

TITLE XV: LAND USAGE

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GENERAL REQUIREMENTS

§ 150.01 TITLE.

This chapter and all material included herein by reference shall be known as the "Building Code of Portland, Indiana." (Ord. 2004-11, passed 8-9-04)

§ 150.02 PURPOSE.

The purpose of this chapter is to protect the life, public safety, health and general

welfare of the citizens of Portland, Indiana, and shall be construed in such a manner to effectuate this purpose. (Ord. 2004-11, passed 8-9-04)

§ 150.03 DEFINITIONS.

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

"Building Commissioner." Includes individuals employed by the Building Department that are authorized to represent the Building Commissioner.

"Class 1 structure."

(1) Any part of the following:

(a) A building or structure that is intended to be or is occupied or otherwise used in any part by any of the following:

1. The public.
2. Three or more tenants.
3. One or more persons who act as the employees of another.

(b) A site improvement affecting access by persons with physical disabilities to a building or structure described in subdivision (a).

(c) Outdoor event equipment.

(d) Any class of buildings or structures that the commission determines by rules to affect a building or structure described in subdivision (1), except buildings or structures described in divisions (3) through (6),

(2) Division (1)(a) includes a structure that contains three or more condominium units (as defined in IC 32-25-2-9) or other units that:

(a) Are intended to be or are used or leased by the owner of the unit; and

(b) Are not completely separated from each other by an unimproved space.

(3) Division (1)(a) does not include a building or structure that:

(a) Is intended to be or is used only for an agricultural purpose on the land where it is located; and

(b) Is not used for retail trade or is a stand used for retail sales of farm produce for eight or less consecutive months in a calendar year.

(4) Division (1) (a) does not include a Class 2 structure.

(5) Division (1) (a) does not include a vehicular bridge.

(6) Division (1) (a) does not include a structure that is intended to be or is occupied solely to provide periodic maintenance or repair of.

(a) The structure; or

(b) Mechanical or electrical equipment located within and affixed to the structure

(7) Pursuant to IC 22-12-1-24, structure includes swimming pool. (IC 22-12-1-4)

"Class 2 structure."

(1) Any part of the following:

(a) A building or structure that is intended to contain or contains only one dwelling unit or two dwelling units unless any part of the building or structure is regularly used as a Class 1 structure.

(b) An outbuilding for a structure described in subdivision (a), such as a garage, barn, or family swimming pool, including an above ground swimming pool, unless any part of the outbuilding is regularly used as a Class 1 structure.

(2) Division (1) does not include a vehicular bridge.

(3) Pursuant to IC 22-12-1-24, structure includes swimming pool. (IC 22-12-1-5)

"Construction." Any of the following:

(1) Fabrication of any part of an industrialized building system or mobile structure for use at another site.

(2) Erection or assembly of any part of a Class 1 or Class 2 structure at the site where it will be used.

(3) Installation of any part of the permanent heating, ventilating, air conditioning, electrical, plumbing, sanitary, emergency detection, emergency communication, or fire or explosion suppression systems for a Class 1 or Class 2 structure at the site where it will be used.

(4) Work undertaken to alter, remodel, rehabilitate, or add to any part of a Class 1 or Class 2 structure.

(5) Work undertaken to relocate any part of a Class 1 or Class 2 structure, except a mobile structure. (IC 22-12-1-7)

"Industrialized building system." Any part of a building or other structure that is in whole or in substantial part fabricated in an off-site manufacturing facility for installation or assembly at the building site as part of a Class 1 structure, a Class 2 structure, or another building or structure. However, the term does not include a mobile structure or a system that is capable of inspection at the building site. (IC 22-12-1-14)

"Manufactured home." A structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of Housing and Urban Development and complies with the standards established under 42 U.S.C. 5401 et seq. and except that such term shall not include any self-propelled recreational vehicle. (IC 22-12-1-16)

"Mobile structure."

(1) Any part of a fabricated unit that is designed to be:

(a) Towed on its own chassis; and

(b) Connected to utilities for year-round occupancy or use as a Class 1 structure, a Class 2 structure, or another structure.

(2) The term includes the following:

(a) Two or more components that can be retracted for towing purposes and subsequently expanded for additional capacity.

(b) Two or more units that are separately towable but designed to be joined into one integral unit.

(3) One or more units that include a hoisting and lowering mechanism equipped with a platform that:

(a) Moves between two or more landings; and

(b) Is used to transport one or more individuals.
(IC 22-12-1-17)

"Person." An individual, corporation, limited liability company, partnership, unincorporated association, or governmental entity.
(IC 22-12-1-18)

"Structure." Both Class 1 and Class 2 structures, unless specifically stated otherwise.

"Vehicular bridge." Any bridge that is neither:

(1) A pedestrian walkway; nor

(2) A passageway for light vehicles; suspended between two or more parts of a building or between two or more buildings.
(IC 22-12-1-26) (Ord. 2004-11, passed 8-9-04)

§ 150.04 SCOPE.

(A) All construction shall be accomplished in compliance with the provisions of this chapter.

(B) Pursuant to IC 22-13-2-6, this chapter shall not apply to industrialized building systems or mobile structures certified under IC 22-15-4; however, the provisions of this chapter and the rules promulgated by the Fire Prevention and Building Safety Commission do apply to any construction related to an industrialized building system or mobile structure not certified under IC 22-15-4.

(C) Pursuant to IC 22-13-2-9, this chapter is not applicable to regulated amusement devices, regulated boilers, regulated pressure vessels, or regulated lifting devices.
(Ord. 2004-11, passed 8-9-04)

§ 150.05 AUTHORITY.

The Building Commissioner is hereby authorized and directed to administer and enforce the following:

(A) All of the provisions of this chapter.

(B) Variances granted in accordance with IC 22-13-2-11.

(C) Orders issued under IC 22-12-7.
(Ord. 2004-11, passed 8-9-04)

BUILDING PERMITS

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§ 150.15 BUILDING PERMIT REQUIRED.

Construction is prohibited unless in conformity with a valid building permit obtained from the Building Commissioner prior to commencement of construction.
(Ord. 2004-11, passed 8-9-04)

§ 150.16 APPLICATION FOR BUILDING PERMIT.

(A) Any person required to have a building permit shall submit a complete application to the Building Commissioner.

(B) This application shall be submitted on a form prepared by the Building Commissioner, and shall contain the following:

(1) Information that the Building Commissioner determines to be necessary to locate and contact the applicant.

(2) A clear and understandable copy of detailed plans and specifications drawn to scale which indicate in a precise manner the nature and location of all work to be accomplished.

(3) A plot plan drawn to scale; provided, however, such plot plan shall not be required in the instance where all such construction is to occur entirely within an existing structure. This plot plan shall reflect the location of the structure in relation to existing property lines and show streets, curbs and sidewalks and proposed changes or additions to such streets, curbs and sidewalks.

(4) If required by Indiana law or any rule of the Fire Prevention and Building Safety Commission, a copy of a Design Release for the work to be done that has been issued by the State Building Commissioner and the State Fire Marshal pursuant to IC 22-15-3.

(5) Any additional information that the Building Commissioner finds to be necessary to determine that the construction will conform to all applicable building laws and will not violate any other applicable ordinances or laws.

(6) The fee established by Interlocal Board under the Interlocal agreement between the City of Portland and Jay County.

(C) Application for a building permit shall be made by the person entitled to obtain the permit or by an employee or agent of that person. The Building Commissioner may require that such an employee or agent provide written authority to apply for a permit.
(Ord. 2004-11, passed 8-9-04)

§ 150.17 ISSUANCE OF BUILDING PERMIT.

The Building Commissioner shall issue a building permit to a person after the person has submitted a complete application, including any applicable fee, provided that the proposed construction will conform to all applicable building laws and will not violate any other applicable ordinances or laws.

BUILDING CODE § 150.35 Code.

§ 150.18 CERTIFICATE OF OCCUPANCY. Code.

No certificate of occupancy for any building or structure shall be issued unless such building or structure was constructed in compliance, with the provisions of this chapter. It shall be unlawful to occupy any such building or structure unless a full, partial, or temporary certificate of occupancy has been issued by the Building Commissioner. (Ord. 2004-11, passed 8-9-04)

INVESTIGATIONS AND INSPECTIONS
OF CONSTRUCTION ACTIVITIES

§ 150.25 GENERAL AUTHORITY TO MAKE
INSPECTIONS AND INVESTIGATIONS.

(A) All construction shall be subject to periodic inspections by the Building Commissioner irrespective of whether a building permit has been or is required to be obtained.

(B) The Building Commissioner may at any reasonable time go in, upon, around or about the premises where any structure subject to the provisions of this chapter or to the rules of the Fire Prevention And Building Safety Commission is located for the purposes of inspection and investigation of such structure. Such inspection and investigation may be made before and/or after construction on the project is completed for the purposes of determining whether the structure meets building standards and procedures, and ascertaining whether the construction and procedures have been accomplished in a manner consistent with this chapter and the rules of the Fire Prevention and Building Safety Commission. (Ord. 2004-11, passed 8-9-04)

§ 150.26 INSPECTIONS BY FIRE DEPARTMENT.

The Building Commissioner and the Fire Department shall work cooperatively to conduct inspections and investigations to promote compliance with fire safety laws (The Fire Department has independent authority to conduct inspections and take enforcement actions under IC 36-8-17).

MINIMUM CONSTRUCTION STANDARDS

§ 150.35 ADOPTION OF RULES BY REFERENCE.

(A) Pursuant to IC 22-13-2-3(b), the rules of the Indiana Fire Prevention and Building Safety Commission as set out in the following Articles of Title 675 of the Indiana Administrative Code are hereby incorporated by reference in this code and shall include any later amendments to those rules.

(1) Article 13 - Building Codes.

(a) Fire and Building Safety Standards.

(b) Indiana Building Code.

(2) Article 14 - Indiana Residential Code.

(3) Article 16 - Indiana Plumbing

(4) Article 17 - Indiana Electrical

(5) Article 18 - Indiana Mechanical Code.

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(6) Article 19 - Indiana Energy Conservation Code.

(7) Article 20 - Indiana Swimming Pool Code.

(8) Article 22 - Indiana Fire Code.

(9) Article 24 - Migrant Day Care Nursery Fire Safety Code.

(10) Article 25 - Indiana Fuel Gas Code.

(B) Two copies of the above building rules incorporated by reference are on file in the office of the Clerk for the legislative body for public inspection as required by IC 36-1-5-4.

(C) The Building Commissioner and the Fire Prevention and Building Safety Commission may grant a variance to the fire safety laws and building laws adopted in this chapter. Pursuant to IC 22-13-2-7(b), a variance granted by the Building Commissioner is not effective until it has been approved by Fire Prevention and Building Safety Commission. (Ord. 2004-11, passed 8-9-04)

§ 150.36 LIFTING DEVICES LOCATED WITHIN A PRIVATE RESIDENCE.

(A) Pursuant to IC 22-12-1-22(b)(12), lifting devices, such as elevators and wheelchair lifts, located within a private residence are not regulated lifting devices. Therefore, the following standards applicable to lifting devices located within a private residence are incorporated by reference:

(1) Part 5.3, Private Residence Elevators, ANSFASME A17.1-2000, Safety Code for Elevators and Escalators published by the American Society of Mechanical Engineers, Three Park Avenue, New York, New York, 10016.

(2) Part 5.4, Private Residence Inclined Elevators, ANSIIASME A17.1-2000, Safety Code for Elevators and Escalators published by the American Society of Mechanical Engineers, Three Park Avenue, New York, New York, 10016.

(3) Section 5, Private Residence Vertical Platform Lifts, ASME A18.1a, 2001 (Addenda to ASME 18.1-1999), Safety Standard for Platform and Stairway Chair Lifts, published by the American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016.

