

**CHAPTER I:**

**ADMINISTRATION**

## SECTION CONTENTS

|              |  |           |
|--------------|--|-----------|
| <b>I.I</b>   | <b>GENERAL PROVISIONS.....</b>               | <b>3</b>  |
| A.           | TITLE .....                                  | 3         |
| B.           | AUTHORITY.....                               | 3         |
| C.           | JURISDICTION .....                           | 3         |
| D.           | PURPOSE.....                                 | 3         |
| E.           | REPEAL AND EFFECTIVE DATE .....              | 4         |
| F.           | SEVERABILITY .....                           | 5         |
| G.           | INTERPRETATION.....                          | 5         |
| H.           | RELATIONSHIP TO COMPREHENSIVE PLAN .....     | 5         |
| I.           | AMENDMENT .....                              | 6         |
| <b>I.II</b>  | <b>DECISION-MAKING BODIES .....</b>          | <b>7</b>  |
| A.           | ADVISORY.....                                | 7         |
| B.           | QUASI-JUDICIAL.....                          | 14        |
| C.           | LEGISLATIVE .....                            | 19        |
| <b>I.III</b> | <b>NON-CONFORMING SITUATIONS.....</b>        | <b>22</b> |
| A.           | GENERAL.....                                 | 22        |
| B.           | NON-CONFORMING LOTS.....                     | 23        |
| C.           | NON-CONFORMING STRUCTURES AND BUILDINGS..... | 24        |
| D.           | NON-CONFORMING USES .....                    | 25        |
| <b>I.IV</b>  | <b>ENFORCEMENT .....</b>                     | <b>26</b> |
| A.           | RESPONSIBILITY FOR ENFORCEMENT .....         | 26        |
| B.           | VIOLATIONS .....                             | 26        |
| C.           | REMEDIES.....                                | 28        |
| D.           | ENFORCEMENT PROCEDURES .....                 | 28        |

## I.I GENERAL PROVISIONS

### A. TITLE

This Ordinance shall hereinafter be known and cited as "Unified Development Ordinance of the City of Terre Haute and Vigo County, including the Towns of Riley, Seelyville, and West Terre Haute, Indiana."

### B. AUTHORITY

This Ordinance is adopted pursuant to the authority contained in IC 36-7-4 et seq. Whenever any provision of this Ordinance refers to or cites a section of the Indiana Code and that section is later amended or superseded, this Ordinance shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

### C. JURISDICTION

Upon adoption of this Ordinance by the Common Council of the City of Terre Haute, the Town Board of Riley, the Town Board of Seelyville, the Town Board of West Terre Haute, and the Board of Commissioners of Vigo County, the Area Plan Commission of Vigo County shall be the duly authorized Plan Commission for the incorporated areas of the City of Terre Haute, the Town of Riley, the Town of Seelyville and the Town of West Terre Haute, and the unincorporated areas of Vigo County pursuant to the Area Planning Law of the Indiana Code.

1. This Ordinance shall be effective within the corporate boundaries of the City of Terre Haute, the Town of Riley, the Town of Seelyville, the Town of West Terre Haute, and the unincorporated areas of Vigo County upon its adoption by the Common Council of the City of Terre Haute, the Town Board of Riley, the Town Board of Seelyville, the Town Board of West Terre Haute, and the Board of Commissioners of Vigo County.
2. Under Indiana Area Planning Law, no incorporated community may exercise extra-territorial jurisdiction over land outside their corporate boundaries for planning and zoning purposes.

### D. PURPOSE

In adopting this Ordinance, the Board of Commissioners of Vigo County, the Common Council of the City of Terre Haute, the Town Board of Riley, the Town Board of Seelyville, and the Town Board of West Terre Haute act for the purpose of:

1. Promoting the public health, safety, convenience, and general welfare;
2. Guiding the future development of the City of Terre Haute, the Town of Riley, the Town of Seelyville, the Town of West Terre Haute, and Vigo County;
3. Securing adequate light, air, convenience of access, and safety from fire, flood, and other danger;
4. Lessening or avoiding congestion in public ways;
5. Ensuring that the needs of agriculture, forestry, industry, and business be recognized in future growth;
6. Ensuring that residential areas provide healthful surroundings for family life;
7. Guiding development in flood hazard areas in order to reduce the potential for loss of life and property, reduce the potential for health and safety hazards, and to reduce the potential for extraordinary public expenditures for flood protection and relief;
8. Making sure federally subsidized flood insurance is available for structures and their contents by fulfilling the requirements of the National Flood Insurance Programs;
9. Ensuring that growth be commensurate with and promote the efficient and economical use of public funds; and
10. Accomplishing the purposes of IC 36-7-4 et seq.

