

ARTICLE 1 BASIC PROVISIONS

SECTION 21-01 BASIC PROVISIONS REGULATIONS

Section 21-01.01 Provisions of Common Applicability.

Note: This Chapter of the *South Bend Municipal Code* contains various word(s) and/or phrase(s) which appear in italics. Such type style indicates that such word(s) and/or phrase(s) are defined in Section 21-11 of this chapter.

(a) Title

This Ordinance shall hereinafter be known and cited as "City of South Bend Zoning Ordinance", and hereinafter referred to as the "Ordinance".

(b) Statutory Authority

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any provision of this Ordinance refers to or cites a section of the Indiana Code and that section is later amended or superseded, this Ordinance shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.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

In adopting this Ordinance, the Common Council of the City of South Bend 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 City of South Bend; and, responsible development and growth of the City of South Bend, and hereby adopts this Ordinance for the purpose of:

- (1) securing adequate light, air, convenience of *access*, and safety from fire, flood, and other danger;
- (2) lessening or avoiding congestion in public ways;
- (3) promoting the public health, safety, comfort, morals, convenience, and general welfare;
- (4) guiding the future development of the City of South Bend;

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- (5) ensuring that residential areas provide healthful surroundings for family life;
- (6) ensuring that the needs of business and industry be recognized in future growth;
- (7) ensuring that growth be commensurate with and promotive of the efficient and economical use of public funds; and
- (8) otherwise accomplishing the purposes of Indiana Code 36-7-4 et seq.

(d) Findings for Adoption of this Ordinance

The Common Council of the City of South Bend, in adopting this Ordinance, finds that the Ordinance has paid reasonable regard to:

- (1) the general policies and patterns of development set out in the *Comprehensive Plan* for the City of South Bend, Indiana;
- (2) current conditions and the character of current *structures* and uses in each *district*;
- (3) the most desirable *use* for which the land in each *district* is adapted;
- (4) the conservation of property values throughout the City of South Bend; and,
- (5) the responsible development and growth of the City of South Bend.

(e) Effective Date of Ordinance

This Ordinance shall be effective at 12:01 a.m., on May 7, 2004.

(f) Repealer of Prior or Conflicting Ordinances

The following sections of the Municipal Code of the City of South Bend St. Joseph County, Indiana (commonly referred to as the South Bend Zoning Ordinance), as adopted by the City of South Bend Common Council on the 12th day of March, 1968, and all amendments thereto, are repealed as of the effective date of this Ordinance: Chapter 21, Article 1 – General Provisions; Chapter 21, Article 2 – Use District Regulations; Chapter 21, Article 3 – Nonconforming Uses; Chapter 21, Article 4 – Height and Area Districts Regulations; Chapter 21, Article 5 – Off-Street Parking and Loading Facilities; Chapter 21, Article 6 – Board of Zoning Appeals; Chapter 21, Article 7 – Rezoning Procedures; Chapter 21, Article 9 – Penalties; Chapter 21, Article 10 – Sign Regulations; and, Chapter 21, Article 11 – Installation, Siding and Roofing Standards for Manufactured Homes, Type A.

Chapter 21, Article 6.5 entitled "Historic Preservation Commission" of the South Bend Municipal Code is hereby re-numbered as Article 13 and shall be entitled "Historic Preservation Commission.

Chapter 21, Article 8 entitled "Subdivisions" of the South Bend Municipal Code is hereby re-numbered as Article 14 and shall be entitled "Subdivisions".

Chapter 21, Article 12 entitled "Floodplain Regulations" of the South Bend Municipal Code is not repealed and remains numbered as Article 12 and shall remain entitled "Floodplain Regulations".

(g) Separability

It is hereby declared to be the intention of the Common Council of the City of South Bend, Indiana, 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.

(h) Eminent Domain – United States of America or State of Indiana Owned Property

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. (For reference see Indiana Code 36-7-4-1104).