(4) Section 6, Private Residence Inclined Platform Lifts, ASME A18.1a, 2001 (Addenda to ASME 18.1-1999), Safety Standard for Platform and Stairway Chair Lifts, published by the American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016.

(5) Section 7, Private Inclined Stairway Lifts, ASME A18.1a, 2001 (Addenda to ASME 18.1-1999), Safety Standard for Platform and Stairway Chair Lifts, published by the

(a) The person doing the construction; and

(B) Two copies of the above lifting device standards incorporated by reference are on file in the office of the Clerk for the legislative body for public inspection as required by IC 36-1-5-4.
(Ord. 2004-11, passed 8-9-04)

ENFORCEMENT AND PENALTIES

§ 150.45 WITHHOLD ISSUANCE OF PERMITS.

(A) Whenever a person which is either an applicant for a building permit or an obtainer of a building permit owes fees (including checks returned for insufficient funds, permit fees, or inspection fees owed pursuant to the terms of the Interlocal agreement which exists between the City of Portland and Jay County) to the Building Commissioner, the Building Commissioner may withhold the issuance of subsequently requested permits until such time that the debt is satisfied.

(B) Whenever a person applies for a building permit for a structure that is not being used or constructed in conformance with applicable provisions of an applicable zoning ordinance or other ordinance relating to land use, the Building Commissioner is authorized to withhold the issuance of requested permits until such time that the property is brought into conformance with applicable ordinances.
(Ord. 2004-11, passed 8-9-04)

§ 150.46 PERMIT REVOCATION.

The Building Commissioner may revoke a building permit when any of the following are applicable:

(A) The application, plans or supporting documents contain a false statement or misrepresentation as to a material fact.

(B) The application, plans or supporting documents reflect a lack of compliance with building standards and procedures.

(C) There is failure to comply with the chapter.

(D) The structure for which the building permit has been issued is not being used or constructed in conformance with an applicable zoning ordinance or other ordinance relating to land use.
(Ord. 2004-11, passed 8-9-04)

§ 150.47 STOP-WORK ORDER.

(A) The Building Commissioner may issue an order requiring suspension of the pertinent construction (stop-work order) in accordance with this section.

(B) The stop work order shall:

(1) Be in writing;

(2) State with specificity the construction to which it is applicable and the reason for its issuance;

(3) Be posted on the property in a conspicuous place;

(b) To the owner of the property or the owner's agent.

(5) The stop-work order shall state the conditions under which construction may be resumed.

(C) The Building Commissioner may issue a stop-work order if:

(1) Construction is proceeding in an unsafe manner, including, but not limited to, in violation of any standard set forth in this chapter or any state law pertaining to safety during construction.

(2) Construction is occurring in violation of this chapter or in such a manner that if construction is allowed to proceed, there is a reasonable probability that it will be substantially difficult to correct the violation.

(3) Construction for which a building permit is required is proceeding without a building permit being in force.

(4) The issuance of a stop-work order shall in no way limit the operation of penalties provided elsewhere in this chapter. (Ord. 2004-11, passed 8-9-04)

§ 150.48 CIVIL ACTION.

Pursuant to IC 36-1-6-4, the City may initiate a civil action in a court of competent jurisdiction to restrain any person from violating a provision of this chapter. (Ord. 2004-11, passed 8-9-04)

§ 150.49 RIGHT OF APPEAL.

Any person aggrieved by an order issued under this chapter shall have the right to petition for review of any order of the Building Commissioner. Such a person may file a petition using either, or both, of the following procedures:

(A) Appeal to the Fire Prevention and Building Safety Commission.

(1) A person aggrieved by an order issued under this chapter may appeal to the Fire Prevention and Building Safety Commission, in accordance with IC 22-13-2-7.

(2) The Commission may modify or reverse any order issued by the City that covers a subject governed by IC 22-12, IC 22-13, IC 22-14, IC 22-15, a fire safety, or a building rule.

(3) The Fire Prevention and Building Safety Commission must review orders that concern a Class 2 structure if the person aggrieved by the order petitions for review under IC 4-21.5-3-7 within 30 days after the issuance of the order.

(4) The Fire Prevention and Building Safety Commission may review all other orders issued under this chapter.

(5) The review of an order by the Fire Prevention and Building Safety Commission does not suspend the running of the time period under any statute in which a person must petition a court for judicial review of the order.

(B) Appeal to an Established Local Administrative Body or Court. If, pursuant to IC 36-1-6-9, the city has established by

ordinance to hear appeals of orders issued under ordinances, then a person aggrieved by an order may petition for review with this administrative body in accordance with said ordinance. If no such administrative body exists, then the person may petition a court for judicial review of the order. (Ord. 2004-11, passed 8-9-04)

BUILDING STANDARDS

§ 150.60 ADOPTION OF STATE LAW.

(A) IC 36-7-9 and any subsequent amendments is hereby adopted by reference as the City of Portland Unsafe Building Code.

(B) IC 36-7-36 and any subsequent amendments is hereby adopted by reference as the City of Portland Vacant and Abandoned Structures Code. (Ord. 2010-3, passed 3-15-10)

§ 150.61 ADMINISTRATION.

(A) The Jay/Portland Building and Planning Department shall be responsible for the administration and enforcement of the Unsafe Building Code and the Vacant and Abandoned Structures Code.

(B) The rules and procedures for the administration and enforcement of the Vacant and Abandoned Structures Code shall be the same as those provided for the administration and enforcement of the Unsafe Building Code. (Ord. 2010-3, passed 3-15-10)

§ 150.62 DEFINITIONS.

(A) The definition of "SUBSTANTIAL PROPERTY INTEREST," as set forth in IC 36-7-9-2 is hereby incorporated by reference herein as if copied in full.

(B) The description of an "UNSAFE BUILDING" contained in IC 36-7-9-4 is hereby supplemented to provide minimum standards for building conditions or maintenance in the city by adding the following definition:

"UNSAFE BUILDING." Any building or structure which has any or all of the conditions or defects hereinafter described shall be deemed to be an unsafe building, provided that such conditions or defects exist to the extent that life, health, property, or safety of the public or its occupants are in danger.

(a) Whenever any door, aisle, passageway, or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.

(b) Whenever the stress in any materials, member, or portion thereof, due to all dead and live loads, is more than one and one-half times the working stress or stresses allowed for new buildings or similar structure, purpose, or location.

(c) Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements for new buildings of similar structure, purpose, or location.

(d) Whenever any portion, member, or appurtenance thereof is likely to fail, to become detached or dislodged, or to collapse and thereby injure persons or damage property.

(e) Whenever any portion of a building, or any member, appurtenance, or ornamentation on the exterior thereof is anchored, attached, or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified for new buildings of similar structure, purpose, or location without exceeding the working stresses permitted for such buildings.

(f) Whenever any portion thereof has cracked, warped, or buckled, or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.

(g) Whenever the building or structure, or any portion thereof, because of dilapidation, deterioration, or decay; faulty construction; the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; the deterioration, decay, or inadequacy of its foundation; or any other cause, is likely to partially or completely collapse.

(h) Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.

(i) Whenever the exterior walls or other vertical members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.

(j) Whenever the building or structure, exclusive of the foundation, shows 33% or more damage or deterioration of its supporting member or members, or 50% damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.

(k) Whenever the building or structure has been so damaged by fire, wind, earthquake, or flood or has become so dilapidated or deteriorated as to become an attractive nuisance to children, or freely accessible to persons for the purpose of committing unlawful acts.

(l) Whenever any building or structure has been constructed, exists, or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of the Building Department or of any law or ordinance of this state or county relating to the condition, location, or structure of buildings.

(m) Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances has in any nonsupporting part, member, or portion less than 50% or in any supporting part, member, or portion less than 66% of the strength, fire resisting qualities and characteristics, or weather resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height, and occupancy in the same location.

(n) Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangements, inadequate light, air, or sanitation filters or otherwise, is determined by the Jay County Health Officer to be unsanitary, unfit for human habitation, or in such condition that it is likely to cause sickness or disease.

(o) Whenever any building or structure because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire resistive construction, faulty electric wiring, gas connections, or heating apparatus, or other cause, is determined by the Fire Chief to be a fire hazard.

(p) Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.
(Ord. 1988-2, passed 4-4-88)

§ 150.63 UNSAFE BUILDING FUND.

An Unsafe Building Fund is hereby established in the operating budget of the city in accordance with the provisions of IC 36-7-9-14.
(Ord. 1988-2, passed 4-4-88)

§ 150.64 WORK STANDARDS.

All work for the reconstruction, alteration, repair, or demolition of buildings and other construction shall be performed in a good and workmanlike manner according to the accepted standards and practices in the trade. The provisions of the rules pertaining to the construction, plumbing, electrical, mechanical, and one- and two-family dwellings, promulgated by the Administrative Building Council of Indiana, shall be considered standard and acceptable practice for all matters covered by this subchapter or orders issued pursuant to this subchapter by the Building Commissioner of the city. (Ord. 1988-2, passed 4-4-88)

§ 150.65 COMPLIANCE REQUIRED.

No person, firm, or corporation, whether as owner, lessee, sublessee, or occupant, shall erect, construct, enlarge, alter, repair, move, improve, remove, demolish, equip, use, occupy, or maintain any building or premises, or cause or permit the same to be done, contrary to or in violation of any of the provisions of this subchapter or any other issued by the Building Commissioner of the city. (Ord. 1988-2, passed 4-4-88)

BUILDING AND PLANNING DEPARTMENT

§ 150.80 DEFINITIONS.

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

"BUILDING AND PLANNING DEPARTMENT." The Jay/Portland Building and Planning Department.

"PERSON." Any association, company, corporation, firm, individual, or partnership. (Ord. 2002-13, passed 11-4-02)

§ 150.81 COLLECTION OF FEES.

The Building and Planning Department shall collect the fees for all services it provides in accordance with this subchapter. (Ord. 2002-13, passed 11-4-02)

§ 150.82 FEES FOR SERVICES.

The Building and Planning Department shall charge a fee for providing any person with services listed in the fee schedule in § 150.84. (Ord. 2002-13, passed 11-4-02)

§ 150.83 COLLECTION OF FEES; ACCOUNTING AND DISPOSITION.

(A) Collection of fees. The Building and Planning Department shall collect the fees established by this subchapter in accordance with § 150.84 below.

(B) Accounting for fees. All fees collected by the Building and Planning Department shall be accounted for in detail for each program service area.

(C) Disposition of fees. All fees collected by the Building and Planning Department pursuant to this subchapter shall be transferred to the Jay County Treasurer. (Ord. 2002-13, passed 11-4-02)

§ 150.84 FEE SCHEDULE.