## E. REPEAL AND EFFECTIVE DATE

The Comprehensive Zoning Ordinance for Terre Haute, Indiana, as adopted by the Common Council of the City of Terre Haute, Indiana, on the 6<sup>th</sup> day of July, 1967, and all amendments thereto, are hereby repealed, in addition, all other Ordinances or parts of other Ordinances adopted by the Board of Commissioners of Vigo County, the Common Council of the City of Terre Haute, the Town Board of the Riley, the Town Board of Seelyville, or the Town Board of West Terre Haute in conflict with this Ordinance, including the Unified Zoning Ordinance for Vigo County, the Comprehensive Zoning Ordinance of the City of Terre Haute, the Subdivision Control Ordinance of Vigo County, the Subdivision Control Ordinance of Terre Haute, the Unified Floodplain Control Ordinance of Vigo County and the Unified Floodplain Control Ordinance of Terre Haute, are hereby repealed to the extent necessary to give this Ordinance full force and effect.

This Ordinance shall be effective on the following dates:

1. Within the corporate boundaries of the City of Terre Haute on \_\_\_\_\_;
2. Within the corporate boundaries of the Town of Riley on \_\_\_\_\_;
3. Within the corporate boundaries of the Town of Seelyville on \_\_\_\_\_;
4. Within the corporate boundaries of the Town of West Terre Haute on \_\_\_\_\_;  
and
5. In the unincorporated areas of Vigo County on \_\_\_\_\_.

F. SEVERABILITY

It is hereby declared to be the intention of the Board of Commissioners of Vigo County, the Common Council of the City of Terre Haute, the Town Board of Riley, the Town Board of Seelyville, and the Town Board of West Terre Haute that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any such section, paragraph, sentence, clause, or phrase is declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or decree, such unconstitutionality or invalidity shall not affect any remaining sections, paragraphs, sentences, clauses or phrases of this Ordinance because the same would have been enacted without the incorporation into this Ordinance of such unconstitutional or invalid section, paragraph, sentence, clause, or phrase.

G. INTERPRETATION

In their interpretation and application, the provisions of this Ordinance shall be held to be the minimum requirements for the promotion of the health, safety, convenience, and the general welfare of the public. In the case of any conflict or inconsistency between two or more provisions of this Ordinance (e.g., the restrictions set forth in an overlay district versus the restrictions set forth in a primary zoning district), the provision, which imposes the greater or higher standard of performance shall control.

H. RELATIONSHIP TO COMPREHENSIVE PLAN

The Unified Development Ordinance (UDO) is intended to implement the policies of the Comprehensive Plan. Non-conformity with the Comprehensive Plan is not grounds for challenge. The Comprehensive Plan shall be amended if in substantial conflict with an approved development proposal.

## I. AMENDMENT

The regulations imposed and the districts created under the authority of this Ordinance may be amended from time to time by ordinance, but no such amendments shall be made without a public hearing before the Planning Commission and the appropriate legislative body.

### 1. Repeal and Replacement of the Entire Ordinance

Procedures for repeal and amendment of the entire ordinance are as stated in IC 36-7-4-606 as amended.

### 2. Text Amendment or Partial Repeal of the Text

Procedures for a text amendment or partial repeal of the text of the Ordinance are as stated in IC 36-7-4-607 as amended.

### 3. Map Amendments (Rezoning)

The procedure for a zone map amendment (rezoning) may be found in Chapter V.

## I.II DECISION-MAKING BODIES

### A. ADVISORY

#### 1. Area Plan Commission

##### a. Establishment

The area planning law is hereby re-adopted and the Area Plan Commission of Vigo County, Indiana, is hereby re-established in accordance with IC 36-7-4-200 et seq.

##### b. Membership

In accordance with IC 36-7-4-211 the representation and composition of the Commission shall be as follows:

##### i. Vigo County representation

- (1) One (1) member appointed by the legislative body of the County from its membership; and
- (2) Five (5) citizen members appointed by the legislative body of the County following the procedures prescribed in this subsection. In order that the citizen representation is apportioned over the entire County, the legislative body of the County shall divide the unincorporated areas of the County into five (5) planning districts. The township trustees of each township shall nominate one (1) resident freeholder of the township as a candidate for the office of planning commissioner. From the list of nominees submitted by the trustees, the legislative body of the County shall appoint one (1) resident freeholder from each planning district to serve as a citizen member on the Area Plan Commission.

##### ii. The representation for the City of Terre Haute, Indiana shall be as follows:

- (1) One (1) member of the Board of Works or the Board of Sanitary Commissioners appointed by the Mayor of the City of Terre Haute;

- (2) One (1) member appointed by the legislative body of the City from its membership; and
  - (3) Three (3) citizen members appointed by the Mayor of the City of Terre Haute.
- iii. The representation for the Town of Riley, Indiana shall be one (1) member and shall be appointed by the Town Board of the Town of Riley.
  - iv. The representation for the Town of Seelyville, Indiana shall be one (1) member and shall be appointed by the Town Board of the Town of Seelyville.
  - v. The representation for the Town of West Terre Haute, Indiana shall be one (1) member and shall be appointed by the Town Board of the Town of West Terre Haute.
  - vi. Qualifications and terms of citizen members are as prescribed by the Area Planning Law (IC 36-7-4-216).

## c. Organization

### i. Meetings and Minutes

The Commission shall fix the time for holding regular meetings each month or as necessary. The Commission shall keep minutes of its meetings. The minutes of Commission meetings and all records shall be filed in the Area Planning Department and are public records (IC 36-7-4-306).

