

CHAPTER 1
PROVISIONS OF COMMON APPLICABILITY

Section 1.01 Title.

This Ordinance shall hereinafter be known and cited as "Town of Osceola Zoning Ordinance", and hereinafter referred to as the "Ordinance".

Section 1.02 Statutory Authority.

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any provision of this Ordinance refers to or cites a section of the Indiana Code, and that section is later amended or superseded, this Ordinance shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

Section 1.03 Purpose.

In adopting this Ordinance, the *Council* has given reasonable consideration to, among other things: the *Comprehensive Plan*; current conditions and the character of current *structures* and *uses* in each *district*; the most desirable *use* for which the land in each *district* is adapted; the conservation of property values throughout the *Town*; and responsible development and growth of the *Town*, and hereby adopts this Ordinance for the purpose of:

- (A) Securing adequate light, air, convenience of access, and safety from fire, flood, and other danger;
- (B) Lessening or avoiding congestion in public ways;
- (C) Promoting the public health, safety, comfort, morals, convenience, and general welfare;
- (D) Guiding the future development of the *Town*;
- (E) Ensuring that residential areas provide healthful surroundings for family life;
- (F) Ensuring that the needs of business and industry be recognized in future growth;

Chapter 1
Provisions of Common Applicability

- (G) Ensuring that growth be commensurate with and promote the efficient and economical use of public funds; and
- (H) Otherwise accomplishing the purposes of Indiana Code 36-7-4 *et seq.*

Section 1.04 Findings for Adoption of this Ordinance.

The *Council*, in adopting this Ordinance, finds that the Ordinance has paid reasonable regard to:

- (A) The general policies and patterns of development set out in the *Comprehensive Plan* for the *Town*;
- (B) Current conditions and the character of current *structures* and *uses* in each *district*;
- (C) The most desirable *use* for which the land in each *district* is adapted;
- (D) The conservation of property values throughout the *Town*; and,
- (E) The responsible development and growth of the *Town*.

Section 1.05 Effective Date.

This Ordinance shall be effective at 12:01 a.m., on January 1, 2015.

Section 1.06 Prior or Conflicting Ordinances.

The Zoning Ordinance for the Town of Osceola, St. Joseph County, Indiana, as previously adopted by the *Council* on the 21st day of February, 1994, as Ordinance No. 4-1994, and all amendments thereto, are repealed as of the effective date of this Ordinance.

Section 1.07 Separability.

It is hereby declared to be the intention of the *Council* 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.

Section 1.08 Eminent Domain or Use.

Nothing in this Ordinance or in any rules, regulations, or orders issued pursuant to this Ordinance shall be deemed to restrict or regulate or to authorize any unit of government, legislative body, *Plan Commission*, or *Board of Zoning Appeals* now or hereafter established, to restrict or regulate:

- (1) United States of America. The exercise of the power of eminent domain by the United States of America or by any department or agency of the United States of America, or the use of property owned or occupied by the United States of America or any department or agency of the United States of America; or,
- (2) State of Indiana. The exercise of the power of eminent domain by the State of Indiana or by any agency of the State of Indiana, or the use of property owned or occupied by the State of Indiana or any agency of the State of Indiana. (*Similar provisions, see I.C. 36-7-4-1104*).

Section 1.09 Interpretation of this Ordinance / Conflict with other Ordinances.

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, comfort, morals, convenience, and the general welfare of the public. In the case of any conflict or inconsistency between two (2) or more provisions of this Ordinance (e.g., the restrictions set forth in an overlay *district* versus the restrictions set forth in a primary *district*) or any other ordinance of the *Town*, the provision which imposes the greater or higher or more restrictive standard of performance shall control.

Section 1.10 Jurisdiction.

Upon both adoption of this Ordinance by the *Council* and the effective date of this Ordinance, the *Area Plan Commission* shall be the duly authorized *Plan Commission* for the incorporated areas of the *Town* pursuant to the Area Planning Law of the Indiana Code, and this Ordinance shall apply to all real property located within the corporate boundaries of the *Town*.