The following fee schedule is established and approved for the services provided by the Building and Planning Department:

| ZONING FEES AND CHARGES | |
|--|----------|
| Variance of use | \$250 |
| Variance from development standards | \$250 |
| Special exception | \$250 |
| Amendment of official zoning map (Rezoning/map change) | \$250 |
| Appeal of decision or determination by Zoning Administrator | \$250 |
| Planned development | \$800 |
| Subdivision development plan application (residential) Plus lot fee of \$45 per lot (fee includes preliminary plan and final plat) | \$800 |
| Wind farm development plan Plus tower fee of \$2,500 per tower | \$20,000 |
| Zoning compliance permit | \$40 |
| Pre-built residential storage buildings/structures (without a foundation) | \$50 |

| ZONING FEES AND CHARGES (Cont'd) | |
|---|---------------------------------|
| Sign permit | \$55 |
| Parking lot permit | \$55 |
| Satellite dish permit (diameter over four feet) | \$35 |
| Fence permit | \$40 |
| Home occupancy permit | \$55 |
| Awning permit | \$40 |
| Swimming pool permit | \$40 |
| Pond permit | \$55 |
| Communication tower, towers or antennas | \$500 |
| Small wind energy tower (privately owned/non residential) | \$500 |
| Residential small wind energy tower | \$200 |
| Grain bin permit | \$40 |
| Agricultural use buildings (exempt from building code) | \$75 |
| Confined feeding operation intent application fee | \$350 |
| CFO animal building/structure (per structure) | \$200 |
| Other buildings/structures for CF operations (per structure) | \$50 |
| Any waste holding area and/or compost structure/facility | \$100 |
| Satellite manure storage structure (SMSS) application | \$350 |
| Satellite manure storage structure (SMSS) permit | \$500 |
| Residential buildings/structures (exempt from building code) Buildings/structures under 750 sq. ft. 751 sq. ft. to 2,999 sq. ft. 3,000 sq. ft. to 6,999 sq. ft. 7,000 sq. ft. to 10,000 sq. ft. Balance over 10,000 sq. ft. @ \$.02 sq. ft. additional | \$75 \$125 \$175 \$250 |
| Occupancy/compliance permits Certificate of occupancy/compliance (included with building permit) Commercial/business certificate of occupancy/compliance Temporary certificate of occupancy/compliance Extension of temporary certificate of occupancy/compliance | n/c \$55 \$40 \$25 |
| Department charges/certified mailings (price per certified letter) | \$8 minimum |
| If more than one petition is filed by the applicant for the same property, and if each petition is to be reviewed by the Board of Zoning Appeals on the same hearing date, the filing fee for the second and each additional petition shall be \$100. | |
| Any person or persons who shall initiate construction of a structure prior to obtaining the required permit(s) for the project shall pay twice the amount of the current permit fee(s) as established by the inter-local board. | |
| No part of any filing fee paid pursuant to this schedule shall be refunded to the applicant. | |
| Zoning fees do not include applicable building permit fees | |

| Building Permit Fee Schedule | |
|---|-----------------------------------|
| Type of Permit | Fee |
| Residential | |
| Manufactured home (sectional or modular) | \$150 |
| Mobile home (county only) | \$150 |
| Garage | \$.10 per sq. ft. |
| Basement, deck, porches, etc. | \$.10 per sq. ft. |
| Stick built | |
| Garage, basement, decks, porches | \$.10 per sq. ft. (\$200 minimum) |
| Additions and structural renovations (includes porches) | \$.10 per sq. ft. (\$55 minimum) |
| Decks (with or without roof) | |
| Up to 200 sq. ft. | \$40 |
| Over 200 sq. ft. | \$.10 per sq. ft. (\$55 minimum) |
| Adding roof to existing porch or deck (if not changing home's roof structure) | \$40 |
| Pools | |
| Above ground | \$55 |
| In ground | \$110 |
| (Decks are extra cost) | |
| Roof structural change | \$55 |
| Accessory structures, carport, garage, gazebo, lean-to, etc. | |
| Less than 100 sq. ft. | n/c |
| 100 sq. ft. to 200 sq. ft. | \$40 |
| Over 200 sq. ft. | \$.10 per sq. ft. (\$55 minimum) |
| Commercial buildings/structures | |
| Commercial new construction | \$.12 per sq. ft. (\$400 minimum) |
| Commercial additions and renovations | \$.12 per sq. ft. (\$400 minimum) |
| Foundation permit | \$150 |
| Underground/above ground storage tank | \$150 |
| No part of any filing fee paid pursuant to this section shall be refunded to the applicant. | |
| Building permit fees do not include applicable zoning permit fees | |

(Ord. 2002-13, passed 11-4-02; Am. Ord. 2007-5, passed 5-31-07; Am. Ord. 2008-17, passed 8-4-08; Am. Ord. 2009-6, passed 3-16-09; Am. Res. 2016-11, passed 11-21-16)

§ 150.99 PENALTY.

(A) Any person violating any provision of this chapter may be subject to a fine in any sum not exceeding \$2,500. The assessment of a monetary penalty shall in no way limit the operation of the penalties provided elsewhere in this chapter.

(B) Any person violating the provisions of §§ 150.60 through 150.66 or IC 36-7-9-28 shall commit a Class C infraction for each day such violation continues.
(Ord. 1988-2, passed 4-4-88; Am. Ord. 2004-11, passed 8-9-04)

Section

- 151.01 Designation of area
- 151.02 Entitlement to deductions for equipment and redevelopment
- 151.03 Authority to substantiate applications for tax deductions.
- 151.04 Extending deadline of economic revitalization area

§ 151.01 DESIGNATION OF AREA.

The city does hereby declare and designate all of the city as an economic revitalization area within the definition of IC 6-1.1-12.1-1 et seq.

(Res. 1984-6, passed 5-7-84)

§ 151.02 ENTITLEMENT TO DEDUCTIONS FOR EQUIPMENT AND REDEVELOPMENT.

The owners of real estate and tangible personal property within this economic revitalization area shall be entitled to all qualified deductions for new manufacturing equipment and redevelopment or rehabilitation of real estate located therein retroactively to March 1, 1983, and thereafter.

(Res. 1984-6, passed 5-7-84)

§ 151.03 AUTHORITY TO SUBSTANTIATE APPLICATIONS FOR TAX DEDUCTIONS.

The Mayor is authorized to execute any and all documents necessary to substantiate applications by owners of qualifying real or personal property for tax deductions pursuant to IC 6-1.1-12.1-1 et seq.

(Res. 1984-6, passed 5-7-84)

§ 151.04 EXTENDING DEADLINE OF ECONOMIC REVITALIZATION AREA.

Resolution 1984-6 shall be extended from December 31, 1993 for all successive periods as may hereafter be provided by Indiana Law.

(Res. 1991-5, passed 11-18-91)

Section

GENERAL PROVISIONS

General Provisions§ 152.01 STATUTORY AUTHORIZATION.

- 152.01 Statutory authorization
- 152.02 Findings of fact
- 152.03 Statement of purpose
- 152.04 Objectives
- 152.05 Definitions
- 152.06 Applicability
- 152.07 Regulatory flood data
- 152.08 Compliance
- 152.09 Abrogation and greater restrictions
- 152.10 Discrepancy between mapped floodplain and actual ground elevations
- 152.11 Interpretation
- 152.12 Disclaimer of liability

The Indiana Legislature has in IC 36-7-4 granted the power to local government units to control land use within their jurisdictions. Therefore, the Common Council of the City of Portland does hereby adopt the following floodplain management regulations. (Ord. 2013-16, passed 11-18-13)

§ 152.02 FINDINGS OF FACT.

- Permits
- 152.20 Floodplain development permit
- 152.21 Permit procedures

(A) The flood hazard areas of Portland are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

Provisions for Flood Hazard Reduction

- 152.30 General standards
- 152.31 Specific standards
- 152.32 Standards for subdivision proposals
- 152.33 Critical facility
- 152.34 Standards for identified floodways
- 152.35 Standards for identified fringe
- 152.36 Standards for SFHAs without established base flood elevation and/or floodways/fringes
- 152.37 Standards for flood prone areas

(B) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, inadequately flood-proofed, or otherwise unprotected from flood damages. (Ord. 2013-16, passed 11-18-13)

§ 152.03 STATEMENT OF PURPOSE.

- Variances
- 152.50 Designation of Variance and Appeals Board
- 152.51 Duties of Variance and Appeals Board
- 152.52 Variance procedures
- 152.53 Conditions for variances
- 152.54 Variance notification
- 152.55 Historic structure
- 152.56 Special conditions

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

(A) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights or velocities.

(B) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.

- Administration
- 152.60 Designation of the administrator
- 152.61 Duties and responsibilities of the administrator
- 152.99 Penalty

(C) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters.

(D) Control filling, grading, dredging, and other development which may increase erosion or flood damage.

(E) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(F) Make federally subsidized flood insurance available for structures and their contents in the city by fulfilling the requirements of the National Flood Insurance Program.

(Ord. 2013-16, passed 11-18-13)

§ 152.04 OBJECTIVES.

The objectives of this chapter are:

(A) To protect human life and health.

(B) To minimize expenditure of public money for costly flood control projects.

(C) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.

(D) To minimize prolonged business interruptions.

(E) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in floodplains.

(F) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas.

(Ord. 2013-16, passed 11-18-13)

§ 152.05 DEFINITIONS.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

"A ZONE." Portions of the SFHA in which the principal source of flooding is runoff from rainfall, snowmelt, or a combination of both. In A zones, floodwaters may move slowly or rapidly, but waves are usually not a significant threat to buildings. These areas are labeled as Zone A, Zone AE, Zones A1-A30, Zone AO, Zone AH, Zone AR and Zone A99 on a FIRM. The definitions are presented below:

"ZONE A." Areas subject to inundation by the 1% annual chance flood event. Because detailed hydraulic analyses have not been performed, no base flood elevation or depths are shown.

"ZONE AE and A1-A30." Areas subject to inundation by the 1% annual chance flood event determined by detailed methods. Base flood elevations are shown within these zones. (Zone AE is on new and revised maps in place of Zones A1-A30.)

"ZONE AO." Areas subject to inundation by 1% annual chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone.

"ZONE AH." Areas subject to inundation by 1% annual chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone.

"ZONE AR." Areas that result from the decertification of a previously accredited flood protection system that is determined to be in the process of being restored to provide base flood protection.

"ZONE A99." Areas subject to inundation by the 1% annual chance flood event, but which will ultimately be protected upon completion of an under-construction federal flood protection system. These are areas of special flood hazard where enough progress has been made on the construction of a protection system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes. Zone A99 may only be used when the flood protection system has reached specified statutory progress toward completion. No base flood elevations or depths are shown.

"ACCESSORY STRUCTURE (APPURTENANT STRUCTURE)." A structure with a floor area 400 square feet or less that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal initial investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.

"ADDITION (TO AN EXISTING STRUCTURE)." Any walled and roofed expansion to the perimeter of a structure in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.

"APPEAL." A request for a review of the floodplain administrator's interpretation of any provision of this chapter.

"AREA OF SHALLOW FLOODING." A designated AO or AH Zone on the community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"BASE FLOOD." The flood having a 1% chance of being equaled or exceeded in any given year.

"BASE FLOOD ELEVATION (BFE)." The elevation of the 1% annual chance flood.

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

"BOUNDARY RIVER." The part of the Ohio River that forms the boundary between the Kentucky and Indiana.

"BOUNDARY RIVER FLOODWAY." means the floodway of a boundary river.

"BUILDING." See "Structure."

"COMMUNITY." A political entity that has the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.

"COMMUNITY RATING SYSTEM (CRS)." A program developed by the Federal Insurance Administration to provide incentives for those communities in the Regular Program that have gone beyond the minimum floodplain management requirements to develop extra measures to provide protection from flooding.

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

"DEVELOPMENT." Any man-made change to improved or unimproved real estate including but not limited to:

- (1) construction, reconstruction, or placement of a structure or any addition to a structure;
- (2) installing a manufactured home on a site, preparing a site for a manufactured home or installing a recreational vehicle on a site for more than 180 days;
- (3) installing utilities, erection of walls and fences, construction of roads, or similar projects;
- (4) construction of flood control structures such as levees, dikes, dams, channel improvements, etc.;
- (5) mining, dredging, filling, grading, excavation, or drilling operations;
- (6) construction and/or reconstruction of bridges or culverts;
- (7) storage of materials; or
- (8) any other activity that might change the direction, height, or velocity of flood or surface waters.

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

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

"ELEVATION CERTIFICATE." A certified statement that verifies a structure's elevation information.

"EMERGENCY PROGRAM." The first phase under which a community participates in the NFIP. It is intended to provide a first layer amount of insurance at subsidized rates on all insurable structures in that community before the effective date of the initial FIRM.

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

"EXPANSION TO AN EXISTING MANUFACTURED HOME PARK or SUBDIVISION." The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"FEMA." The Federal Emergency Management Agency.

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

"FLOOD BOUNDARY AND FLOODWAY MAP (FBFM)." An official map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated the areas of flood hazards and regulatory floodway.