### ii. Officers

At the first meeting in each year, the Commission shall elect from its members a President and a Vice President. The Vice President may act as President of the Commission during the absence or disability of the President. The Commission may appoint a Secretary, who is not required to be a member of the Commission (IC 36-7-4-303 and IC 36-7-4-304).

### iii. Duties and Powers

The Commission is hereby vested with the duties and powers imposed upon and granted to an area plan commission under area planning law, including, without limitation, the powers and duties listed below. To effectuate the purposes of this Ordinance, the Commission:



- (1) Shall exercise general supervision of, and make rules for, the administration of the affairs of the Department;
- (2) Shall make recommendations to the participating legislative bodies concerning:
  - (a) Proposals to amend the Comprehensive Plan;
  - (b) Proposals to amend or partially repeal the text of this Ordinance;
  - (c) Proposals to change the official Zone Maps whether by incorporating an additional map or by amending or deleting a map; and,
  - (d) Planned unit development proposals under the terms of this Ordinance.
- (3) Shall approve all plans and commitments as provided in this Ordinance;
- (4) May establish a schedule of reasonable fees to defray the administrative costs connected with:
  - (a) Processing and hearing administrative appeals and petitions for rezoning, special exceptions, variances, planned unit development approvals;
  - (b) Issuing Improvement Location Permits and conditional use permits; and
  - (c) Other official actions taken under this Ordinance;
- (5) May invoke any legal, equitable, or special remedy available under this Ordinance or applicable law for the enforcement of the provisions of this Ordinance or actions taken hereunder;
- (6) May request the Vigo County Prosecutor or City Attorney as appropriate, to take appropriate action in any case involving the violation of this Ordinance and the Prosecutor shall act when so requested;
- (7) May designate a hearing examiner or a committee of the Commission to conduct any public hearing required to be held by the Commission;

- (8) Shall appoint the Director and fix the Director's compensation, provided that, to the extent permitted by applicable law, the appointment of the Director must be confirmed by the Board of Commissioners of Vigo County within thirty (30) days after the Commission's appointment of the Director, provided further that the Board of Commissioners of Vigo County shall be deemed to have confirmed such appointment unless such appointment is disaffirmed by the Board of Commissioners of Vigo County at a regular or special meeting by a majority of the Commissioners within thirty (30) days after the Commission's appointment of the Director;
- (9) May appoint one or more attorneys to advise the Department and to assist in the enforcement of this Ordinance and the area planning law, provided that, to the extent permitted by applicable law, the appointment of any such attorney must be confirmed by the Board of Commissioners of Vigo County within thirty (30) days after the Commission's appointment of any such attorney, provided further that the Board of Commissioners of Vigo County shall be deemed to have confirmed such appointment unless such appointment is disaffirmed by the Board of Commissioners of Vigo County at a regular or special meeting by a majority of the Commissioners within thirty (30) days after the Commission's appointment of any such attorney;
- (10) May employ one (1) attorney on a full-time basis, provided that, to the extent permitted by applicable law, the appointment of any such attorney must be confirmed by the Board of Commissioners of Vigo County within thirty (30) days after the commission's appointment of any such attorney, provided further that the Board of Commissioners of Vigo County shall be deemed to have confirmed such appointment unless such appointment is disaffirmed by the Board of Commissioners of Vigo County at a regular or special meeting by a majority of the Commissioners within thirty (30) days after the Commission's appointment of any such attorney;
- (11) Shall keep a complete record of all Departmental proceedings;

- (12) Shall record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the Department;
- (13) Shall prepare, publish, and distribute reports, Ordinances, and other materials relating to the activities authorized under IC 36-7-4;
- (14) Shall adopt a seal;
- (15) Shall certify official acts;
- (16) Supervise the fiscal affairs of the Department;
- (17) Prepare and submit an annual budget in the same manner as other departments of county government and be limited in all expenditures to the provisions made for the expenditures by the County Council of Vigo County; and,
- (18) May exercise all powers conferred on it by State law, local ordinance, or rule in the manner so prescribed. This Section shall not be construed as a limitation on such powers.

d. Rules and Procedures

The Commission shall prescribe uniform rules and procedures pertaining to investigations and hearings in keeping with the terms of this Ordinance and State Law (IC 36-7-4-401(a)(2)).

2. Area Planning Department

a. Establishment

The Area Planning Department for Vigo County in the Vigo County government is hereby re-established in Vigo County, Indiana in accordance with IC 36-7-4 et seq. The Area Planning Department for Vigo County shall consist of the Commission, the Director and such staff as the Commission considers necessary.

b. Exercise of Planning and Zoning Authority

The Department shall exercise exclusively the planning and zoning functions of Vigo County, the Town of Riley, the Town of Seelyville, and the Town of West Terre Haute.

The Department shall share planning and zoning functions for the City of Terre Haute with the City of Terre Haute Zoning Administrator. Duties and powers of the Terre Haute Zoning Administrator are enumerated in (c) below.

c. Duties and Powers

It shall be the duty of the Director to supervise the general administration of the Department.

