Article 14
Use Regulations

Section 14.01 Residential

The following requirements shall be complied with for the specified use:

(a) **Residential Dwellings**

(1) **All Types of Residential Dwellings.** All site-built dwellings and manufactured dwellings not located in a manufactured home park shall meet the following requirements:

a. **Minimum Floor Area.** The dwelling shall meet the minimum square footage requirements for the zoning district in which it is to be located and must be 23 feet in width by 41 feet in length. The width or length of the dwelling may be reduced where the building will be two (2) stories in height and meet the minimum floor area requirement of the zoning district.

b. **Exterior Materials.** The home shall be covered with an exterior material customarily used on site-built residential dwellings. The primary materials shall be one (1) or more of the following:

1. Residential horizontal aluminum, vinyl, or fiber cement lap siding;
2. Cedar or other wood siding;
3. Stucco;
4. Brick;
5. Stone (including native stone, cultured stone cast stone or other masonry material with the appearance of stone); or
6. Other similar quality material to the above, as determined by the enforcement official.

c. **Roof.** The home shall have a roof with a minimum rise of 3:12, composed of a material customarily used on site-built residential dwellings, such as fiberglass, shake, asphalt, slate, metal or tile, which shall be installed onto a surface appropriately pitched for the materials used.

(2) **Manufactured Homes Located Outside Of An Approved Manufactured Home Park.** Manufactured homes shall be permitted as a permanent residences in any zoning district that permits single family dwelling units, subject to requirements and limitations applying generally to residential use in the district, the requirements of subsection (1) above, and the following requirements.

a. **Manufactured Housing Construction and Safety Standards.** Manufactured homes shall be installed as a permanent residence, bear a seal certifying that it was built in compliance with the federal Manufactured Housing Construction and Safety Standards Law (1974 U.S.C. 5401 et seq.) and have been constructed after January 1, 1981.

b. **Foundation.** The dwelling shall be attached and anchored to a permanent foundation of concrete or masonry construction in conformance with the regulations in the state One- and Two-Family Dwelling Code and with manufacturer's installation specifications. Any wheels, axles and towing chassis shall be removed.

c. **Number.** There may be one (1) manufactured home per lot.

d. **Additional Restrictions.** Additional manufactured home restrictions:

d. **Additional Restrictions.** Additional manufactured home restrictions:

1. Manufactured homes shall be used for residential purposes only.

2. Manufactured homes may not be used as storage units on residential parcels as well as any vans, truck boxes, semi trailers or railroad cars.

e. **Permanent Perimeter Enclosure.** Those manufactured homes designated as requiring a permanent perimeter enclosure must be set onto an excavated area, with foundations, footings, and crawl space or basement walls constructed in accordance with the terms of the One- and Two-Family Dwelling Code. The space between the floor joists of the home and the excavated under floor grade shall be completely enclosed with the permanent perimeter enclosure, except for required openings.

f. **Foundation Siding and Skirting (for Temporary Structures).**

1. All manufactured or manufactured homes without a permanent perimeter enclosure shall have an approved foundation siding or skirting enclosing the entire perimeter of the home.

i. Foundation siding or skirting and back-up framing shall be weather-resistant, non-combustible, or self-extinguishing materials, which blend with the exterior siding of the home. Below grade level for a minimum distance of six inches above finish grade, the materials shall be unaffected by decay or oxidation.

ii. The siding shall be installed in accordance with manufacturer's recommendations or approved equal standards.

2. The siding shall be ventilated by openings, which shall have a net area of not less than one and one-half square feet for each 25 linear feet of exterior perimeter. The openings shall be covered with corrosion resistant wire mesh not larger than one- half inch in any dimension.

3. The under floor area shall be provided with an 18 inch by 24 inch minimum size access crawl hole, which shall not be blocked by pipes, ducts, or other construction interfering with the accessibility of the under floor space or other approved access mechanism.

g. **Structural alteration.** No alteration may be made to, or to enclose, the manufactured home for purposes of increasing the usable living area or providing additional storage area, with the exception of manufacturer approved and constructed add-a-room or expanded unit.