"FLOOD INSURANCE RATE MAP (FIRM)." An official map of a community, on which FEMA has delineated both the areas of special

flood hazard and the risk premium zones applicable to the community.

"FLOOD INSURANCE STUDY (FIS)." The official hydraulic and hydrologic report provided by FEMA. The report contains flood profiles, as well as the FIRM, FBFM (where applicable), and the water surface elevation of the base flood.

"FLOOD PRONE AREA." Any land area acknowledged by a community as being susceptible to inundation by water from any source. (See "Flood")

"FLOOD PROTECTION GRADE (FPG)." The elevation of the regulatory flood plus two feet at any given location in the SFHA. (see "Freeboard")

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

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

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

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

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

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

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

"FRINGE." Those portions of the floodplain lying outside the floodway.

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

"HIGHEST ADJACENT GRADE." The highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

"HISTORIC STRUCTURES." Any structures individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.

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

"LETTER OF FINAL DETERMINATION (LFD)." A letter issued by FEMA during the mapping update process which establishes final elevations and provides the new flood map and flood study to the community. The LFD initiates the six-month adoption period. The community must adopt or amend its floodplain management regulations during this six-month period unless the community has previously incorporated an automatic adoption clause.

"LETTER OF MAP CHANGE (LOMC)." A general term used to refer to the several types of revisions and amendments to FEMA maps that can be accomplished by letter. They include Letter of Map Amendment (LOMA), Letter of Map Revision (LOMR), and Letter of Map Revision based on Fill (LOMR-F). The definitions are presented below:

"LETTER OF MAP AMENDMENT (LOMA)." An amendment by letter to the currently effective FEMA map that establishes that a property is not located in a SFHA through the submittal of property specific elevation data. A LOMA is only issued by FEMA.

"LETTER OF MAP REVISION (LOMR)." An official revision to the currently effective FEMA map. It is issued by FEMA and changes flood zones, delineations, and elevations.

"LETTER OF MAP REVISION BASED ON FILL (LOMR-F)." An official revision by letter to an effective NFIP map. A LOMR-F provides FEMA's determination concerning whether a structure or parcel has been elevated on fill above the BFE and excluded from the SFHA.

"LOWEST ADJACENT GRADE." The lowest elevation, after completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

"LOWEST FLOOR." The lowest elevation described among the following:

- (1) The top of the lowest level of the structure.
- (2) The top of the basement floor.
- (3) The top of the garage floor, if the garage is the lowest level of the structure.
- (4) The top of the first floor of a structure elevated on pilings or pillars.
- (5) The top of the floor level of any enclosure, other than a basement, below an elevated structure where the walls of the enclosure provide any resistance to the flow of flood waters unless:

(a) the walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of flood waters by providing a minimum of two openings (in addition to doorways and windows) in a minimum of two exterior walls; if a structure has more than one enclosed area, each shall have openings on exterior walls;

(b) the total net area of all openings shall be at least one square inch for every one square foot of enclosed area; the bottom of all such openings shall be no higher than one foot above the exterior grade or the

interior grade immediately beneath each opening, whichever is higher; and,

(c) such enclosed space shall be usable solely for the parking of vehicles and building access.

"MANUFACTURED HOME." A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

"MANUFACTURED HOME PARK or SUBDIVISION." A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

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

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

"NATIONAL FLOOD INSURANCE PROGRAM (NFIP)." The federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the Federal Government and the private insurance industry.

"NATIONAL GEODETIC VERTICAL DATUM (NGVD) OF 1929." As corrected in 1929, is a vertical control used as a reference for establishing varying elevations within the floodplain.

"NEW CONSTRUCTION." Any structure for which the "start of construction" commenced after the effective date of the community's first floodplain ordinance.

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

"NON-BOUNDARY RIVER FLOODWAY." The floodway of any river or stream other than a boundary river.

"NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 88)" as adopted in 1993 is a vertical control datum used as a reference for establishing varying elevations within the floodplain.

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

"ONE-PERCENT ANNUAL CHANCE FLOOD." The flood that has a 1% chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the one-percent annual chance flood. See "Regulatory Flood".

"PHYSICAL MAP REVISION (PMR)." An official republication of a community's FEMA map to effect changes to base (1% annual chance) flood elevations, floodplain boundary delineations, regulatory floodways, and planimetric features. These changes typically occur as a result of structural works or improvements, annexations resulting in additional flood hazard areas, or correction to base flood elevations or SFHAs.

"PUBLIC SAFETY AND NUISANCE." Anything which is injurious to the safety or health of an entire community, neighborhood or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

"RECREATIONAL VEHICLE." A vehicle which is (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling, but as quarters for recreational camping, travel, or seasonal use.

"REGULAR PROGRAM." The phase of the community's participation in the NFIP where more comprehensive floodplain management requirements are imposed and higher amounts of insurance are available based upon risk zones and elevations determined in a FIS.

"REGULATORY FLOOD." The flood having a 1% chance of being equaled or exceeded in any given year, as calculated by a method and procedure that is acceptable to and approved by the Indiana Department of Natural Resources and the Federal Emergency Management Agency. The regulatory flood elevation at any location

is as defined in § 152.07. The "REGULATORY FLOOD" is also known by the term "Base Flood", "One-Percent Annual Chance Flood", and "100-Year Flood".

"REPETITIVE LOSS." Flood-related damages sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equaled or exceeds 25% of the market value of the structure before the damage occurred.

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

"SPECIAL FLOOD HAZARD AREA (SFHA)." Those lands within the jurisdiction of the City of Portland subject to inundation by the regulatory flood. The SFHAs of the City of Portland are generally identified as such on the Jay County, Indiana and Incorporated Areas Flood Insurance Rate Map dated March 17, 2014 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date. (These areas are shown on a FIRM as Zone A, AE, A1- A30, AH, AR, A99, or AO).

"START OF CONSTRUCTION." Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

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

"SUBSTANTIAL DAMAGE." Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

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

"SUSPENSION." The removal of a participating community from the NFIP because the community has not enacted and/or enforced the proper floodplain management regulations required for participation in the NFIP.

"VARIANCE." A grant of relief from the requirements of this chapter, which permits construction in a manner otherwise prohibited by this chapter where specific enforcement would result in unnecessary hardship.

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

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

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

"ZONE." A geographical area shown on a FIRM that reflects the severity or type of flooding in the area.

"ZONE A." (see definition for A zone)

"ZONE B, C, and X." Areas identified in the community as areas of moderate or minimal hazard from the principal source of flood in the area. However, buildings in these zones could be flooded by severe, concentrated rainfall coupled with inadequate local drainage systems. Flood insurance is available in participating communities but is not required by regulation in these zones. (Zone X is used on new and revised maps in place of Zones B and C.) (Ord. 2013-16, passed 11-18-13)

§ 152.06 APPLICABILITY.

This chapter shall apply to all SFHAs and known flood prone areas within the jurisdiction of Portland. (Ord. 2013-16, passed 11-18-13)

§ 152.07 REGULATORY FLOOD DATA.

This chapter's protection standard is the regulatory flood. The best available regulatory flood data is listed below.

(A) The regulatory flood elevation, floodway, and fringe limits for the studied SFHAs within the jurisdiction of the City of Portland shall be as delineated on the 1% annual chance flood profiles in the Flood Insurance Study of Jay County, Indiana and Incorporated Areas dated March 17, 2014 and the corresponding Flood Insurance Rate Map dated March 17, 2014 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date.

(B) The regulatory flood elevation, floodway, and fringe limits for each of the SFHAs within the jurisdiction of the City of Portland, delineated as an "A Zone" on the Jay County, Indiana and Incorporated Areas Flood Insurance Rate Map dated March 17, 2014 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date, shall be according to the best data available as provided by the Indiana Department of Natural Resources; provided the upstream drainage area from the subject site is greater than one square mile. Whenever a party disagrees with the best available data, the party needs to replace existing data with better data that meets current engineering standards. To be considered, this data must be submitted to the Indiana Department of Natural Resources for review, subsequently approved.

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

(D) Upon issuance of a Letter of Final Determination (LFD), any more restrictive data in the new (not yet effective) mapping/study shall be utilized for permitting and construction (development) purposes, replacing all previously effective less restrictive flood hazard data provided by FEMA. (Ord. 2013-16, passed 11-18-13)

§ 152.08 COMPLIANCE.

No structure shall hereafter be located, extended, converted or structurally altered within the SFHA without full compliance with the terms of this chapter and other applicable regulations. No land or stream within the SFHA shall hereafter be altered without full compliance with the terms of this chapter and other applicable regulations. (Ord. 2013-16, passed 11-18-13)

§ 152.09 ABROGATION AND GREATER RESTRICTIONS.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. 2013-16, passed 11-18-13)

§ 152.10 DISCREPANCY BETWEEN MAPPED FLOODPLAIN AND ACTUAL GROUND ELEVATIONS.

(A) In cases where there is a discrepancy between the mapped floodplain (SFHA) on the FIRM and the actual ground elevations, the elevation provided on the profiles shall govern.

(B) If the elevation of the site in question is below the base flood elevation, that site shall be included in the SFHA and regulated accordingly.

(C) If the elevation (natural grade) of the site in question is above the base flood elevation and not located within the floodway, that site shall be considered outside the SFHA and the floodplain regulations will not be applied. The property owner shall be advised to apply for a LOMA. (Ord. 2013-16, passed 11-18-13)

§ 152.11 INTERPRETATION.

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

(A) Considered as minimum requirements.

(B) Liberally construed in favor of the governing body.

(C) Deemed neither to limit nor repeal any other powers granted under state statutes. (Ord. 2013-16, passed 11-18-13)

§ 152.12 DISCLAIMER OF LIABILITY.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on rare occasions. Therefore, this chapter does not create any liability on the part of Portland, the Indiana Department of Natural Resources, or the State of Indiana, for any flood damage that results from reliance on this chapter or any administrative decision made lawfully thereunder. (Ord. 2013-16, passed 11-18-13)

PERMITS

§ 152.20 FLOODPLAIN DEVELOPMENT PERMIT.

A Floodplain Development Permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities in areas of special flood hazard. (Ord. 2013-16, passed 11-18-13)

§ 152.21 PERMIT PROCEDURES.

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

(A) Application Stage.

(1) A description of the proposed development.

(2) Location of the proposed development sufficient to accurately locate property and structure(s) in relation to existing roads and streams.

(3) A legal description of the property site.

(4) A site development plan showing existing and proposed development locations and existing and proposed land grades.

(5) Elevation of the top of the planned lowest floor (including basement) of all proposed buildings. Elevation should be in NAVD 88 or NGVD.

(6) Elevation (in NAVD 88 or NGVD) to which any non-residential structure will be floodproofed.

(7) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. A hydrologic and hydraulic engineering study is required and any watercourse changes submitted to DNR for approval and then to FEMA as a Letter of Map Revision. (See § 152.61 for additional information.)

(B) Construction Stage.

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

(2) Any work undertaken prior to submission of the elevation certification shall be at the applicant's risk. The Floodplain Administrator shall review the lowest floor or floodproofed elevation survey data submitted. The applicant shall correct any deficiencies detected by such review. Failure to submit the elevation certification or failure to make correction required shall be cause to issue a stop-work order for the project.

(C) Finished construction. Upon completion of construction, an elevation certification which depicts the "as-built" lowest floor elevation is required to be submitted to the Floodplain Administrator. If the project includes a floodproofing measure, floodproofing certification is required to be submitted by the applicant to the Floodplain Administrator.
(Ord. 2013-16, passed 11-18-13)

PROVISIONS FOR FLOOD HAZARD REDUCTION

§ 152.30 GENERAL STANDARDS.

In all SFHAs and known flood prone areas the following provisions are required:

(A) New construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

(B) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.

(C) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage below the FPG.

(D) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage.