- i. It shall be the duty of the Director to propose annually a plan for the operation of the Department and administer such plan after its approval by the Commission.
- ii. It shall be the duty of the Director to enforce and administer this Ordinance; receive and review all applications required by this Ordinance; issue Improvement Location Permits; and number and file all Certificates of Use and Occupancy except as provided in (3) below.
- iii. The Director shall, when requested by the Commission or appropriate Board of Zoning Appeals, or when the interests of the County or a participating municipality so require, make investigations in connection with matters referred to in this Ordinance and render written reports on the same.
- iv. The Director shall prepare and submit an annual report of the activities of the Department and the status of this Ordinance to the Commission, the Board, and the participating legislative bodies.
- v. The Director shall keep the records of the Department, including, without limitation, records of applications, permits issued, certificates issued, inspections made, reports rendered, and notices or orders issued. The Director shall maintain records of all final determinations and decisions of the Commission and the County Board of Zoning Appeals.
- vi. The Director shall transmit to the Commission or Board the recommendation of the Department on all applications, petitions, or matters requiring official action by the Commission or County Board of Zoning Appeals.
- vii. The Director shall maintain the Official Zoning Maps and designate on the official Zoning Maps all map amendments, planned unit developments, special exceptions, and conditional uses granted under the terms of this Ordinance.

- viii. The Director shall provide and maintain information for the public relative to all matters arising out of this Ordinance.
- ix. Subject to the approval of the Commission and the County Board of Zoning Appeals, the Director shall appoint and remove the employees of the Department, according to the standards and qualification fixed by the Commission without regard to political affiliation.
- x. The Director shall perform such other duties as the Commission or County Board of Zoning Appeals, may direct in accordance with the provisions of this Ordinance.
- xi. Maintain current and permanent records of non-conforming uses.

### 3. City of Terre Haute Zoning Administrator

#### a. Establishment

The City of Terre Haute shall maintain a Zoning Administrator for purposes of administering this Ordinance within the corporate limits of the City of Terre Haute.

#### b. Duties and Powers

The Zoning Administrator shall enforce this Ordinance, and in addition thereto and in furtherance of said authority shall:

- i. Issue all Improvement Location Permits, and make and maintain records thereof;
- ii. Issue all Certificates of Use and Occupancy, and make and maintain records thereof;
- iii. Conduct inspections of buildings, structures, and uses of land to determine compliance with the terms of this Ordinance;
- iv. Maintain permanent and current records of the Ordinance, including, but not limited to all maps, amendments, conditional uses, variances, appeals and applications;
- v. Provide and maintain for the public information relative to all matters arising out of this Ordinance;
- vi. Receive from the City Clerk all applications for amendments to this Ordinance and amendments to the zone maps.

- vii. Transmit recommendations on all amendments together with those of the Director, to the Commission.
- viii. Transmit recommendations on pending matters to the City Board of Zoning Appeals.
- ix. Receive and maintain copies from the City Board of Zoning Appeals of all final determinations of the City Board on variances, conditional uses, appeals, and other matters upon which the City Board of Zoning Appeals has been required to act.
- x. Maintain permanent and current records of non-conforming uses.

## B. QUASI-JUDICIAL

### 1. Vigo County Board of Zoning Appeals

#### a. Establishment

The Vigo County Board of Zoning Appeals is hereby re-established in accordance with IC 36-7-4-900 et seq.

The Vigo County Board of Zoning Appeals shall have exclusive territorial jurisdiction over all matters properly before the Vigo County Board involving or affecting property within unincorporated areas of the Vigo County; the corporate boundaries of the Town of Riley, the corporate boundaries of the Town of Seelyville, or the corporate boundaries of the Town of West Terre Haute.

#### b. Membership

The Vigo County Board shall consist of five (5) members appointed as follows:

- i. Three (3) citizen members appointed by the Board of Commissioners of Vigo County, of whom one (1) must be a member of the Commission and two (2) must not be members of the Plan Commission;
- ii. One (1) citizen member appointed by the Vigo County Council, who must not be a member of the Plan Commission; and

- iii. One (1) citizen member appointed by the Plan Commission, who must be a member of the Plan Commission other than the member appointed under (i) above.
- iv. All members of the Vigo County Board of Zoning Appeals must be residents of the unincorporated areas of Vigo County, the corporate boundaries of the Town of Riley, the corporate boundaries of the Town of Seelyville, or the corporate boundaries of the Town of West Terre Haute.
- v. Each appointing authority may, at any time, appoint one (1) alternate member for each member that it has appointed who shall be available to replace any member who becomes disqualified under IC 36-7-4-909. The terms of all alternate members shall expire on the date of expiration of the term of the member for whom they serve as an alternate.

## 2. City of Terre Haute Board of Zoning Appeals

### a. Establishment

The City Board of Zoning Appeals shall have exclusive territorial jurisdiction over all matters properly before the City Board involving or affecting property within the corporate boundaries of the City of Terre Haute.