Section 1.11 Subdivision of Land.

The *subdivision* of land may occur in any and all *districts* established by this Ordinance. Whenever a *subdivision* occurs, the rules, regulations and procedures of the *Town* Subdivision Control Ordinance, or any subsequently adopted replacement Subdivision Control Ordinance for the *Town* shall apply.

Chapter 1

Provisions of Common Applicability

Section 1.12 Scope and Application.

Except as expressly provided otherwise in this Ordinance:

- (A) No person may use or occupy any land, building, structure or improvement or authorize or permit the use or occupancy of any land, building, structure or improvement under his or her control except in accordance with the applicable provisions of this Ordinance;
- (B) No land, building, structure or improvement shall be used and no building, structure or improvement shall be erected, reconstructed or structurally altered, which is arranged, intended or designed to be used for any purpose other than a *use* which is permitted in the *district* in which such land, building, structure or improvement is located; and
- (C) No building, structure or improvement shall be placed, erected, moved or structurally altered with respect to height, area, bulk, or setback except in compliance with the regulations of this Ordinance.

Section 1.13 Private Provisions.

The provisions of this Ordinance are not intended to nullify, abolish or repeal any easement, covenant or other private agreement or restriction.

Section 1.14 Determination of Land Uses Not Listed in this Ordinance.

- (A) It is recognized that this Ordinance may require interpretation to assign all possible *uses* to individual *districts*. Therefore, any *use* which is not specifically set forth in this Ordinance shall be reviewed by the *Zoning Administrator* for consistency with the intent set forth in each *district* and for compatibility with use characteristics typical of *uses* permitted within those *districts*. Based upon this review, the *Zoning Administrator* shall determine the appropriate *district* for any *use* which is not specifically set forth herein.
- (B) In case of disagreement with the determination of the *Zoning Administrator* in assigning a *use* to an appropriate *district*, any aggrieved party may file an appeal with the *Board of Zoning Appeals* pursuant to the provisions of Section 15.03 Board of Zoning Appeals, of this Ordinance.
- (C) If it is determined by the *Zoning Administrator* that a particular *use* is not permitted in any residential, office, commercial, industrial or other *district* provided for in this Ordinance, and no appeal of the *Zoning Administrator's* decision is filed with the *Board of Zoning Appeals* pursuant to the provisions of Section 15.03 Board of Zoning Appeals, of this Ordinance; or it is determined upon appeal that a particular *use* is not permitted in any residential, office, commercial, industrial or other *district* provided for in this Ordinance, then such *use* may be deemed to require the *PUD district* and shall be considered to be a

permitted *use* only in a *PUD district* in which such *use* is specifically included and described in the *PUD district* Ordinance.

Section 1.15 Saving Provision for Pending Enforcement Actions.

Except as shall be expressly provided for in this Ordinance, the adoption of this Ordinance shall not:

- (A) Nullify or make void any action pending under, or by virtue of, any prior Zoning Ordinance or Subdivision Control Ordinance;
- (B) Discontinue, nullify, void, abate, modify or alter any penalty accruing or about to accrue under, or by virtue of, any prior Zoning Ordinance or Subdivision Control Ordinance;
- (C) Affect the liability of any person, firm, or corporation under, or by virtue of, any prior Zoning Ordinance or Subdivision Control Ordinance;
- (D) Waive any right of the *Town* under any section or provision of any prior Zoning Ordinance or Subdivision Control Ordinance; or,
- (E) Vacate or annul any rights obtained by any person, firm, or corporation by lawful action of the *Town* under, or by virtue of, any prior Zoning Ordinance or Subdivision Control Ordinance.

Section 1.16 Transition Rules.