(E) Electrical, heating, ventilation, plumbing, air conditioning equipment, utility meters, and other service facilities shall be located at/above the FPG or designed so as to prevent water from entering or accumulating within the components below the FPG. Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the FPG.

(F) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

(G) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

(H) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(I) Any alteration, repair, reconstruction or improvements to a structure that is in compliance with the provisions of this chapter shall meet the requirements of "new construction" as contained in this chapter.
(Ord. 2013-16, passed 11-18-13)

§ 152.31 SPECIFIC STANDARDS.

In all SFHAs, the following provisions are required:

(A) In addition to the requirements of § 152.30, all structures to be located in the SFHA shall be protected from flood damage below the FPG. This building protection requirement applies to the following situations:

(1) Construction or placement of any structure having a floor area greater than 400 square feet.

(2) Addition or improvement made to any existing structure where the cost of the addition or improvement equals or exceeds 50% of the value of the existing structure (excluding the value of the land).

(3) Reconstruction or repairs made to a damaged structure where the costs of restoring the structure to its before damaged condition equals or exceeds 50% of the market value of the structure (excluding the value of the land) before damage occurred.

(4) Installing a travel trailer or recreational vehicle on a site for more than 180 days.

(5) Installing a manufactured home on a new site or a new manufactured home on an existing site. This chapter does not apply to returning the existing manufactured home to the same site it lawfully occupied before it was removed to avoid flood damage.

(B) Residential structures. New construction or substantial improvement of any residential structure (or manufactured home) shall have the lowest floor; including basement, at or above the FPG (two feet above the base flood elevation). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of § 152.31(D).

(C) Non-residential structures. New construction or substantial improvement of any commercial, industrial, or non-residential structure (or manufactured home) shall either have the lowest floor, including basement, elevated to or above the FPG (two feet above the base flood elevation) or be floodproofed to or above the FPG. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of § 152.31(D). Structures located in all "A Zones" may be floodproofed in lieu of being elevated if done in accordance with the following:

(1) A registered professional engineer or architect shall certify that the structure has been designed so that below the FPG, the structure and attendant utility facilities are watertight and capable of

resisting the effects of the regulatory flood. The structure design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice. Such certification shall be provided to the official as set forth in § 152.61(B)(12).

(2) Floodproofing measures shall be operable without human intervention and without an outside source of electricity.

(D) Elevated structures.

(1) New construction or substantial improvements of elevated structures shall have the lowest floor at or above the FPG.

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

(a) Provide a minimum of two openings located in a minimum of two exterior walls (having a total net area of not less than one square inch for every one square foot of enclosed area).

(b) The bottom of all openings shall be no more than one foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher.

(c) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

(d) Access to the enclosed area shall be the minimum necessary to allow for parking for vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).

(e) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.

(f) The interior grade of such enclosed area shall be at an elevation at or higher than the exterior grade.

(E) Structures constructed on fill. A residential or nonresidential structure may be constructed on a permanent land fill in accordance with the following:

(1) The fill shall be placed in layers no greater than one foot deep before compacting to 95% of the maximum density

obtainable with either the Standard or Modified Proctor Test method, which shall be retained in permit file.

(2) The fill shall extend ten feet beyond the foundation of the structure before sloping below the BFE.

(3) The fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulkheading. If vegetative cover is used, the slopes shall be no steeper than 3 horizontal to 1 vertical.

(4) The fill shall not adversely affect the flow of surface drainage from or onto neighboring properties.

(5) The top of the lowest floor including basements shall be at or above the FPG.

(F) Standards for manufactured homes and recreational vehicles. Manufactured homes and recreational vehicles to be installed or substantially improved on a site for more than 180 days must meet one of the following requirements:

(1) These requirements apply to all manufactured homes to be placed on a site outside a manufactured home park or subdivision; in a new manufactured home park or subdivision; in an expansion to an existing manufactured home park or subdivision; or in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood:

(a) The manufactured home shall be elevated on a permanent foundation such that the lowest floor shall be at or above the FPG and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(b) Fully enclosed areas formed by foundation and other exterior walls below the FPG shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in § 152.31(D).

(2) These requirements apply to all manufactured homes to be placed on a site in an existing manufactured home park or subdivision that has not been substantially damaged by a flood:

(a) The manufactured home shall be elevated so that the lowest floor of the manufactured home chassis is supported by reinforced piers or other foundation elevations that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(b) Fully enclosed areas formed by foundation and other exterior walls below the FPG shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in § 152.31(D).

(3) Recreational vehicles placed on a site shall either:

(a) be on site for less than 180 days; or,

(b) be fully licensed and ready for highway use (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or

(c) meet the requirements for "manufactured homes" as stated earlier in this section.

(G) Accessory structures. Relief to the elevation or dry floodproofing standards may be granted for accessory structures. Such structures must meet the following standards:

(1) Shall not be used for human habitation.

(2) Shall be constructed of flood resistant materials.

(3) Shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters.

(4) Shall be firmly anchored to prevent flotation.

(5) Service facilities such as electrical and heating equipment shall be elevated or floodproofed to or above the FPG.

(6) Shall be designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in § 152.31(D).

(H) Above ground gas or liquid storage tanks. All above ground gas or liquid storage tanks shall be anchored to prevent flotation or lateral movement.

(Ord. 2013-16, passed 11-18-13)

§ 152.32 STANDARDS FOR SUBDIVISION PROPOSALS.

(A) All subdivision proposals shall be consistent with the need to minimize flood damage.

(B) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems

located and constructed to minimize flood damage.

(C) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(D) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions), which is greater than the lesser of 50 lots or five acres. (Ord. 2013-16, passed 11-18-13)

§ 152.33 CRITICAL FACILITY.

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA. Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated to or above the FPG at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the FPG shall be provided to all critical facilities to the extent possible. (Ord. 2013-16, passed 11-18-13)

§ 152.34 STANDARDS FOR IDENTIFIED FLOODWAYS.

(A) Located within SFHAs, established in § 152.07, are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and has erosion potential. If the site is in an identified floodway, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources and apply for a permit for construction in a floodway. Under the provisions of IC 14-28-1 a permit for construction in a floodway from the Indiana Department of Natural Resources is required prior to the issuance of a local building permit for any excavation, deposit, construction, or obstruction activity located in the floodway. This includes land preparation activities such as filling, grading, clearing and paving etc. undertaken before the actual start of construction of the structure. However, it does exclude non-substantial additions/improvements to existing (lawful) residences in a non-boundary river floodway. (IC 14-28-1-26 allows construction of a non-substantial addition/improvement to a residence in a non-boundary river floodway without obtaining a permit for construction in the floodway from the Indiana Department of Natural Resources. Please note that if fill is needed to elevate an addition above the existing grade, prior approval for the fill is required from the Indiana Department of Natural Resources.)

(B) No action shall be taken by the Floodplain Administrator until a permit or letter of authorization (when applicable) has been issued by the Indiana Department of Natural Resources granting approval for construction in the floodway. Once a permit for construction in a floodway or letter of authorization has been issued by the Indiana Department of Natural Resources, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in § 152.30 et seq. have been met. The Floodplain Development Permit cannot be less restrictive than the permit for construction in a floodway issued by the Indiana Department of Natural Resources. However, a community's more restrictive regulations (if any) shall take precedence.

(C) No development shall be allowed which, acting alone or in combination with existing or future development, will adversely affect the efficiency of or unduly restrict the capacity of the floodway. This adverse effect is defined as an increase in the elevation of the regulatory flood of at least fifteen-hundredths (0.15) of a foot as determined by comparing the regulatory flood elevation under the project condition to that under the natural or pre-floodway condition as proven with hydraulic analyses.

(D) For all projects involving channel modifications or fill (including levees) the city shall submit the data and request that the Federal Emergency Management Agency revise the regulatory flood data per mapping standard regulations found at 44 CFR § 65.12. (Ord. 2013-16, passed 11-18-13)

§ 152.35 STANDARDS FOR IDENTIFIED FRINGE.

If the site is located in an identified fringe, then the Floodplain Administrator may issue the local Floodplain Development Permit provided the provisions contained in §§ 152.30 et seq. have been met. The key provision is that the top of the lowest floor of any new or substantially improved structure shall be at or above the FPG. (Ord. 2013-16, passed 11-18-13)

§ 152.36 STANDARDS FOR SFHAs WITHOUT ESTABLISHED BASE FLOOD ELEVATION AND/OR FLOODWAYS/FRINGES.

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

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

(2) No action shall be taken by the Floodplain Administrator until either a permit for construction in a floodway permit (including letters of authorization) or a floodplain analysis/regulatory assessment citing the 1% annual chance flood elevation and the recommended Flood Protection Grade has been received from the Indiana Department of Natural Resources.

(3) Once the Floodplain Administrator has received the proper permit for construction in a floodway permit (including letters of authorization) or floodplain analysis/regulatory assessment approving the proposed development, a Floodplain Development Permit may be issued provided the conditions of the Floodplain Development Permit are not less restrictive than the conditions received from the Indiana Department of Natural Resources and the provisions contained in §§ 152.30 et seq. have been met.

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

(1) If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined and the drainage area upstream of the site is less than one square mile, the Floodplain Administrator shall require the applicant to provide an engineering analysis showing the limits of the floodplain and 1% annual chance flood elevation for the site.

(2) Upon receipt, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in §§ 152.30 et seq. have been met.

(C) The total cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the regulatory flood more than 0.14 of one foot and will not increase flood damages or potential flood damages. (Ord. 2013-16, passed 11-18-13)

§ 152.37 STANDARDS FOR FLOOD PRONE AREAS.

All development in known flood prone areas not identified on FEMA maps, or where no FEMA published map is available, shall meet applicable standards as required per §§ 152.30 et seq. (Ord. 2013-16, passed 11-18-13)

VARIANCES

§ 152.50 DESIGNATION OF VARIANCE AND APPEALS BOARD.

The Board of Zoning Appeals shall hear and decide appeals and requests for variances from requirements of this chapter. (Ord. 2013-16, passed 11-18-13)

§ 152.51 DUTIES OF VARIANCE AND APPEALS BOARD.

The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this chapter. Any person aggrieved by the decision of the board may appeal such decision to the Circuit or Superior Court of Jay County, as provided by Indiana Code. (Ord. 2013-16, passed 11-18-13)

§ 152.52 VARIANCE PROCEDURES.

In passing upon such applications, the board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and:

(A) The danger of life and property due to flooding or erosion damage.

(B) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

(C) The importance of the services provided by the proposed facility to the community.

(D) The necessity to the facility of a waterfront location, where applicable.

(E) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.

(F) The compatibility of the proposed use with existing and anticipated development.

(G) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.

(H) The safety of access to the property in times of flood for ordinary and emergency vehicles.

(I) The expected height, velocity, duration, rate of rise, and sediment of transport of the floodwaters at the site.

(J) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges. (Ord. 2013-16, passed 11-18-13)

§ 152.53 CONDITIONS FOR VARIANCES.

(A) Variances shall only be issued when there is:

(1) A showing of good and sufficient cause.

(2) A determination that failure to grant the variance would result in exceptional hardship.

(3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.

(B) No variance for a residential use within a floodway subject to § 152.34 or § 152.36(A) may be granted.

(C) Any variance granted in a floodway subject to § 152.34 or § 152.36(A) will require a permit from the Indiana Department of Natural Resources.

(D) Variances to the Provisions for Flood Hazard Reduction of § 152.31 may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade.

(E) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(F) Variances may be granted for the reconstruction or restoration of any structure individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.

(G) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Flood Protection Grade and the elevation to which the lowest floor is to be built and stating that the cost of the flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. (See § 152.54.)

(H) The Floodplain Administrator shall maintain the records of appeal actions and report any variances to the Federal Emergency Management Agency or the Indiana Department of Natural Resources upon request (See § 152.54). (Ord. 2013-16, passed 11-18-13)

§ 152.54 VARIANCE NOTIFICATION.