### b. Membership

The City Board shall consist of five (5) members appointed as follows:

- i. Three (3) citizen members appointed by the Mayor of the City of Terre Haute, of whom one (1) must be a member of the Plan Commission and two (2) must not be members of the Plan Commission;
- ii. One (1) citizen member appointed by the Common Council of the City of Terre Haute, who must not be a member of the Plan Commission; and
- iii. One (1) citizen member appointed by the Plan Commission, who must be a member of the Plan Commission other than the member appointed under (i) above.
- iv. All members of the City Board must be residents within the corporate boundaries of the City of Terre Haute.
- v. Each appointing authority may, at any time, appoint one (1) alternate member for each member that it has appointed

who shall be available to replace any member who becomes disqualified under IC 36-7-4-909. The terms of all alternate members shall expire on the date of expiration of the term of the member for whom they serve as an alternate.

c. Applicable to Vigo County and City Boards of Zoning Appeals

i. Organization

At the first meeting of each year, each Board shall elect a Chairman and a Vice Chairman from among its members. The Vice Chairman may act as Chairman during the absence or disability of the Chairman. Each Board may appoint and fix the duties of a Secretary.

ii. Procedure

(1) Rules of Procedure

Each Board shall adopt rules concerning the filing of appeals, applications for variances and special exceptions, the giving of notice, the conduct of hearings and other subjects, or other matters as required or permitted by State law.

(2) Meetings and Records

Each Board shall, keep minutes of its proceedings, prepare written findings of fact in all cases heard by it, record the vote on all actions taken by it, and record the disqualification, abstention, or failure to vote of each member on all actions taken by it. All minutes and records shall be filed in the office of the appropriate Board and shall be public records.

(3) Findings and Decisions

All decisions of each Board on all matters within their respective jurisdiction and authority shall be in writing and supported by specific findings of fact pertaining to the matter under consideration or as required by State law.

(4) Appeal to Court

A decision of each Board is subject to review by certiorari as prescribed by State law.



## iii. Duties and Powers

### Each Board:

- (1) Shall hear and determine appeals from and review any order, requirement, decision, or determination made by the Director or Zoning Administer as applicable, a staff-member, hearing officer or administrative official under this Ordinance;
- (2) Shall hear and determine appeals from and review any order, requirement, decision, or determination made by an administrative board or other body except the Plan Commission in relation to the enforcement of this Ordinance; or
- (3) Shall hear and determine appeals from and review any order, requirement, decision, or determination made by an administrative board or other body except the Plan Commission in relation to the enforcement of those provisions of this Ordinance requiring the procurement of an Improvement Location Permit or Certificate of Occupancy (IC 36-7-4-918).
- (4) Shall hear, and approve or deny, all conditional uses as specified in Chapter 5 of this Ordinance.
- (5) Shall hear, and approve or deny, all variances from development standards of this Ordinance. A variance from development standards may be approved only upon written determination that:
  - (a) The approval will not be injurious to the public health, safety, morals and general welfare of the community;
  - (b) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner; and
  - (c) The strict application of the terms of this Ordinance would result in an unnecessary hardship in the use of the property.
- (6) Each Board may impose conditions as a part of its approval of any conditional use to protect the public

health, and for reasons of safety, comfort and convenience as set forth in Chapter 5.

- (7) Each Board shall exercise all powers conferred on it by State law, local ordinance, or rule in the manner so prescribed. This Section shall not be construed as a limitation on such powers.

iv. Commitments

Each Board may permit or require the owner of a parcel of property to make a written commitment concerning the use or development of that parcel in the case of a petition for a conditional use or a variance from the terms of this Ordinance. All such commitments shall be in recordable form and shall be recorded in the office of the Vigo County Recorder and shall take effect upon the granting of the conditional use or variance. Unless modified by a decision of the applicable Board, a recorded commitment shall be binding on the owner of the parcel, each subsequent owner, and each other person acquiring an interest in the parcel. A commitment may be modified or terminated only by a decision of the applicable Board made at a public hearing after notice. By permitting or requiring commitments, the Board does not obligate itself to approve or deny any request. This Section does not affect the validity of any covenant, easement, equitable servitude, or other land use restriction created in accordance with law.

v. Conflict of Interest

No member of either Board shall participate in a hearing or decision of the Board concerning a matter in which he has a direct or indirect financial interest or, which for any other reason brought to the attention of the applicable Board, results in his disqualification either by himself or by the applicable Board.

Each Board shall enter in its record the fact that a regular member has such a disqualification and the name of the alternate member, if any, who participates in the hearing or decision.

## C. LEGISLATIVE

### 1. Vigo County Board of Commissioners

The Vigo County Board of Commissioners shall exercise the legislative body function for planning actions for the unincorporated areas of Vigo County. These actions include the following:

- a. Consideration of comprehensive plans;
- b. Consideration of new or amended text to the Unified Development Ordinance applicable to the unincorporated areas;
- c. Consideration of zone map amendments (rezonings) in the unincorporated areas; and
- d. Consideration of planned unit developments in the unincorporated areas.