(3) Temporary Use; Permits.

a. Circumstances for Permit Issuance. Subject to conditions, fees, and standards otherwise required by this title, a temporary use permit may be issued:

1. To an applicant to use a manufactured or manufactured home as a construction office at a job site;

2. To an applicant whose own health or health of another necessitates care, and emergency situations where the facts show that an unnecessary hardship would occur if not permitted to locate a manufactured or manufactured home adjacent to the residence of one who is able to provide care or in need of care; or

3. If a home is burned, a manufactured home could be placed on the property by order of the Building Commissioner prior to the granting of the variance. No more than one (1) manufactured home should be allowed on a parcel of land.

b. **Length of Permit.** A temporary use permit may be issued, at the discretion of the plan commission's designated administrator, for a period not to exceed six (6) months.

c. **Permit Expiration.** At the time the temporary permit expires, the manufactured or manufactured home and all appurtenances shall be removed from the property unless a variance has been granted by the BZA.

d. **Utility Requirements.** Manufactured or manufactured homes used for temporary uses shall have an approved water supply, sewage disposal system, and utility connections, where appropriate, and at the discretion of the enforcement official.

(4) Mobile Homes Shall be Barred from the County

a. No mobile home shall be allowed to be used as a permanent dwelling outside of a mobile home park.

(5) Home occupations

a. The regulations of this section apply to home occupations that are accessory to a residential use. These regulations do not apply to farms.

b. The home occupation shall be incidental and secondary to the use of the dwelling for dwelling purposes and does not occupy more than one-fourth of the floor area of a story, cellar, or accessory structure.

c. There shall be no signs, display, or activity that will indicate from the exterior that the building is being used, in part, for any purpose other than that of a dwelling, except one sign, not to exceed 3' x 5'.

d. There shall be no services rendered that require receipt and delivery of merchandise, goods, or equipment by other than a passenger motor vehicle or by United States Postal Services or licensed commercial delivery.

e. All activity, including storage, shall be conducted completely within the dwelling unit, attached garage, or detached garage.

f. There shall be no perceptible noise, odor, smoke, electrical interference, or vibration emanating from the structure between the hours of 11:00 p.m. and 7:00 a.m. local time.

(6) Accessory Dwelling Units

a. One (1) accessory dwelling unit may be created on a lot containing an existing single family dwelling through the following methods:

i. Converting existing living area, attic, basement or garage;

ii. Adding floor area to the principal building; or

iii. Constructing a detached accessory dwelling unit on a site with an existing dwelling.

b. The size of the accessory dwelling unit may be no more than 33% of the living area of the principal dwelling or 800 square feet, whichever is more.

c. The exterior finish material must be the same or visually match in type, size and placement, the exterior finish material of the principal dwelling.

d. The roof pitch must be the same as the predominant roof pitch of the principal dwelling. The eaves must project from the building walls the same distance as the eaves on the principal dwelling;

e. Trim must be the same in type, size, and location as the trim used on the principal dwelling.

f. Windows must match those in the principal dwelling in proportion (relationship of width to height) and orientation (horizontal or vertical).

g. All health department requirements for water and sanitary sewage disposal shall be met.

h. When an accessory dwelling is located within the principal dwelling, only one (1) entrance may be located on the facade of the building facing the street, unless the building contained additional entrances before the accessory dwelling unit was created. An exception to this regulation is entrances that do not have access from the ground such as entrances from balconies or decks.

i. Detached accessory dwelling units must be setback at least 50 feet from the front lot line or 10 feet behind the main house and must meet the side and rear yard setbacks of the district.

(7) The following requirements shall be complied with the specified use:

a. Ponds. All ponds constructed shall have a horizontal safety area of 10 feet in width which the water depth of the residential safety area shall not exceed 24 inches.