(A) Any applicant to whom a variance is granted that allows the lowest floor of a structure to be built below the base flood elevation shall be given written notice over the signature of a community official that:

(1) The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage; and

(2) Such construction below the base flood level increases risks to life and property.

(B) The Floodplain Administrator will maintain a record of all variance actions, including justification for their issuance. (Ord. 2013-16, passed 11-18-13)

§ 152.55 HISTORIC STRUCTURE.

Variances may be issued for the repair or rehabilitation of "historic structures" upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as an "historic structure" and the variance is the minimum to preserve the historic character and design of the structure. (Ord. 2013-16, passed 11-18-13)

§ 152.56 SPECIAL CONDITIONS.

Upon the consideration of the factors listed in § 152.50 et seq., and the purposes of this chapter, the Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter. (Ord. 2013-16, passed 11-18-13)

ADMINISTRATION

§ 152.60 DESIGNATION OF THE ADMINISTRATOR.

The Common Council of the City of Portland hereby appoints the Zoning Administrator to administer and implement the provisions of this chapter and is herein referred to as the Floodplain Administrator. (Ord. 2013-16, passed 11-18-13)

§ 152.61 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.

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

(B) Duties and responsibilities of the Floodplain Administrator shall include, but are not limited to:

(1) Review all floodplain development permits to assure that the permit requirements of this chapter have been satisfied.

(2) Inspect and inventory damaged structures in the SFHA and complete substantial damage determinations.

(3) Ensure that construction authorization has been granted by the Indiana Department of Natural Resources for all development projects subject to §§ 152.34 and 152.36(A), and maintain a record of such authorization (either copy of actual permit/authorization or floodplain analysis/regulatory assessment).

(4) Ensure that all necessary federal or state permits have been received prior to issuance of the local floodplain development permit. Copies of such permits/authorizations are to be maintained on file with the floodplain development permit.

(5) Maintain and track permit records involving additions and improvements to residences located in the floodway.

(6) Notify adjacent communities and the State Floodplain Coordinator prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA.

(7) Maintain for public inspection and furnish upon request local permit documents, damaged structure inventories, substantial damage determinations, regulatory flood data, SFHA maps, Letters of Map Change (LOMC), copies of DNR permits, letters of authorization, and floodplain analysis and regulatory assessments (letters of recommendation), federal permit documents, and "as-built" elevation and floodproofing data for all buildings constructed subject to this chapter.

(8) Utilize and enforce all Letters of Map Change (LOMC) or Physical Map Revisions (PMR) issued by FEMA for the currently effective SFHA maps of the community.

(9) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

(10) Review certified plans and specifications for compliance.

(11) Verify and record the actual elevation of the lowest floor (including basement) of all new or substantially improved structures, in accordance with § 152.21.

(12) Verify and record the actual elevation to which any new or substantially improved structures have been floodproofed in accordance with § 152.21.
(Ord. 2013-16, passed 11-18-13)

§ 152.99 PENALTY.

Failure to obtain a Floodplain Development Permit in the SFHA or failure to comply with the requirements of a Floodplain Development Permit or conditions of a variance shall be deemed to be a violation of this chapter. All violations shall be considered a common nuisance and be treated as such in accordance with the provisions of the City Zoning Code. All violations shall be punishable by a fine not exceeding \$2,500.

(A) A separate offense shall be deemed to occur for each day the violation continues to exist.

(B) The Portland Planning Commission shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a Standard Flood Insurance Policy to be suspended.

(C) Nothing herein shall prevent the city from taking such other lawful action to prevent or remedy any violations. All costs connected therewith shall accrue to the person or persons responsible.
(Ord. 2013-16, passed 11-18-13)

Section

General Provisions

- 153.01 Intent
 153.02 Definitions
 153.03 Amendments to zoning and
 subdivision control ordinance
 153.04 Violations

Specific Standards

- 153.15 Permitted placement
 153.16 Structural alteration

GENERAL PROVISIONS

§ 153.01 INTENT.

It is the intent of this chapter to comply with IC 36-7-4-1106 to provide for the use of certain manufactured homes, as defined in § 153.02, in all districts in which similar dwellings constructed on-site are permitted, subject to the requirements set forth in this chapter to assure acceptable similarity in exterior appearance between those 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.
 (Ord. 1982-2, passed 6-21-82)

§ 153.02 DEFINITIONS.

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

"EXPANDO ROOM." An expandable manufactured housing unit.

"MANUFACTURED HOME." A dwelling unit fabricated after January 1, 1981, in an off-site manufacturing facility for installation or assembly at the building site, bearing a seal certifying that it is built in compliance with the federal Manufactured Housing Construction and Safety Standards Code or Indiana Public Law 360, Acts of 1971, as promulgated by the Indiana Administrative Building Council, and containing more than 950 square feet of occupied space.

"MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS CODE." Title IV of the 1974 Housing and Community Development Act (42 U.S.C. 5401 et seq.) as amended (previously known as the federal Mobile Home Construction and Safety Act); rules and regulations adopted thereunder, which include H.U.D. - approved information supplied by the home manufacturer; and regulations and interpretations of said code by the Indiana Administrative Building Council.

"MOBILE HOME." A transportable factory-built structure that contains 950 square feet or less of occupied space.

"ONE AND TWO FAMILY DWELLING CODE, INDIAN A." The mandatory statewide building code adopted by the Indiana Administrative Building Council for one and two family residential dwellings.

"PUBLIC LAW 360, ACTS OF 1971." Enabling legislation requiring the Indiana Administrative Building Council to adopt rules and regulations for the construction, repair, or maintenance of one or two family residential dwellings.

"SPECIAL EXCEPTION PERMIT." A device for permitting a use within a district other than a principally permitted use.

"UNDERFLOOR SPACE ENCLOSURE." Materials and foundations used to support the manufactured housing unit and enclose or remove from exterior view all underfloor space as defined in IC 36-7-4-1106(a).
 (Ord. 1982-2, passed 6-21-82)

§ 153.03 AMENDMENTS TO ZONING AND SUBDIVISION CONTROL ORDINANCE.

The zoning, master plan, and subdivision ordinances of the city more commonly known as Zoning and Subdivision Control Ordinance 1980-9 and all amendments thereto, are hereby amended so that said zoning, master plan, and subdivision ordinances hereafter require the following:

(A) All residential homes hereafter constructed shall be larger than 950 square feet of occupied space, shall be placed on a permanent foundation as described herein, and shall have a roof pitch and roofing materials as described herein.

(B) All dwelling units must be at least 23 feet in width.

(C) All residential homes shall have a roof composed of a material customarily used on site-built residential dwellings, such as asbestos, fiberglass, shake asphalt, or tile, which shall be installed onto a surface appropriately pitched for the materials used and not having a roof pitch of less than 2-1/2 to one.
 (Ord. 1982-2, passed 6-21-82)

§ 153.04 VIOLATIONS.

Violations hereof shall be enforced as are all other provisions of the zoning and subdivision control ordinances of the city.
 (Ord. 1982-2, passed 6-21-82)

SPECIFIC STANDARDS

§ 153.15 PERMITTED PLACEMENT.

The establishment, location, and use of manufactured homes which have been constructed and 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 that residential use in the district and providing such homes meet the following requirements and limitations:

(A) The home shall meet all requirements applicable to single-family dwellings and possess all necessary improvement location, building, and occupancy permits and other certificates required by the Code.

(B) The home shall be larger than 950 square feet of occupied space as defined in IC 36-7-4-1106(a) or meet the minimum square footage requirements for the appropriate zone.

(C) All dwelling units must have an underfloor space enclosure that serves as the foundation or weight-bearing and supporting foundation for the dwelling unit, and which totally encloses said underfloor space and removes from exterior view all underfloor space of the dwelling unit, and which must be of continuous exterior masonry or concrete.

(D) The home shall be attached and anchored to a permanent foundation in conformance with the regulations in the Indiana One and Two Family Dwelling Code and with manufacturer's installation specifications.

(E) The home shall be covered with an exterior material customarily used on site-built residential dwellings, and this material shall extend over the top of the foundation (or meet the community's site-built residential dwelling home standards).
(Ord. 1982-2, passed 6-21-82)

§ 153.16 STRUCTURAL ALTERATION.

Due to its integral design, any structural alteration or modification of a manufactured or mobile home after it is placed on the site must be approved by the authorized building administrator of the city.
(Ord. 1982-2, passed 6-21-82)

Section

- 154.01 Adoption of zoning and subdivision control ordinance by reference
- 154.02 Standards for acceptance of municipal improvements and permit procedures
- 154.03 Countywide Community Developer
- 154.04 Adoption of comprehensive plan by reference

§ 154.01 ADOPTION OF ZONING AND SUBDIVISION CONTROL ORDINANCE BY REFERENCE.

Ordinance 1997-11, passed 12-15-97, adopting unified zoning and subdivision control provisions for the city and real estate within two miles of the city, is hereby adopted by reference and made a part of this code as if set out in full herein.
(Ord. 1980-9, passed 5-19-80; Am. Ord. 1997-11, passed 12-15-97; Am. Ord. 2005-2, passed 5-2-05; Am. Ord. 2005-10, passed 7-18-05; Am. Ord. 2005-20, passed 12-19-05; Am. Ord. 2006-4-A, passed 4-17-06; Am. Ord. 2013-14, passed 10-14-13; Am. Ord. 2014-12, passed 6-2-14)

§ 154.02 STANDARDS FOR ACCEPTANCE OF MUNICIPAL IMPROVEMENTS AND PERMIT PROCEDURES.

Ordinance 1985-12, passed 7-29-85, amending ordinance 1980-9 and adopting standards for acceptance of municipal improvements and permit procedures, is hereby adopted by reference and made a part of this code as if set out in full herein.
(Ord. 1985-12, passed 7-29-85)

§ 154.03 COUNTYWIDE COMMUNITY DEVELOPER.

The Common Council of the city hereby supports the establishment of a full time Countywide Community Developer position to provide Community Development services throughout the entire geographical boundaries of Jay County.
(Res. 2000-2, passed 6-5-00)

§ 154.04 ADOPTION OF A COMPREHENSIVE PLAN BY REFERENCE.

Resolution 2003-5, passed 5-5-03, adopting a comprehensive plan for the city, is hereby adopted by reference and made a part of this code as if set out in full herein.
(Res. 2003-5, passed 5-5-03)

Section

- 155.01 Purpose and definitions
- 155.02 Historic Preservation Commission establishment and organization
- 155.03 Powers and duties of the Commission
- 155.04 Historic districts, conservation districts and guidelines
- 155.05 Interim protection
- 155.06 Certificates of appropriateness (COA)
- 155.07 Staff approvals
- 155.08 Visual compatibility
- 155.09 Preservation of historical and architectural character upon alteration or relocation mandated
- 155.10 Appeal provisions
- 155.11 Maintenance
- 155.12 Relationship with zoning districts
- 155.13 Paint colors
- 155.14 Interested parties
- 155.15 Enforcement, penalties, and judicial review

§ 155.01 PURPOSE AND DEFINITIONS.

(A) *Purpose of historic preservation and protection.* In order to promote the educational, cultural and general welfare of the citizens of Portland and to insure the harmonious and orderly growth and development of the municipality; to maintain established residential neighborhoods in danger of having their distinctiveness destroyed; to enhance property values and attract new residents; to ensure the viability of the traditional downtown area and to enhance tourism within the City of Portland; it is deemed essential by the City of Portland that qualities relating to its history and harmonious outward appearance of its structures be preserved. This purpose is advanced through the restoration and preservation of historic areas and buildings, the construction of compatible new buildings where appropriate, and the maintenance and insurance of compatibility in regards to style, form, proportion, texture, and material between historic buildings and those of contemporary design. It is the intention of the City of Portland through this chapter to preserve and protect historic and architecturally worthy buildings, structures, sites, monuments, streetscapes, and neighborhoods which impart a distinct aesthetic quality to the city and serve as visible reminders of its historic heritage.