## 2. City of Terre Haute

- a. The Common Council of the City of Terre Haute shall exercise the legislative body function for planning actions within the corporate boundaries of the City of Terre Haute. These actions include the following:
  - i. Consideration of comprehensive plans;
  - ii. Consideration of new or amended text to the Unified Development Ordinance applicable to the land within the corporate boundaries;
  - iii. Consideration of zone map amendments (rezonings) in the corporate boundaries;
  - iv. Consideration of planned unit developments in the corporate boundaries; and
  - v. Approval of subdivision variance requests within the corporate boundaries.
- b. Each zoning ordinance adopted that is applicable within the corporate boundaries of the City of Terre Haute may be vetoed by the Mayor of the City of Terre Haute.
  - i. The Mayor must exercise the veto:
    - (1) In a case in which the Common Council adopts (as certified) the proposal, within ten (10) days after the Common Council acts;
    - (2) In a case in which the Common Council amends the proposal and the Plan Commission approves the amendment or fails to act, within fifty-five (55) days after the proposal is returned to the Plan Commission for its consideration;
    - (3) In a case in which the Common Council amends the proposal and confirms its original amendment by another vote, within ten (10) days after the Common Council confirms its original amendment; or
    - (4) In a case in which the proposal is to take effect because of Common Council's failure to act within a period of days, within ten (10) days after the expiration of that period.

- ii. If a city zoning ordinance is not vetoed, it takes effect without any action being taken by the Mayor of the City.
- iii. If a city zoning ordinance is vetoed, it is defeated unless the Common Council, at its first regular or special meeting after receiving the veto message, passes the ordinance over the veto by a two-thirds (2/3) vote of the elected members.

### 3. Town Councils of Riley, Seelyville, and West Terre Haute

The Town Councils of the Towns of Riley, Seelyville, and West Terre Haute shall exercise the legislative body functions for planning actions within their respective jurisdictions. No town may exercise jurisdiction over any area outside their corporate boundaries. Planning actions include:

- a. Consideration of comprehensive plans;
- b. Consideration of new or amended text to the Unified Development Ordinance applicable to the land within the corporate boundaries;
- c. Consideration of zone map amendments (rezonings) in the corporate boundaries; and
- d. Consideration of planned unit developments in the corporate boundaries.

## I.III NON-CONFORMING SITUATIONS

### A. GENERAL

1. Within the zoning districts established by this Ordinance, there exist:
  - a. Non-conforming lots of record;
  - b. Non-conforming buildings or structures; and
  - c. Non-conforming uses of land.
2. These uses were legally established prior to the effective date of this Ordinance, but would be prohibited, regulated or restricted under the provisions of this Ordinance.

It is the intent of this Ordinance to permit these legally established non-conforming lots, structures and uses to continue until they are removed, but not to encourage their survival. It is further the intent of this Ordinance that legally established non-conforming structures and uses shall not:

- a. Be enlarged upon, expanded or extended; or
  - b. Be used as grounds for adding other structures or uses which are prohibited elsewhere in the same district. In addition, non-conforming lots of record, non-conforming buildings or structures, and non-conforming uses of land that are either illegal or not legally established on the effective date of this Ordinance shall not become legally established or validated by virtue of the enactment of this Ordinance.
3. Incompatibility of Non-Conforming Uses

Legally established non-conforming uses are declared by this Ordinance to be incompatible with permitted uses in the zoning district in which such legally established non-conforming use is located. A legally established non-conforming use of a building or structure, or a legally established non-conforming use of land, shall not be extended, expanded or enlarged after the effective date of this Ordinance.

4. Avoidance of Undue Hardship

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans for or construction of any building or structure, or the designation of use of any building or structure, for which a permit has been

properly issued prior to the effective date of this Ordinance; provided that the construction of such building or structure is commenced within one (1) year of such effective date and diligently prosecuted to completion; and provided further however that such construction shall be completed within two (2) years of the issuance of said permit.

5. Discontinuation of Non-Conformity

If any legally established non-conforming use of land is discontinued or abandoned for more than six (6) months (except when government action impedes access to the premises), any subsequent use of such land shall conform to the provisions of this Ordinance.

6. Special Exceptions Not Non-Conforming Uses

Any use, which is permitted as a conditional use in a district under the terms of this Ordinance (other than a change through Board action from a non-conforming use to another use not generally permitted in the district) shall not be deemed a non-conforming use in such district, but shall without further action be considered a conforming use.

B. NON-CONFORMING LOTS

Any legally established lot recorded or any legally established platted lot recorded prior to the effective date of this Ordinance, having less than the required minimum lot area or minimum lot width required by the applicable zoning district regulations of this Ordinance, shall be deemed a permitted exception to such minimum lot area or minimum lot width and may be used for any use permitted within the applicable zoning district in which such lot is located provided that:

1. All other development standards are met; and
2. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership.
3. If two or more legally established lots of record, or a combination of legally established lots of record and portions of legally established lots of record with continuous frontage in single ownership, are of record on the effective date of this Ordinance, the lots involved shall be considered to be a single lot for the purposes of this Ordinance and no portion of such single lot shall be used or sold in a manner which increases non-compliance with minimum lot width and minimum lot area requirements established by this Ordinance, nor shall any division of any such single lot be made which creates a lot with a minimum lot width or minimum lot area below the requirements stated in this Ordinance. Nothing herein shall be construed to require a combination of lots of record beyond that which is

necessary to create lots in compliance with the minimum standards of the applicable zoning district.