Section 14.02 Agriculture and Animal-Related Uses

The following requirements shall be complied with for the specified use:

(a) **Confined Animal Feeding Operations**

(1) Confined animal feeding operations (CAFO) shall be required to comply with all requirements of the Concentrated Animal Feeding Operation Ordinance contained in Chapter 97 of the La Porte County Code of Ordinances.

(2) CAFOs shall be required to obtain a permit from the Indiana Department of Environmental Management.

(b) **Boarding Stables**

(1) The minimum parcel size shall be 10 acres.

(2) All areas for stockpiling manure shall be screened from view and shall not be located closer than 250 feet to any property line, creek, or stream and shall not be allowed to become a nuisance.

(c) **Keeping of Horses and Livestock**

(1) The keeping of animals, other than domesticated pets, is only permitted as follows:

Zoning District	Lot area	Animals allowed
A Agricultural Zoning Districts	Less than 3 acres	Special exception permitted but must still meet the requirements of subsection (2)
	3 acres or more	Permitted – no limit on number of animals
R1A, R1B, R1C, R1D Single Family Residential Districts	Less than 3 acres	Not permitted
	3 acres or more	Permitted but must still meet the requirements of subsection (2)

(2) On lot less than (3) acres in the A agricultural zoning districts and lots three (3) acres or more in the R1A, R1B, R1C, R1D single family residential districts, there shall be the following acreage for each animal or combinations of animals:

Animal	Minimum Acres for each Animal
Chickens (Roosters are not permitted), turkeys or rabbits	0.02
Sheep, goats llamas or alpaca	0.1

Swine	0.2
Horses, ponies, mules or burros	1
Cattle, bison, ostrich or elk	1

(3) All grazing areas shall be fenced. Grazing areas shall not be located over sanitary drain fields.

(4) An accessory structure shall be provided to house such animals. Any barn, or stable structure and any outdoor feed (non-grazing) area training or exercising corrals shall be setback at least 100 feet from any lot line of an adjacent residentially zoned lot. All stables shall be enclosed by a suitable fence and shall be maintained so that odor, dust, noise or water drainage shall not constitute a nuisance or hazard to adjoining premises.

(5) All areas for stockpiling manure shall be screened from view and shall not be located closer than 250 feet to any property line, creek, or stream and shall not be allowed to become a nuisance.

(d) **Roadside Stands**

(1) The stand shall be located at a safe distance from the traveled way.

(e) **Slaughterhouses**

(1) All front, side and rear yard setbacks shall be a minimum of 300 feet.

(2) A minimum buffer/setback of 300 feet shall be provided between any building or animal enclosures and an adjacent residential district. The buffer/setback shall be landscaped with a buffer zone A in accordance with section 17.02(c).

Section 14.03 Retail Trade

The following requirements shall be complied with for the specified use:

(a) Retail Uses With More Than 40,000 Square Feet Of Floor Area

(1) The design of the center shall ensure that vehicular circulation patterns will minimize conflicts between vehicles and pedestrians on-site.

(2) Internal drives defined by the ends of aisles shall have raised curbed landscape islands at appropriate locations to define circulation paths and control movements through the parking lot.

(3) Any outlots shall have shared access and circulation with the main shopping center.

(4) A minimum buffer/setback of 25 feet shall be provided between the parking lot or loading area and any adjacent residential district landscaped in accordance with section 17.02(c).

(5) Loading facilities which serve the commercial establishment in the principal building shall be screened from public view.

(6) Any outlots shall have access, circulation and parking designed to complement the entire site.

(b) Drive-Through Accessory to a Retail Use

(1) The drive-through facility must be attached to the structure.

(2) The drive-through facility shall be located on the side or rear elevation of the building to minimize visibility from the roadway. The site shall be oriented so that drive-through lanes and pickup windows are not a prominent feature of the building.

(3) The drive-through service shall be screened from adjacent residential land uses by a solid screening wall in accordance with section 17.03, such that it will not impact the use and enjoyment of the residential land use.

(4) Clear identification and delineation between the drive-through facility and the parking lot shall be provided.

(5) There shall be a minimum of three (3) stacking spaces.