- (A) Pending Permit Applications (per IC 36-7-4-1109).
 - (1) As used in this section, the term “Zoning Approval or Permit” shall include the following: an *improvement location permit*; a *building permit*; a *certificate of occupancy*; approval of a site-specific *development plan*; approval of a primary plat or secondary plat; approval of a *conditional use, special exception use*; or, approval of a *planned unit development*.

Chapter 1 Provisions of Common Applicability

- (2) For any full and complete application for a zoning approval or permit required by the prior existing Zoning Ordinance of the *Town* and which application is pending on the effective date of this Ordinance, the granting of said zoning approval or permit, and the granting of any secondary, additional, or related permits or approvals required from the *Town* with respect to the general subject matter of the application of said permit, are governed for at least three (3) years after the date of application by the statutes, ordinances, rules, *development standards*, and regulations in effect and applicable to the real estate when the application is filed, even if: before the issuance of the permit or while the permit approval process is pending; or, before the issuance of any secondary, additional, or related permits or approvals or while the secondary, additional, or related permit or approval process is pending, the statutes, ordinances, rules, *development standards*, or regulations governing the granting of the permit or approval are changed by the general assembly or the *Council*. However, this subsection shall not apply if the development or other activity to which the permit relates is not completed within seven (7) years after the development or activity is commenced.

(B) Zone Map Amendments.

Any application for zone map amendment which has been filed with the *Council* and which application is full and complete under the provisions of the prior existing Zoning Ordinance of the *Town* shall be allowed to continue to be processed to completion pursuant to the terms and conditions of the prior existing Zoning Ordinance of the *Town*, provided, however:

- (1) If the proposed *use* would no longer be permitted in the proposed *district* as a result of changes to that *district* resulting from the adoption of this Ordinance, such application shall be deemed amended to request the *district* of this Ordinance in which the proposed *use* is first permitted; or,
- (2) If the proposed *district* would no longer be in existence as a result of the adoption of this Ordinance, such application shall be deemed to be amended to request the *district* of this Ordinance which is most comparable to the zoning classification requested in such application for zone map amendment.

(C) *Special Exception Use; Variance of Development Standards*

Any application before the *Board of Zoning Appeals* (i.e., *special exception use* or *variance of development standards*) which has been filed with the *Board of Zoning Appeals*, and which application is full and complete under the provisions of the prior existing Zoning Ordinance of the *Town*, shall be allowed to continue to be processed to completion pursuant to the terms and conditions of the prior existing Zoning Ordinance of the *Town*. However:

- (1) If such application is no longer required by the terms of this Ordinance, such application shall be considered dismissed for lack of jurisdiction; or,
- (2) If the proposed *use* or development requires additional approvals from the *Board of Zoning Appeals* pursuant to the terms and conditions of this Ordinance (and which additional approvals from the *Board of Zoning Appeals* were not required by the terms and conditions of the prior existing Zoning Ordinance of the *Town*), the application shall be deemed amended to include only those additional approvals which are minimally required and within the jurisdiction of the *Board of Zoning Appeals* to approve for the proposed *use* or site plan for the development.

Section 1.17 Amendments to this Ordinance.

In its continuing administration of the purposes set forth in Section 1.03 Purpose, above, the *Council* may find it reasonable and necessary to propose and adopt amendments to the text of this Ordinance or determine changes to the zone maps incorporated into this Ordinance. All such amendments shall be considered and adopted in compliance with Indiana Code 36-7-4-600 *et seq.*, the provisions of this Ordinance, and any applicable Rules of Procedure subsequently adopted by the *Area Plan Commission* or the *Council* governing such procedures.

Section 1.18 Compliance Required for Use and Development of Real Property.

Compliance with the terms and provision of this Ordinance shall be a prerequisite for the use and development of real property within the *Town*. Failure to comply with the terms and provisions of this Ordinance shall be deemed to be a civil zoning violation enforceable by the *Zoning Administrator*, as provided for in Indiana Code 36-7-4 *et seq.*, and Chapter 17 Enforcement, of this Ordinance.

Section 1.19 Exemptions for Transportation, Communication, and Utility Lines.