(B) *Definitions.* The following terms shall have the following meaning unless a contrary meaning is required by the context or is specifically prescribed. Words in the present tense include the future tense. The singular number includes the plural, and the plural, the singular. The word "SHALL" is always mandatory. The word "PERSON" includes a firm, a partnership, a limited liability company, or

a corporation, as well as an individual. Terms not defined in this section shall have the meanings customarily assigned to them.

"ALTERATION." A material or color change in the external architectural features of any building, structure, or site within a historic district.

"CITY." The City of Portland, Indiana.

"CLASSIFICATIONS."

(a) Outstanding. The "O" classification means that the property has sufficient historic or architectural significance that is listed, or is eligible for individual listing, in the National Register of Historic Places. Outstanding resources can be of local, state, or national importance.

(b) Notable. A classification of "N" means that the property does not merit the outstanding rating, but it is still above average in its importance. A notable structure may be eligible for the National Register.

(c) Contributing. A "C" classification means the property is at least 40 years old, but does not meet the criteria for an "O" or "N" classification. Such resources are important to the density or continuity of the area's historic fabric. Contributing structures can be listed in the National Register only as part of a historic district.

(d) Non-contributing. Property classified as "NC" is not included in an inventory unless it is located within the boundaries of a historic district. Such properties may be less than 50 years old, or they may be older structures that have been altered in such a way that they have lost their historic character, or they may be otherwise incompatible with their historic surroundings. These properties are not eligible for listing in the National Register.

"DEMOLITION." The complete or substantial removal of any building, structure, or site located in a historic district.

"HISTORIC DISTRICT." A single building, structure, object, or site or a concentration of buildings, structures, objects, spaces, or sites, the boundaries of which are described or delineated on a map approved in an ordinance adopted under this chapter.

"INTERESTED PARTY." One of the following:

- (a) The Mayor.
- (b) The City Council.
- (c) The city Plan Commission.

(d) A neighborhood association, whether incorporated or unincorporated, a majority of whose members are residents of a historic district designated by an ordinance adopted under this chapter.

(e) An owner or occupant of property located in a historic district established by an ordinance adopted under this chapter.

(f) Historic Landmarks Foundation of Indiana, Inc., or any of its successors.

(g) The state historic preservation officer designated under IC 14-3-3.4-10.

"PRESERVATION GUIDELINES." Criteria, locally developed, which identify local design concerns in an effort to assist property owners in maintaining the character of the designated district or buildings during the process of rehabilitation or new construction.

"PRIMARY AREA." The principal area of historic and/or architectural significance within a historic district as delineated on the map establishing the boundaries of the historic district.

"ROUTINE MAINTENANCE." Work for which no certificate of appropriateness is required.

"SECONDARY AREA." An area in a historic district delineated on the map establishing the boundaries of the historic district that is adjacent to a primary area and which has a visual relationship to the primary area and could affect the preservation of the primary area. The purpose of designating a secondary area is to assure its compatibility and harmony with an adjacent, primary area.

"STREETScape." Appearance from a public way, the distinguishing characteristics of which are created by the width of the street and sidewalks, their paving materials and color, the design of the street furniture (e.g., street lights, trash receptacles, benches, etc.) use of plant materials such as trees and shrubs, and the setback, mass, and proportion of those buildings which enclose the street.

"VISUAL COMPATIBILITY." Those elements of design that meet the guidelines set out in § 155.08.
(Ord. 2008-7, passed 5-5-08)

§ 155.02 HISTORIC PRESERVATION COMMISSION ESTABLISHMENT AND ORGANIZATION.

(A) *Creation.* There is hereby established the Historic Preservation Commission of the City of Portland, Indiana (hereinafter referred to as the "Commission").

(B) *Composition.* The Commission shall consist of not less than three or more than nine voting members. The voting members shall be appointed by the Mayor subject to the approval of the City Council and shall be residents of the city who are interested in the preservation and development of historic areas. The members of the Commission should include professionals in the disciplines of architectural history, planning, and other disciplines related to historic preservation, to the extent that those professionals are available in the community. Nonvoting, advisory members may be appointed to the Commission by the Mayor with approval by the City Council. Commission members shall serve without compensation, except for reasonable expenses incurred in the performance of their duties.

(C) *Term.* Voting members shall serve for a term of three years; however, the initial terms of members shall be for one year, two years, and three years in order for the terms to be staggered. The term for nonvoting, advisory members shall be for three years. A vacancy shall be filled within 90 days for the duration of the term.

(D) *Commission administrator.* A city administrator designated by the Mayor shall serve as the ex-officio administrator of the Commission. The administrator shall provide staff assistance to the Commission, act as the Commission's secretary, and issue certificates of appropriateness as directed by the Commission.

(E) *Officers.* The Commission shall elect from its membership a Chairperson, Vice-Chairperson, and Treasurer who shall serve for one year and who may be reelected.

(F) *Rules.* The Commission shall adopt rules consistent with this chapter for the transaction of its business. The rules must include the time and place of regular meetings and a procedure for the calling of special meetings.

(G) *Meetings.* Commission meetings must be open to the public in accordance with Indiana's Open Door Law and a public record shall be kept of the Commission's resolutions, proceedings, and actions. The Commission shall hold regular meetings, at least monthly, except when it has no business pending. Special meetings may be called in a manner determined by the Commission and its rules.
(Ord. 2008-7, passed 5-5-08)

§ 155.03 POWERS AND DUTIES OF THE COMMISSION.

(A) The Commission shall be concerned with those elements of development, redevelopment, rehabilitation, and preservation that affect visual quality in a historic district, which include but are not limited to viewsheds,

landscapes, and streetscapes of historic importance. The Commission may not consider details of design, interior arrangements, or building features, if those details, arrangements, or features are not subject to public view, and may not make any requirement except for the purpose of preventing development, alteration, or demolition in the historic district obviously incongruous with the historic district.

(B) The Commission shall conduct surveys and establish historic districts in accordance with the provisions of § 155.04.

(C) The Commission may adopt preservation guidelines for architectural review. If adopted, preservation guidelines shall be published and made readily accessible to the general public.

(D) The Commission has the authority to receive funds in order to promote its stated purpose.

(E) The Commission shall promote public interest in historic preservation by initiating and carrying on a public relations and community education program.

(F) The Commission, through this chapter, may:

(1) Acquire by purchase, gift, grant, bequest, devise, or lease any real or personal property, including easements, that is appropriate for carrying out the purposes of the Commission;

(2) Hold title to real and personal property; and

(3) Sell, lease, rent, or otherwise dispose of real and personal property at a public or private sale on the terms and conditions that the Commission considers best.

(G) The Commission shall establish procedures that the Commission must follow in acquiring and disposing of property. (Ord. 2008-7, passed 5-5-08)

§ 155.04 HISTORIC DISTRICTS, CONSERVATION DISTRICTS AND GUIDELINES.

(A) All recommendations for the establishment of a historic district shall be in the form of a written report and must be based on the criteria outlined in this section. A recommendation for establishing a historic district may be initiated from either of the following two sources:

(1) Based on its survey, the Commission may draw and submit historic district maps for City Council approval.

(2) Owners of property in fee simple wishing to establish a historic district which includes their property may petition the Commission to consider drawing and submitting a map or maps of said property to the City Council for its approval. The Commission may establish in its rules criteria to be met before it considers a petition.

(B) *Conservation districts.* The Commission may recommend, and the City Council may provide that the establishment of a historic district shall occur in two phases. During the first phase, which continues for a period of three years from the date the ordinance is adopted, a certificate of appropriateness is required for the following activities: the demolition of any building; the moving of any building; and any new construction of a principal building or accessory building or structure subject to view from a public way.

(1) At the expiration of the initial three-year period, the first phase of a conservation district continues and the second phase does not become effective if a majority of the property owners in the district object to the Commission, in writing, to the requirement that certificates of appropriateness be issued for the following activities:

(a) A conspicuous change in the exterior appearance of historic buildings by additions, construction, alteration, or maintenance involving exterior color changes;

(b) A change in walls and fences or construction of walls and fences, if along public ways;

(c) A conspicuous change in the exterior appearance of non-historic buildings subject to view from a public way by additions, reconstruction, alteration, or maintenance involving exterior color change.

(2) The objections of a majority of the property owners must be received by the Commission not earlier than 180 days or later than 60 days before the third anniversary of the adoption of the ordinance.

(C) *Commission preparation of historic district maps.* In order to establish a historic district, the Commission shall first prepare a map describing the district in accordance with the following:

(1) The map shall be based on a survey conducted by the Commission which identifies historic buildings, structures, and sites located within the city.

(2) A district may be limited to the boundaries of a property containing a single building, structure, or site.

(3) The map may divide the district into primary and secondary areas as follows:

(a) *Primary area.* The principal area of historic and architectural significance.

(b) *Secondary area.* An area adjacent to a primary area which has a visual relationship to the primary area and could affect the preservation of the primary area. The purpose of designating a secondary area is to assure its compatibility and harmony with an adjacent primary area.

(D) (1) The Commission shall classify and designate on the map all buildings, structures, and sites within each historic district described on the map. Buildings, structures, and sites shall be classified as historic or non-historic. Historic buildings, structures, and sites must possess identified historic or architectural merit of a degree warranting their preservation. The Commission shall further classify and designate all buildings and structures within a proposed historic district as follows:

- (a) Outstanding;
- (b) Notable; or
- (c) Contributing.

(2) Non-historic buildings, structures, and sites are those not classified on the map as historic. In lieu of other classifications, the Commission may devise its own system of further classification of historic buildings, structures, and sites.

(E) *City Council approval of maps of historic districts.* Before a historic district is established and the building classifications take effect, the map setting forth the district's boundaries and building classifications must be submitted to, and approved in an ordinance by, the City Council.

(F) *Recording the fact of designation.* The map establishing boundaries of a historic district may be recorded in the Office of the Jay County Recorder. (Ord. 2008-7, passed 5-5-08; Am. Ord. 2014-6, passed 4-7-14)

Cross-reference:

- Downtown Commercial Historic District, see T.S.O. VI
- Downtown Facade Funding Program, see § 34.04

§ 155.05 INTERIM PROTECTION.

(A) When submitting a map to the City Council under § 155.04, the Commission may declare one or more buildings or structures that are classified and designated as historic on the map to be under interim protection.

(B) Not more than two working days after declaring a building, structure, or site to be under interim protection under this section, the Commission shall, by personal delivery or first class mail, provide the owner or occupant of the building, structure or site with a written notice of the declaration. The written notice must:

(1) Cite the authority of the Commission to put the building, structure, or site under interim protection under this section;

(2) Explain the effect of putting the building, structure, or site under interim protection: and

(3) Indicate that the interim protection is temporary.

(C) A building or structure put under interim protection under division (A) remains under interim protection until the map is:

(1) Submitted to; and

(2) Approved in an ordinance or rejected by the City Council.

(D) While a building, structure, or site is under interim protection under this section:

(1) The building, structure, or site may not be demolished or moved; and

(2) The exterior appearance of the building, structure, or site may not be conspicuously changed by:

- (a) Addition;
- (b) Reconstruction; or
- (c) Alteration.

(E) The Commission may approve a certificate of appropriateness at any time during the period of interim protection, provided the proposed change meets the criteria for considering effect of actions on historic buildings in § 155.06(D) and any proposed preservation guidelines prepared for the building, structure, or site, but the certificate of appropriateness shall have no effect, and no action may be taken pursuant thereto, unless the map including the building, structure or site is approved by the City Council. (Ord. 2008-7, passed 5-5-08)

§ 155.06 CERTIFICATES OF APPROPRIATENESS (COA).