(6) Each drive-through facility shall provide an escape lane to allow other vehicles to pass those waiting to be served. The enforcement official may waive the requirement for an escape lane where it can be demonstrated that such a waiver will not result in an adverse effect on public safety or the convenience of patrons of the facility.

(c) Planned Neighborhood Shopping Center in R1C, R1D, R2B, R3A and R3B Residential Zoning Districts

(1) A special exception shall be required for a planned neighborhood shopping center in the R1C, R1D, R2B, R3A and R3B residential zoning districts to provide day-to-day convenience shopping to adjoining residential neighborhoods.

(2) The site shall have frontage and access to major thoroughfare.

(3) The total commercial floor area shall be no more than 20,000 square feet.

(4) Uses shall be limited to those permitted in the B1 district.

(5) Architectural and sign treatment shall be compatible with the character of the surrounding residential area in terms of building materials and scale.

Section 14.04 Services

(a) **Tattoo Establishment**

(1) The site shall not be within 100 feet of a residential district.

(2) The use shall not operate after 10:00 PM.

Section 14.05 Motor Vehicle Dealers and Service

The following requirements shall be complied with for the specified use:

(a) **Vehicle Service and Repair, Major and Minor**

(1) All repair work shall be conducted completely within an enclosed building.

(2) Storage of wrecked, partially dismantled, or other derelict vehicles is prohibited, unless such storage is required under police or court order. Vehicles awaiting repair shall not be stored outdoors for more than seven (7) days and shall be screened with an eight (8) foot high screen wall in accordance with section 17.03.

(3) There shall be no outdoor storage or display of vehicle components and parts, supplies, or equipment or other merchandise, except within an area defined on the site plan which extends no more than 10 feet beyond the building.

(b) **Automobile Wash**

(1) The site shall have sufficient road frontage to be able to meet all of the driveway access spacing requirements of section 18.04.

(2) All washing facilities shall be within a completely enclosed building.

(3) Where adjoining a residential district, a solid screening wall shall be erected along any common lot line in accordance with section 17.03.

(4) Vacuuming and drying may be located outside the building, but shall not be in the required front yard and shall be set back at least 50 feet from any residential district.

(5) All cars required to wait for access to the facilities shall be provided stacking spaces fully off the street right-of-way which does not conflict with vehicle maneuvering areas to access gasoline pumps or vacuums.

(c) **Vehicle Service Stations and Truck Stops**

(1) The site shall have sufficient road frontage to be able to meet all of the driveway access spacing requirements of section 18.04.

(2) Pump islands shall be a minimum of 20 feet from any public right of way or lot line, and at least 50 feet from any residential lot line.

(3) Where adjoining residentially zoned or used property, a solid screening wall shall be erected along any common lot line in accordance with section 17.03.

(4) Access driveways shall meet the standards of Article 18; turning movements may be restricted in consideration of traffic conditions. Only one (1) driveway shall be permitted from each street.

(5) All vehicle service and repair shall comply with Section 14.05(a) above.

(6) The design and materials of the canopy shall be compatible with the principal building. The proposed clearance of any canopy shall be noted on the site plan. Canopy lighting shall be recessed such that the light source cannot be seen from off site.

Section 14.06 Accommodation and Food services

The following requirements shall be complied with for the specified use:

(a) **Bed & Breakfast Inns**

(1) The regulations of this section only apply to bed & breakfast inns located in agricultural and residential districts. When located in nonresidential districts, the requirements applicable to hotels shall apply.

(2) The bed and breakfast inn shall be a private residence, owned by the innkeeper and the residence in which the innkeeper resides while renting the rooms to transient guests.

(3) A bed and breakfast inn located in a residential zoning district shall not be permitted to operate a restaurant that is open to the general public and may only offer breakfast to the guests.

(4) The bed and breakfast inn shall be operated in its entirety within the principal dwelling and not within any accessory building, except for incidental storage in use of a residential type garage.

(5) There shall be no exterior evidence, other than a permitted sign, to indicate that the residence is being utilized for any purpose other than that of a dwelling.