## C. NON-CONFORMING STRUCTURES AND BUILDINGS

Where a legally established non-conforming building or structure exists on the effective date of this Ordinance that could not be built under the terms of this Ordinance by reason of restrictions on maximum gross floor area; maximum lot coverage; building height limitations; minimum front, side and rear setbacks and yards; location on the lot; bulk; or other provisions of this Ordinance applicable to the building or structure, such building or structure may continue to exist so long as it remains otherwise lawful, subject to compliance with the following provisions:

1. Such legally established non-conforming building or structure may not be enlarged, expanded or altered in a way which increases its non-conformity, but such building or structure may be altered so as to decrease the extent of nonconformity;
2. Should such legally established non-conforming building or structure, or legally established non-conforming portion of a building or structure, be damaged or destroyed by any means to the extent of more than fifty percent (50%) of the gross floor area of the building or structure immediately prior to the damage or destruction, said building or structure shall not be reconstructed except in conformity with the provisions of this Ordinance; and
3. Should such building or structure be moved for any reason for any distance whatsoever, such building or structure shall thereafter conform to the provisions of this Ordinance.
4. On any legally established non-conforming building or structure, or portion of a building or structure, containing a legally established non-conforming use, work may be done on repair or replacement of non-bearing walls, fixtures, wiring or plumbing, provided that the cubic feet content existing when it became non-conforming shall not be increased. Nothing in this Section shall be deemed to prevent the strengthening, repairing or restoring to safe condition of any building or structure, or part thereof, declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

If a legally established non-conforming building or structure or portions of a building or structure containing a legally established non-conforming use becomes unsafe or unlawful by reason of physical condition and is razed, such building or structure shall not thereafter be rebuilt except in conformity with the provisions of this Ordinance.



## D. NON-CONFORMING USES

Where legally established non-conforming uses exist on the effective date of this Ordinance which would not be permitted by the provisions of this Ordinance, such uses may be continued so long as they remain otherwise lawful provided that:

1. Such legally established non-conforming uses shall not be enlarged, expanded, increased or extended to occupy a greater area of land than was occupied on the effective date of this Ordinance;
2. Such legally established non-conforming uses shall not be moved in whole or in part to any portion of the lot or parcel other than that occupied by such uses on the effective date of this Ordinance; and
3. No additional building or structure shall be erected in connection with such legally established non-conforming use of land.
4. If use changes, such use must be established as a conforming use.

## I.IV ENFORCEMENT

### A. RESPONSIBILITY FOR ENFORCEMENT

1. Subject to obtaining the consent of the owner / occupant of a premise, the Director or Zoning Administrator, as applicable, may enter upon any premises at any reasonable time for the purpose of inspecting all lands located within their jurisdiction and carrying out their duties in the enforcement of this Ordinance. In no event shall the Director or Zoning Administrator have the right to enter residential structures or other structures not open to the public without the permission of the owner / occupant or an administrative search warrant first obtained. Prior to entering such residential structures or other structures not open to the public, the Director or Zoning Administrator shall advise the owner / occupant that such owner / occupant is not required to grant entry without the presentation of an administrative search warrant.
2. In the event that access is denied by the owner / occupant of a premises, the Director or Zoning Administrator may make application to any judge of the Municipal, Circuit or Superior Courts of Vigo County, Indiana, for the issuance of an administrative search warrant. Such application shall identify the premises upon which entry is sought and the purpose for which entry is desired. The application shall state the facts giving rise to the belief that a condition, which is in violation of this Ordinance exists on the premises, or that such a violation in fact exists and must be abated, and that the condition or violation is not a lawful nonconforming use to the best of the affiant's belief. Any warrant issued pursuant to such application shall order such owner/occupant to permit entry to the Director or Zoning Administrator for the purposes stated therein.

### B. VIOLATIONS

Each of the following shall be deemed civil zoning violations, which may be enforced by the designated enforcement entity in accordance with the provisions set forth in (D) below:

1. The location, erection, or maintenance of any sign not specifically permitted by this Ordinance;
2. The failure to obtain an Improvement Location Permit when one is required by the terms and provisions of this Ordinance;
3. The outdoor storage of junk, trash or debris in any zoning district the provisions of which do not specifically permit such a use;