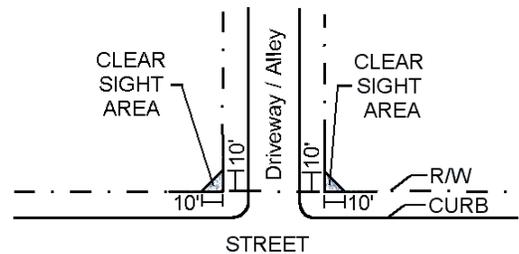
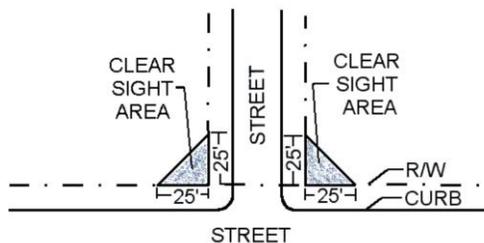
- (A) Service easements, including but not limited to those providing for: roadways; railroad lines; pipelines; electric power lines, conduits or systems; telephone lines, conduits or systems; cable television lines, conduits or systems; water mains, lines valves or fire hydrants; sanitary sewer mains, lines, laterals, manhole structures or lift stations; drainage or storm sewer inlets, pipes or roof drains; and, similar and comparable utility services and facilities, shall be exempt from the provisions of this Ordinance.
- (B) Bus stations, park and ride facilities, railway terminals, gas storage tanks, power stations, utility substations, water treatment plants, pumping stations, water towers, sewage treatment plants and other facilities which generate, create or process such transportation, communication, or utility services, shall not be exempt from the provisions of this ordinance, and therefore shall be subject to all use and *development standards* regulations of this Ordinance.

Chapter 1

Provisions of Common Applicability

Section 1.20 Clear Sight Area Requirements.

- (A) No *building, structure* or improvement, including landscaping, shall be erected, placed, planted or maintained so as to interfere with a clear sight area located between the heights of three (3) feet and ten (10) feet above the crown of a *street, driveway or alley*.
- (B) A clear sight area shall be established for all *streets*, whether public or private, in one of the following manners:
- (1) At the intersection of streets, clear sight areas are formed at each corner by the *street right-of-way* lines and a line connecting points on the *right-of-way* lines located twenty-five (25) feet away from the intersection of such *street right-of-way* lines. In the case of a round or corner-cut *right-of-way*, the measurement shall be taken from the intersection of the *right-of-way* lines extended; or,
 - (2) At the intersection of a *street* with a driveway or *alley*, clear sight areas shall be formed by the intersection of the *street right-of-way* line and the driveway surface edge or the *right-of-way* of the *alley* and a line connecting points ten (10) feet from the intersection of such *street right-of-way* line and the driveway surface edge or *alley right-of-way*.



Section 1.21 Number of Buildings on a Lot

In all *Zoning_Districts* not more than one (1) principal detached single family dwelling, where permitted, shall be located on a lot.

Section 1.22 Access to Lots.

(A) Access to a *lot* or parcel shall be from a dedicated, improved *public right-of-way*. A *lot* or *parcel* without *frontage* along a dedicated, improved *public right-of-way* shall be developed under one (1) of the following:

- (1) Only after obtaining a *frontage* variance from the *Area Board of Zoning Appeals* for those *lots* without *frontage* on a *public street*; or
- (2) Through a *condominium* regulated by I.C. 32-25; or
- (3) As part of multifamily *zoning district*; or
- (4) As part of *planned unit development*.

Section 1.23 Requirements for All Private Streets and Private Alleys.