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(i) 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 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 City of South Bend, the provision which imposes the greater or higher or more restrictive standard of performance shall control.

(j) Jurisdiction of this Ordinance

Upon: (i) adoption of this Ordinance by the Common Council of the City of South Bend; and, (ii) the effective date of this Ordinance, the *Area Plan Commission* of St. Joseph County, Indiana shall be the duly authorized *plan commission* for the incorporated areas of the City of South Bend pursuant to the Area Planning Law of the Indiana Code, and the Ordinance shall apply to all real property located within the corporate boundaries of the City of South Bend.

(k) 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 City of South Bend Subdivision Regulations (Chapter 21, Article 8 entitled "Subdivisions" of the South Bend Municipal Code renumbered by this Ordinance to Article 14 and entitled "Subdivisions"), or any subsequently adopted replacement Subdivision Control Ordinance for the City of South Bend or St. Joseph County, Indiana, shall apply.

(l) Scope and Application of this Ordinance

Except as expressly provided otherwise in this Ordinance:

- (1) 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 their control except in accordance with the applicable provisions of this Ordinance.
- (2) 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.

- (3) 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

(m) Private Provisions

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

(n) Determination of Land Uses Not Listed in this Ordinance

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. 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 21-09.03 – Board of Zoning Appeals of this Ordinance. If it is: (i) determined by the *Zoning Administrator* that a particular *use* is not permitted in any residential, commercial / mixed use, 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 21-09.03 – Board of Zoning Appeals of this Ordinance; or, (ii) determined upon appeal that a particular *use* is not permitted in any residential, commercial / mixed use, industrial or other *district* provided for in this Ordinance, then such *use* shall 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*.

(o) Saving Provision for Pending Enforcement Actions

Except as shall be expressly provided for in this Ordinance, the adoption of this Ordinance shall not: (i) nullify or make void any action pending under, or by virtue of, any prior zoning ordinance or subdivision control ordinance; (ii) 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; (iii) affect the liability of any person, firm, or corporation under, or by virtue of, any prior zoning ordinance or subdivision control ordinance; (iv) waive any right of the City of South Bend under any section or provision of any prior zoning ordinance or subdivision control ordinance; or, (v) vacate or annul any rights obtained by any person, firm, or corporation by lawful action of the City of South Bend under, or by virtue of, any prior zoning ordinance or subdivision control ordinance.

(p) **Transition Rules**

(1) Final Site Development Plan / Building Permits

Any application for a Final Site Development Plan approval by the *Area Plan Commission* or application for a *building permit* which has been filed with the *Zoning Administrator* and which application is full and complete under the provisions of the South Bend Zoning Ordinance (Chapter 21 of the South Bend Municipal Code, as amended) prior to the effective date of this Ordinance shall continue to be processed to completion pursuant to the terms and conditions of the South Bend Zoning Ordinance (Chapter 21 of the South Bend Municipal Code, as amended).

In the case of a Final Site Development Plan, an application for a *building permit* shall be filed with the *Zoning Administrator* within one (1) year after Final Site Development Plan Approval by the *Area Plan Commission* or such Final Site Development Plan Approval shall be deemed null and void, provided, however, a one time extension of up to one (1) year may be granted by the *Zoning Administrator* for good cause shown. Such application for an *improvement location permit* shall be full and complete under the provisions of the South Bend Zoning Ordinance (Chapter 21 of the South Bend Municipal Code, as amended).

(2) Zone Map Amendments

Any application for zone map amendment which has been filed with the Common Council and which application is full and complete under the provisions of the South Bend Zoning Ordinance (Chapter 21 of the South Bend Municipal Code, as amended) prior to the effective date of this Ordinance shall be allowed to continue to be processed to completion pursuant to the terms and conditions of the South Bend Zoning Ordinance (Chapter 21 of the South Bend Municipal Code, as amended), provided, however:

- (A) 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,
- (B) 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 zoning classification requested in such application for zone map amendment.

