exceptions applicable to all residential uses in districts where permitted...	50-86(f)
Conditional exceptions.....	50-86(f)(2)
Accessory buildings.....	50-86(f)(2)c
Front yard	50-86(f)(2)a
Tapered yard	50-86(f)(2)b
Generally	50-86(f)(1)
Accessory buildings.....	50-86(f)(1)f
Front yard	50-86(f)(1)b
Lot dimensions	50-86(f)(1)a
Rear yard	50-86(f)(1)c
Vehicle parking space	50-86(f)(1)e
Vision clearance on corner lots	50-86(f)(1)d
Group house and garden apartment.....	50-86(c)
Mobile dwelling unit.....	50-75(e)
Single-family dwelling.....	50-86(a)
Two-family dwelling	50-86(b)
Signs	
Administration	50-143
Definitions	50-138
Local business uses	
Location permitted	
Miscellaneous	50-87(c)(9)

CODE INDEX

	Section
ZONING (Cont'd.)	
Prohibition.....	50-139
Removal.....	50-141
Specifications of allowed signs	50-142
Time limitations for temporary signs.....	50-140
Single-family dwelling	
Accessory buildings; uses permitted	50-86(a)(4)
Bulk standards.....	50-86(a)(3)
Front yard and side yard adjoining street.....	50-86(a)(3)b
Ground floor area	50-86(a)(3)e
Height of buildings.....	50-86(a)(3)a
Lot coverage.....	50-86(a)(3)f
Rear yard.....	50-86(a)(3)d
Side yard	50-86(a)(3)c
Definitions	50-86(a)(1)
Location permitted.....	50-86(a)(2)
Special uses	
Initiation.....	50-90(b)
Procedures and decisions	50-90(c)
Purpose	50-90(a)
Standards and practices	
General office, nonretail (GO)	
Procedures	50-88(b)(4)
Manufactured housing	50-111
Special uses	
Procedures and decisions.....	50-90(c)
Storage of junk, refuse and disabled or damaged motor vehicles	50-85(h)
Streets, sidewalks and other public places	
Local business uses	
Bulk standards	
Front yard and side yard adjoining street	50-87(d)(2)
Signs	
Prohibition	50-139
Specifications of allowed signs.....	50-142
Single-family dwelling	
Bulk standards	
Front yard and side yard adjoining street	50-86(a)(3)b
Two-family dwelling	
Bulk standards	
Front yard and side yard adjoining a street.....	50-86(b)(3)b
Traffic and vehicles	
Contingent uses	
Location permitted and vehicle parking space required	50-89(b)
Local business uses	
General provisions and conditional exceptions applica- ble to all business uses	
Conditional exceptions	
Vehicle parking space.....	50-87(e)(2)c

TRAIL CREEK CODE

	Section
ZONING (Cont'd.)	
Generally	
Vehicle parking space	50-87(e)(1)a
Mobile dwelling unit.....	50-86(e)
Residential uses	
General provisions and conditional exceptions applica- ble to all residential uses in districts where permit- ted	
Generally	
Vehicle parking space	50-86(f)(1)e
Signs	
Specifications of allowed signs	50-142
Storage of junk, refuse and disabled or damaged motor vehicles.....	50-85(h)
Trailers, mobile homes, tents and boats	50-85(g)
Two-family dwelling	
Accessory building; uses permitted	50-86(b)(4)
Bulk standards	50-86(b)(3)
Front yard and side yard adjoining a street.....	50-86(b)(3)b
Ground floor area	50-86(b)(3)e
Height of buildings.....	50-86(b)(3)a
Lot coverage.....	50-86(b)(3)f
Rear yard.....	50-86(b)(3)d
Side yard	50-86(b)(3)c
Definitions	50-86(b)(1)
Location permitted.....	50-86(b)(2)
Use, control over.....	50-85(a)
Establishment of new uses	50-85(a)(1)
Existing building permits and existing uses.....	50-85(a)(2)
Weights and measures. See herein specific subjects	
Yards and open spaces	
Accessory structures and uses, control over	
Permitted accessory structures and uses in yards.....	50-85(e)(5)
Apartment house	
Bulk standards	50-86(d)(3)
General office, nonretail (GO)	50-88(b)(3)
Group house and garden apartment	
Bulk standards	50-86(c)(3)
Local business uses	
Bulk standards	50-87(d)
General provisions and conditional exceptions applica- ble to all business uses	
Conditional exceptions	
Front yard.....	50-87(e)(2)b
Residential uses	
General provisions and conditional exceptions applica- ble to all residential uses in districts where permit- ted	
Conditional exceptions	50-86(f)(2)
Generally	50-86(f)(1)

CODE INDEX

	Section
ZONING (Cont'd.)	
Single-family dwelling	
Bulk standards	50-86(a)(3)
Two-family dwelling	
Bulk standards	50-86(b)(3)
Yards and other open areas, control over	50-85(c)
Yards and other open areas, control over	50-85(c)
Zoning districts established; zoning map	
Determination and interpretation of district boundaries..	50-62
District map and boundaries	50-61
Procedure relating to annexed or vacated areas	50-63
Zoning districts designated	50-60