(A) All *private streets* and *private alleys*, when specifically authorized for use by the *Town* through grant of a *variance*, development incentive, plat or *subdivision* waiver, shall be developed to the following standards:

- (1) Pavement Width for *Private Streets*. Minimum pavement width for that portion of a *private street* available for through traffic (i.e., exclusive of *parking spaces*):
 - (a) Residential *Districts*:
 1. 1 way traffic – 12'
 2. 2 way traffic – 24'
 - (b) Office, Commercial and Industrial *Districts*:
 1. 1 way traffic – 18'
 2. 2 way traffic – 36'
- (2) Pavement Width for *Private Alleys*. Minimum pavement width for that portion of a *private alley* available for through traffic (i.e., exclusive of *parking spaces*):
 - (a) Residential *Districts* – 12'

Chapter 1 Provisions of Common Applicability

- (b) Commercial *Districts* or Industrial *Districts* – 16'
- (B) Depth and Materials. Minimum pavement depth and materials for that portion of a *private street* or *private alley* available for through traffic as noted above, shall be as required by the *Town* for *public streets* or *public alleys*. Curb sections shall be as required by the *Town* for *public streets* or *public alleys*.
- (C) Emergency Vehicles. The geometric design of *private streets* or *private alleys* shall provide for the through movement or turn-around of emergency vehicles. Turn-around design may include cul-de-sac, hammerhead or other design approved by the *Town*.
- (D) Maintenance / Services. Prior to the issuance of an *improvement location permit* or obtaining secondary plat approval, the developer or subdivider shall file documentary assurances with the *Town* that all lots served by the *private streets* or *private alleys* shall be provided with the following services: regular trash pick-up; leaf pick-up; snow removal; daily mail delivery service; roadway maintenance and repair, including, but not limited to, driving surface, roadway subgrade, subsurface drainage, roadside drainage, curbs, sidewalks, street lights, street name signs, traffic control signs, and traffic control signals; and, powers to enforce speed control and parking regulations. Such services shall be provided in accordance with the specifications approved by the *Town*, which shall include the establishment of a maintenance fund or escrow account by the developer or subdivider, which may be supplemented by regular or special assessments against each lot owner provided such assessments are at reasonable and non-discriminatory rate of charge. Such documentary assurances shall be incorporated into the applicable final plat that is recorded in the Office of the Recorder of St. Joseph County, Indiana, or otherwise provided for through legally binding perpetual agreements as approved by the *Town*.

Section 1.24 Additional Setback Provisions

- (A) In the case where the thoroughfare plan does not include a proposed right-of-way, or where the existing right-of-way is greater than the proposed right-of-way, the existing right-of-way line shall be used for setback measurement.
- (B) The minimum front yard and minimum building setback from the right-of-way line of a *private street* shall be the same as for all other streets in the applicable *district*.
- (C) In any block in any *district* contained in this Ordinance in which an existing front yard setback is established by existing, legally established *nonconforming buildings* or *structures* on more than sixty percent (60%) of the total number of *lots* within the same *block face* fronting on the same *public street*, the minimum front yard setback for any new *building*, *structure* or addition along such *block face* shall be the average of such established front yards, if such average dimension is less than the minimum *front yard setback* established by this Ordinance.

- (D) That portion of a *double frontage lot* which abuts any perimeter *street* in which a "non-access easement" is provided for by a properly approved and recorded plat, shall be subject to *setback* and landscaping requirements of this Ordinance applicable to minimum rear *yards*.

Section 1.25 Exemption for Anti-Terrorism Devices and Portable Towers.

Sensors and special devices specifically designed to monitor air quality and to alert governmental authorities of biological, chemical or nuclear attack(s) shall be allowed on any *building or structure*, including *telecommunications towers*, subject to the final review of the *Zoning Administrator*. Integrated portable tower systems, which are specifically designed to monitor air quality and which may alert governmental authorities of biological, chemical or nuclear attack(s) may be permitted on an emergency basis, subject to the final review of the *Zoning Administrator* with regard to location(s) and duration.

Section 1.26 Environmental Performance Standards.

All *uses* in existence prior to the effective date of this Ordinance, or established after the effective date of this Ordinance in any *District*, shall comply with the performance standards of the applicable municipal, state or federal regulations pertaining to: vibration; smoke, dust and particulate matter; noxious matter; odor; noise; heat; glare; or, waste, and shall be subject to enforcement action by the applicable municipal, state or federal agency responsible for monitoring and enforcing such regulations.