(6) There shall be no alteration or construction not customarily found in residential dwellings; except modifications as recommended by the fire department such as fire protection and fire suppression equipment.

(7) The bed and breakfast inn shall be inspected by the fire department and the county board of health for compliance with fire code and heath code requirements prior to operation.

(8) Guests are not allowed to stay longer than 14 consecutive days or 30 days in any one calendar year at any tourist home/bed and breakfast location.

(9) Sufficient off street parking shall be required as for commercial lodging establishments. Existing buildings and structures that contribute towards the residential character of the site shall be retained and incorporated into the site design to the maximum extent practical. All required parking for any bed and breakfast inn shall be screened from adjacent residential uses.

(b) **Restaurants with Drive-Through Service**

(1) The drive-through facility shall be located on the side or rear elevation of the building to minimize visibility from the public or private roadway. The site shall be oriented so that drive-through lanes and pickup windows are not a prominent feature of the building.

(2) The drive-through service shall be screened from adjacent residential land uses by a solid screening wall in accordance with section 17.03, such that it will not impact the use and enjoyment of the residential land use.

(3) Clear identification and delineation between the drive-through facility and the parking lot shall be provided.

(4) There shall be a minimum of 10 stacking spaces.

(5) Each drive-through facility shall provide an escape lane to allow other vehicles to pass those waiting to be served.

(6) Only one (1) access shall be provided onto any street.

(7) Where the restaurant is constructed adjacent to other commercial uses, a direct vehicular access connection shall be established with the adjoining property if possible.

(c) **Restaurants in Industrial Districts**

(1) The restaurant shall be located within an office structure or industrial building or shall be located in a freestanding building as part of an overall industrial or office park.

(2) The restaurant shall be planned as a part of an overall plan for development and shall be part of a service establishment complex for such development.

(3) The restaurant shall comprise not more than 20% of the land area of an overall development.

(4) There shall be no more than one (1) restaurant in a freestanding building per business park.

(5) Drive-in or drive-through restaurants shall be prohibited.

Section 14.07 Finance, Insurance, Real Estate, Professional, Scientific, and Technical Services

The following requirements shall be complied with for the specified use:

(a) Banks with Drive-Through Tellers

(1) The drive-through facility shall be located on the side or rear elevation of the building to minimize visibility from the public or private roadway.

(2) The drive-through service for teller stations and automated teller machines (ATM), including any associated lighting, shall be screened from adjacent residential land uses by a solid screening wall in accordance with section 17.03, such that it will not impact the use and enjoyment of the residential land use.

(3) Clear identification and delineation between the drive-through facility and the parking lot shall be provided.

(4) There shall be a minimum of four (4) stacking spaces for the first drive-through lane and three (3) stacking spaces for each additional lane.

(5) The drive-through facility shall provide an escape lane to allow other vehicles to pass those waiting to be served. The enforcement official may waive the requirement for an escape lane where it can be demonstrated that such a waiver will not result in an adverse effect on public safety or the convenience of patrons of the facility.

Section 14.08 Health Care and Social Assistance

The following requirements shall be complied with for the specified use:

(a) **Day Care Centers, Commercial/Preschools**

(1) There shall be a minimum of 110 square feet of outdoor play area per child on site at any given time.

(2) The minimum side and rear yard setback shall be 20 feet.

(3) A minimum 20 foot buffer/setback shall be provided between the parking lot and any adjacent residential use landscaped in accordance with section 17.02(c).

(4) The day care center or preschool shall be inspected by the fire department and the county board of health for compliance with fire code and heath code requirements prior to operation.

(b) **Funeral Homes/Mortuaries**

(1) An off-street vehicle assembly area shall be provided to be used in support of funeral processions and activities. This area shall be in addition to the required off-street parking and its related maneuvering area.