(3) 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 *Board of Zoning Appeals* of the City of South Bend and which application is full and complete under the provisions of the South Bend Zoning Ordinance (Chapter 21 of the South Bend Municipal Code, as amended) prior to the effective date of this Ordinance shall be allowed to continue to be processed to completion pursuant to the terms and conditions of the South Bend Zoning Ordinance (Chapter 21 of the South Bend Municipal Code, as amended), provided, however:

- (A) if such application is no longer required by the terms of this Ordinance, such application shall be considered dismissed for lack of jurisdiction; or,
- (B) 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 South Bend Zoning Ordinance (Chapter 21 of the South Bend Municipal Code, as amended), such 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.

(q) Amendments to this Ordinance

In its continuing administration of the purposes set forth in Section 21-01.01 (c) above, the Common Council of the City of South Bend 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 Common Council of the City of South Bend governing such procedures.

(r) 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 City of South Bend. 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 Section 21-10 – Enforcement of this Ordinance.

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(s) Exemptions for Transportation, Communication, and Utility Lines

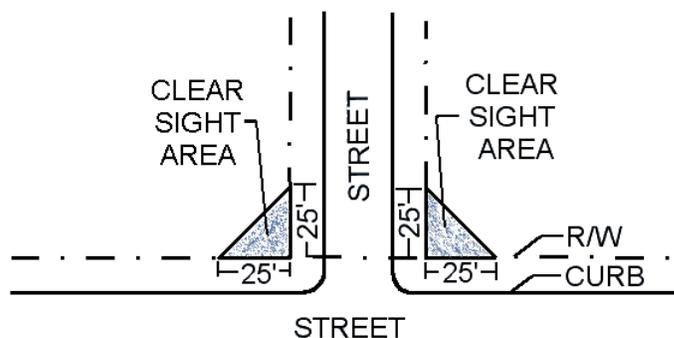
Service easements, including but not limited to those providing for: roadways; railroad lines; pipelines; electric power lines, conduits or systems; telephone lines, conduits or systems; cable television lines, conduits or systems; water mains, lines valves or fire hydrants; sanitary sewer mains, lines, 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.

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 be subject to all *use* and *development standards* regulations of this Ordinance.

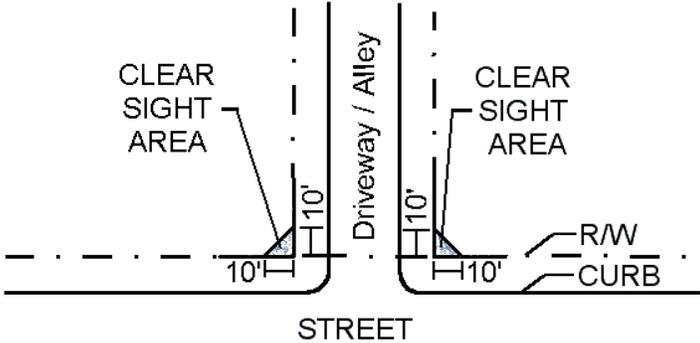
(t) Clear Sight Area Requirements

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*. 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 Area 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 Area 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*.



(u) Requirements for All Private Streets and Private Alleys.

All *private streets* and *private alleys*, when specifically authorized for use by the City of South Bend 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*:
 - i. 1 way traffic – 12'
 - ii. 2 way traffic – 24'
 - (B) Commercial / Mixed Use *Districts* or Industrial *Districts*:
 - i. 1 way traffic – 18'
 - ii. 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'
 - (B) Commercial / Mixed Use *Districts* or Industrial *Districts* – 16'

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- (3) 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 City of South Bend for *public streets* or *public alleys*. Curb sections shall be as required by the City of South Bend for *public streets* or *public alleys*.
- (4) 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 Board of Public Works.
- (5) 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 Board of Public Works 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 *Board of Public Works*, 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 *Board of Public Works*.

(v) 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.