Section 1.27 Height Regulations for Roof Mounted or Roof Piercing Structures.

The following regulations shall apply to roof mounted or roof piercing *structures* in any *district*:

- (A) Parapet walls may exceed the maximum building height, provided such parapet wall does not exceed four (4) feet in height above the roof line; and,
- (B) Roof mounted or roof piercing chimneys, cooling towers, elevator bulkheads, mechanical penthouses, stacks, stage towers, scenery lofts, water towers, radio or television antenna, ornamental towers, cupolas, domes, steeples and spires, may exceed the maximum building height, provided such structures do not exceed twenty-five (25) feet in height above the roof line, or to such height as is necessary to accomplish the purpose they are to serve.

Chapter 1

Provisions of Common Applicability

Section 1.28 Wetlands.

- (A) The wetlands of the *Town* are a valuable natural resource requiring careful management to maintain their usefulness to public health, safety and welfare. In their natural state, wetlands serve to control flooding and water pollution, buffer shorelines and stream banks against erosion and maintain supplies of potable ground water. Wetlands also provide high-quality wildlife habitat and offer opportunities for recreation, scientific study and natural resource education.
- (B) It is the policy of the *Town* to avoid or minimize damage to wetlands, to permit reasonable economic use of wetlands in ways that are compatible with sound wetlands conservation practices; to encourage development not dependent on a water-related location to be sited in upland areas; to allow wetlands losses only when unavoidable; to promote development at adjacent upland sites that will have minimal or no adverse impact on wetlands; and to coordinate the planning and zoning process with federal and state programs designed to preserve, protect or enhance wetlands values.
- (C) Applicability. This section shall apply to all lands in or within twenty-five (25) feet of a wetland located within the jurisdiction of the *Town*.
- (D) Areas shown on the National Wetlands Inventory, published by the U.S. Fish and Wildlife Service, as being wetlands are presumed to be wetlands consistent with the definitions thereof. Wetlands not shown on the National Wetlands Inventory are presumed to exist and are hereby designated as such and are protected under all of the terms and provisions of this section.
- (E) Certification of No Adverse Impact. Persons applying for *subdivision* or *planned unit development* approval, or for a *building permit* for any residential, office, commercial or industrial *use*, must certify that the proposed *subdivision*, *planned unit development* or *structure* or *use* for which a *building permit* is being sought, is in full compliance with all federal and state laws protecting wetlands. Any action within a wetland, such as, but not limited to, grading, dredging, draining and filling may require a permit from the Indiana Department of Natural Resources, the Indiana Department of Environmental Management or the U.S. Army Corps of Engineers or other state or federal agency, as applicable. It is hereby deemed the responsibility of the applicant to obtain the necessary permits, or to obtain certification from the appropriate state and federal agencies that said permits are not applicable.

Section 1.29 Greenway Connection.

Residential developments, schools, religious *uses*, businesses or other *uses* which encourage public access, and which are located on a *lot* or *parcel* which abuts any portion of a *greenway*

designated on an officially adopted plan of the City of Mishawaka, Elkhart County, St. Joseph County or the *Town*, shall provide a direct linkage from the project to such *Greenway*.

Section 1.30 Existing Buildings and Structures – Exemption from Development Standards.

In those instances where *buildings* and *structures* exist on a *lot* or parcel that is subsequently rezoned to another zoning *district* (a/k/a zone map amendment) or is approved as a *special exception use*, those *buildings* and *structures* shall be exempt from seeking *variances* from the required side, rear, or front yard *development standards* of that zoning *district*. Existing *structures* shall be deemed to be *legal nonconforming buildings* or *structures* and shall comply with all provisions of **Chapter 3 Nonconforming Lots, Uses, Buildings, Structures or Signs**, from that point forward.