4. The storage of inoperable motor vehicles or motor vehicle parts in any zoning district the provisions of which do not specifically permit such a use;
5. The parking or storage in any zoning district, the provisions of which do not specifically permit such a use, of any motor vehicle used or designed:
  - a. For use in pulling, towing, hauling, transporting; or,
  - b. As a temporary or permanent base, platform or support for equipment, machinery, materials or other goods (including but not limited to stake body trucks, dump trucks, trucks or tractors having dual rear wheels or more than two axles, semi-trailer tractors, semi-trailers and trailers having dual rear wheels or more than one axle or having an overall length of more than twelve feet). However, this provision does not apply to motor vehicles which do not exceed three-quarter ton load classification in size and which are the primary source of transportation for an individual whose primary place of residence is the particular dwelling at which the motor vehicle is parked on a regular basis.
6. The outdoor storage or display of merchandise or goods in any zoning district the provisions of which do not specifically permit such a use or in violation of the zoning district development standards regulating such a use;
7. The conduct of any activity in a residential zoning district that is not specifically enumerated as a permitted primary or accessory use in that zoning district, or which activity has not been legally established by a currently valid variance, special exception, or other approval grant;
8. Failure to comply with zoning district development standards, including but not limited to landscaping, paving or striping of parking areas, minimum parking space requirements, trash dumpster enclosure, fencing or screening requirements;
9. The failure to comply with the terms, provisions, conditions or commitments of a variance grant or special exception; the terms of commitments made in connection with the approval of a development plan filed in connection with a petition for zone map amendment; or other approval grant authorized by this Ordinance;
10. The violation of a Stop-Work Order issued pursuant to (C.1.) below; and,
11. Failure to comply with any other provisions of this Ordinance.

## C. REMEDIES

### 1. Stop-Work Order

The Director or Zoning Administrator is empowered to issue a Stop-Work order requiring the suspension of land improvement of any kind when any of the following circumstances exist:

- a. Site improvement is occurring without an Improvement Location Permit or any other permit required by this Ordinance having first been obtained; or,
  - b. Site improvement is occurring in violation of the terms, conditions or provisions of this Ordinance; the terms, provisions, conditions or commitments of a variance grant or conditional use; the terms of commitments made in connection with the approval of a development plan filed in connection with a petition for zone map amendment; or, other approval grant authorized by this Ordinance.
2. The Stop-Work order shall be posted on the property in a conspicuous place, or personally delivered to the owner, possessor, or person in charge and state the conditions under which construction or other activity may be resumed. The Director or Zoning Administrator shall meet with the recipient of a Stop-Work Order upon request to explain the conditions under which construction or other activity may be resumed.
  3. The appropriate enforcement authority may institute a lawsuit in a court of competent jurisdiction to enforce the provisions of a Stop-Work Order.

## D. ENFORCEMENT PROCEDURES

1. Any person who commits a civil zoning violation as defined in (B) above may be issued a citation by the Director or Zoning Administrator.
2. Subject to the provisions of (3) below, each day a civil zoning violation remains uncorrected is a distinct and separate civil zoning violation subject to an additional citation and fine in the amount prescribed by ordinance.
3. Procedures
  - a. The Director or Zoning Administrator may issue a citation to a person who commits a civil zoning violation or allows a civil zoning violation to be committed on real estate in which the person has a possessory interest. The citation may be served by personal service, by certified mail, by First Class U.S. Mail, or by placement in a conspicuous place on the property

where the violation occurs and shall serve as notice that a civil zoning violation has been committed.

- b. No citation shall be issued unless the person who commits a civil zoning violation or allows a civil zoning violation to be committed on real estate in which the person has a possessory interest has been served with a notice to correct the civil zoning violation at least ten (10) days before the issuance of a citation to allow said person an opportunity to correct the violation and to come into compliance with the prescribed zoning ordinance or regulation. However, the service of a notice to correct the civil zoning violation is not required before issuing a citation for violation of a Stop-work order issued pursuant to this Section.
- c. If a person who is served with a notice of civil zoning violation or receives a citation elects to file a land use petition to correct such violation, then the person must indicate the intent to file such a land use petition by written notification to the citing authority. A person shall have ten (10) days from service of a notice of civil zoning violation or receipt of citation to file the land use petition. During the pendency of said land use petition the issuance of additional citations and additional monetary fines as prescribed in the Official Schedule of Fees shall be stayed. A person who files the land use petition within said time period shall pursue the land use petition in an expeditious and diligent manner. If the land use petition is denied, withdrawn or dismissed and the civil zoning violation continues, then a lawsuit may be commenced by the appropriate enforcement official as provided by applicable laws.

#### 4. Trial for Civil Zoning Violations

- a. A person who receives a citation for a civil zoning violation must appear in the appropriate court on the designated hearing date. The citation shall serve as notice of the person's hearing date. The issuance of additional citations and additional monetary fines as prescribed in the Official Schedule of Fees shall be stayed upon issuance of the citation. The citation shall be given at least five (5) days before the hearing date. A lawsuit may be commenced by the appropriate enforcement official as provided by applicable law to enforce the terms and provisions of this Ordinance.
- b. If a person who receives a citation fails to:
  - i. Pay the assessed fine within the time prescribed by the judge;
  - ii. File a land use petition as prescribed above; or,
  - iii. Fails to appear at his designated hearing, the appropriate enforcement official may file a lawsuit as provided by

applicable law to enforce the terms and provisions of this Ordinance.

- c. Seeking a civil penalty as authorized in this Section does not preclude the designated enforcement entity from seeking alternative and additional relief from the Court in the same action, or from seeking injunctive relief or any other remedy in a separate action for the enforcement of IC 36-7-4 or any Ordinance adopted or action taken under IC 36-7-4.