(A) *Certificates of appropriateness (COA) required.* A certificate of appropriateness must be issued by the Commission before a permit is issued for, or work is begun on, any of the following:

(1) Within all areas of a historic district:

(a) The demolition of any building or structure;

(b) The moving of any building or structure;

(c) A conspicuous change in the exterior appearance of any historic building or any part of or appurtenance to such a building, including walls, fences, light fixtures, steps, paving, and signs by additions, reconstruction, alteration, or maintenance involving exterior color change if cited by individual ordinance; or

(d) Any new construction of a principal building or accessory building or structure subject to view from a public way.

(2) Within a primary area of a historic district:

(a) A change in walls and fences, or the construction of walls and fences along public ways;

(b) A conspicuous change in the exterior appearance of non-historic buildings subject to view from a public way by additions, reconstruction, alteration and/or maintenance involving exterior color change.

(3) Within a conservation district:

(a) The moving of any building;

(b) The demolition of any building; or

(c) Any new construction of a principal building or accessory building or structure subject to view from a public way.

(B) *Application for certificates of appropriateness.* An application for a certificate of appropriateness shall be made in the office of the Commission or its designee on forms provided by that office. All applications shall be subject to the rules and requirements established by the Commission. Rules may include, but are not limited to, filing deadlines and application requirements such as sketches, drawings, photographs, descriptions, or other information which the Commission requires to make a decision.

(C) *Approval or denial of certificates of appropriateness.* The Commission may approve or deny certificates of appropriateness for any actions covered by this chapter. If an application for a certificate of appropriateness is approved by the Commission, or is not acted on by the Commission within 30 days after it is filed, a certificate of appropriateness shall be issued. The Commission

may grant an extension of the 30-day limit if the applicant agrees to it. The Commission must report its findings and the reasons for its decision in written form, and supply the applicant with a copy of its report. A copy of the certificate of appropriateness must be submitted with the application for a building or demolition permit; no building or demolition permit shall be issued unless a copy of the certificate of appropriateness is provided by the applicant with the application.

(D) *Criteria for considering effect of actions on historic buildings.* The Commission, in considering the appropriateness of any reconstruction, alteration, maintenance, or moving of a historic building, structure, site or any part of or appurtenance to such building or structure, including walls, fences, light fixtures, steps, paving, and signs shall require that such work be done in a manner that will preserve the historical and architectural character of the building, structure, or appurtenance. In considering historic and architectural character, the Commission shall consider, among other things, the following:

(1) Purposes of this chapter;

(2) Historical and architectural value and significance of the building, structure, site or appurtenance;

(3) Compatibility and significance of additions, alterations, details, materials, or other non-original elements which may be of a different style and construction date than the original;

(4) The texture, material, color, style, and detailing of the building, structure, site or appurtenance;

(5) The continued preservation and protection of original or otherwise significant structure, material, and ornamentation;

(6) The relationship of buildings, structures, appurtenances, or architectural features similar to one within the same historic district, including for primary areas, visual compatibility as defined in § 155.08(B); and

(7) The position of the building or structure in relation to the street, public right-of-way and to other buildings and structures.

(Ord. 2008-7, passed 5-5-08)

§ 155.07 STAFF APPROVALS.

(A) The Commission may authorize the staff of the Commission, on behalf of the Commission, to grant or deny an application for a certificate of appropriateness.

(B) The Commission shall specify by rule the types of applications for certificates of appropriateness that the staff of the commission is authorized to grant or deny. The staff may not be authorized to grant or deny an application for a certificate of appropriateness for the following:

(1) The demolition of a building, structure, or site.

(2) The moving of a building or structure.

(3) The construction of an addition to a building or structure.

(4) The construction of a new building or structure.
(Ord. 2008-7, passed 5-5-08)

§ 155.08 VISUAL COMPATIBILITY.

(A) *For new construction, contemporary design, and non-historic buildings.* To preserve and encourage the integrity of historic buildings, structures, sites, monuments, streetscapes, and neighborhoods and to ensure their compatibility with any new work, the construction of a new building or structure, and the moving, reconstruction, alteration, color change, major maintenance, or repair conspicuously affecting the external appearance of any non-historic building, structure, or appurtenance within the primary area must be generally of a design, form, proportion, mass, configuration, building material, texture, color, and location on a lot compatible with other buildings in the historic district and with places to which it is visually related.

(B) *Criteria for considering visual compatibility within historic primary areas.* Within the primary area of a historic district, new buildings, structures, as well as buildings, structures, and appurtenances that are moved, reconstructed, materially altered, repaired, or changed in color, must be visually compatible with buildings and places to which they are visually related generally in terms of the following visual compatibility factors:

(1) *Height.* The height of proposed buildings must be visually compatible with adjacent buildings.

(2) *Proportion of building's front facade.* The relationship of the width of a building to the height of the front elevation must be visually compatible with buildings, squares, and places to which it is visually related.

(3) *Proportion of openings within the facility.* The relationship of the width of the windows to the height of windows in a building must be visually compatible with buildings, squares, and places to which it is visually related.

(4) *Relationship of solids to voids in front facades.* The relationship of solids to voids in the front facade of a building must be visually compatible with buildings, squares, and places to which it is visually related.

(5) *Rhythm of spacing of buildings on streets.* The relationship of a building to the open space between it and adjoining buildings must be visually compatible with buildings, squares, and places to which it is visually related.

(6) *Rhythm of entrances and porch projections.* The relationship of entrances and porch projections of a building to sidewalks must be visually compatible with buildings, squares, and places to which it is visually related.

(7) *Relationship of materials, texture, and color.* The relationship of the materials, texture, and color of the facade of a building must be visually compatible with buildings, squares, and places to which it is visually related.

(8) *Roof shapes.* The roof shape of a building must be visually compatible with buildings, squares, and places to which it is visually related.

(9) *Wall of continuity.* Appurtenances of a building or site, such as walls, wrought iron fences, evergreen landscape masses, and building facades, must form cohesive walls of enclosure along the street, if necessary to ensure visual compatibility of the building to the buildings and places to which it is visually related.

(10) *Scale of the building.* The size of a building and the building mass of a building in relation to open spaces, windows, door openings, porches, and balconies must be visually compatible with the buildings and places to which it is visually related.

(11) *Directional expression of front elevation.* A building must be visually compatible with buildings, squares, and places to which it is visually related in its directional character, including vertical character, horizontal character, or non-directional character.
(Ord. 2008-7, passed 5-5-08)

§ 155.09 PRESERVATION OF HISTORICAL AND ARCHITECTURAL CHARACTER UPON ALTERATION OR RELOCATION MANDATED.

(A) A historic building or structure or any part of or appurtenance to such a building or structure, including stone walls, fences, light fixtures, steps, paving, and signs may be moved, reconstructed, altered, or maintained only in a manner that will preserve the historical and architectural character of the building, structure, or appurtenance.

(B) A historic building may be relocated to another site only if it is shown that preservation on its current site is inconsistent with division (A). (Ord. 2008-7, passed 5-5-08)

§ 155.10 APPEAL PROVISIONS.

(A) The purpose of this section is to preserve historic buildings that are important to the education, culture, traditions, and economic values of the city and to afford the city, historical organizations, property owners, and other interested persons the opportunity to acquire or to arrange for the preservation of these buildings.

(B) If the Commission denies the issuance of a certificate of appropriateness for the demolition of a building, structure, or site, a demolition permit may be issued by other agencies and a building, structure, or site may be demolished, but only after the property owner has demonstrated to the Commission that the historic building, structure, or site is incapable of earning an economic return on its value, as appraised by a licensed real estate appraiser.

(C) Notice of the proposed demolition must be given for a period fixed by the Commission, based on the Commission's classification on the approved map, but not less than 60 days nor more than one year. Notice must be posted on the premises of the building or structure proposed for demolition in a location clearly visible from the street. In addition, notice must be published in a newspaper of general local circulation at least three times before demolition, with the first publication not more than 15 days after the application for a permit to demolish is filed, and the final publication at least 15 days before the date of the permit.

(D) The Commission may approve a certificate of appropriateness at any time during the notice period under division (C). If the certificate of appropriateness is approved, a demolition permit shall be issued without further delay, and demolition may proceed. (Ord. 2008-7, passed 5-5-08)

§ 155.11 MAINTENANCE.

(A) Historic buildings, structures, and sites shall be maintained to meet the applicable requirements established under state statute for buildings generally so as to prevent the loss of historic material and the deterioration of important character defining details and features.

(B) *Ordinary repairs and maintenance.* Nothing in this section shall be construed so as to prevent the ordinary repairs and maintenance of any building, structure, or site, provided that such repairs or maintenance do not result in a conspicuous change in the

design, form, proportion, mass, configuration, building material, texture, color, location, or external visual appearance of any structure, or part thereof. (Ord. 2008-7, passed 5-5-08)

§ 155.12 RELATIONSHIP WITH ZONING DISTRICTS.

Zoning districts lying within the boundaries of the historic district are subject to regulations for both the zoning district and the historic district. If there is a conflict between the requirements of the zoning district and the requirements of the historic district, the more restrictive requirements shall apply. (Ord. 2008-7, passed 5-5-08)

§ 155.13 PAINT COLORS.

In an ordinance approving the establishment of a historic district, the city may exclude changes in paint colors from the activities requiring the issuance of a certificate of appropriateness under § 155.06 before a permit may be issued or work begun. (Ord. 2008-7, passed 5-5-08)

§ 155.14 INTERESTED PARTIES.

(A) An interested party (as defined in § 155.01) has a private right of action to enforce and prevent violation of provisions of this chapter or an ordinance adopted by the city under this chapter, and with respect to any building, structure, or site within a historic district, and has the right to restrain, enjoin, or enforce by restraining order or injunction, temporarily or permanently, any person from violating a provision of this chapter or an ordinance adopted under this chapter.

(B) The interested party does not have to allege or prove irreparable harm or injury to any person or property to obtain relief under this section.

(C) The interested party bringing an action under this section does not have to post a bond unless the court, after a hearing, determines that a bond should be required in the interest of justice.

(D) The interested party that brings an action under this section is not liable to any person for damages resulting from bringing or prosecuting the action unless the action was brought without good faith or without a reasonable belief that a provision of this chapter, or an ordinance adopted by a unit under this chapter, had been, or was about to be violated.

(E) An interested party who obtains a favorable judgment in an action under this section may recover reasonable attorney fees and court costs from the person against whom judgment was rendered.

(F) An action arising under this section must be brought in the circuit or superior court of the county in which the historic district lies and no change of venue from the county shall be allowed in the action.

(G) The remedy provided in this section is in addition to other remedies that may be available at law or in equity.
(Ord. 2008-7, passed 5-5-08)

§ 155.15 ENFORCEMENT, PENALTIES, AND JUDICIAL REVIEW.

(A) Any person, whether as principal, agent, owner, lessee, tenant, contractor, builder, architect, engineer, or otherwise, who violates any provision of this chapter shall be subject to a fine as follows, for each offense:

(1) Not less than \$10 nor more than \$2,500 for demolition; and

(2) Not less than \$10 nor more than \$300 for all other offenses.

(B) Each day of the existence of any violation of this chapter shall be a separate offense.

(C) The erection, construction, enlargement, alteration, repair, demolition, color change, moving, or maintenance of any building, structure, or appurtenance which is begun, continued, or maintained contrary to any provisions of this chapter is hereby declared to be a nuisance and in violation of this chapter and unlawful. The city may institute a suit for injunction in the Circuit Court or Superior Court of Jay County to restrain any person or government unit from violating any provision of this chapter and to cause such violation to be prevented, abated, or removed. Such action may also be instituted by any property owner who is adversely affected by the violation of any provision of this chapter.

(D) The remedies provided for in this section shall be cumulative and not exclusive and shall be in addition to any other remedies provided by law.

(E) Any person or party aggrieved by a decision or action taken by the Commission shall be entitled to a judicial review hereof in accordance with IC 4-22-1.
(Ord. 2008-7, passed 5-5-08)