(2) If a crematory is included as part of a funeral home/mortuary, it shall meet the following requirements:

a. Crematories shall be setback 200 feet from any lot line adjoining a residentially zoned or used lot.

b. All required state permits, licenses and certifications shall be obtained.

c. Crematories shall not emit any noticeable odor or particulates.

d. Crematories shall have emission stacks covered or shrouded with materials safe for such uses and that are compatible in design and architecture with the existing funeral home and the building housing the crematory. The crematory facility and emission stack shall be compatible with surrounding properties.

(c) **Nursing Homes and Senior Assisted Living**

(1) Independent senior housing and senior apartments may be developed in a multiple-family or cluster housing form with full facilities for self-sufficiency in each individual unit. A community center for this overall development may be provided.

(2) Senior assisted living housing shall be developed in a multiple-family housing form with central dining facilities provided as a basic service to each unit. A community center for the overall development shall be provided to support recreational and social activities.

(3) Personal service uses such as a dry cleaning pickup station, beauty shop, barber shop or similar use for the exclusive service to residents of a complex may be allowed within a housing development. In no instance shall such service use be provided with direct access to a street for the use of the public in general, it being the purpose of this provision to allow such use to only be provided as a convenience to occupants of the complex in which such service is located. No signs of any nature shall be visible from outside the building in which the use is located.

(4) The nursing home or senior assisted living facility shall be inspected by the fire department and the county board of health for compliance with fire code and heath code requirements prior to occupancy.

Section 14.09 Entertainment and Recreation

The following requirements shall be complied with for the specified use of a Sexually Oriented Business:

(a) **Sexually Oriented Businesses**

(1) *Purpose*. It is the purpose of this section to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the County. The provisions of this section have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the purpose nor effect of this section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the purpose nor effect of this section to condone or legitimize the distribution of obscene material.

(2) *Findings and Rationale*. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Board of County Commissioners, and on findings, interpretations, and narrowing constructions incorporated in numerous cases, including, but not limited to, City of Littleton v. Z.J. Gifts D-4, L.L.C., 541 U.S. 774 (2004); Pap's A.M. v. City of Erie, 529 U.S. 277 (2000); City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002); City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986); Young v. American Mini Theatres, Inc., 427 U.S. 50 (1976); Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991); FW/PBS, Inc. v. City of Dallas, 493 U.S. 215 (1990); California v. LaRue, 409 U.S. 109 (1972); as well as in the cases of Artistic Entertainment, Inc. v. City of Warner Robins, 223 F.3d 1306 (11th Cir. 2000); Peek-A-Boo Lounge of Bradenton, Inc. v. Manatee County, 337 F.3d 1251 (11th Cir. 2003); Peek-A-Boo Lounge of Bradenton, Inc. v. Manatee County, 630 F.3d 1346 (11th Cir. 2011); Gary v. City of Warner Robins, 311 F.3d 1334 (11th Cir. 2002); Ben's Bar, Inc. v. Village of Somerset, 316 F.3d 702 (7th Cir. 2003); Wise Enters. v. Unified Gov't of Athens-Clarke County, 217 F.3d 1360 (11th Cir. 2000); BZAPs, Inc. v. City of Mankato, 268 F.3d 603 (8th Cir. 2001);World Wide Video of Washington, Inc. v. City of Spokane, 368 U.S. 1186 (9th Cir. 2004); Gammoh v. City of La Habra, 395 F.3d 1114 (9th Cir. 2005); Ward v. County of Orange, 217 F.3d 1350 (11th Cir. 2000); Boss Capital, Inc. v. City of Casselberry, 187 F.3d 1251 (11th Cir. 1999); David Vincent, Inc. v. Broward County, 200 F.3d 1325 (11th Cir. 2000); Sammy's of Mobile, Ltd. v. City of Mobile, 140 F.3d 993 (11th Cir. 1998); Lady J. Lingerie, Inc. v. City of Jacksonville, 176 F.3d 1358 (11th Cir. 1999); Lady J. Lingerie, Inc. v. City of Jacksonville, 973 F.Supp. 1428 (M.D. Fla. 1997); Grand Faloon Tavern, Inc. v. Wicker, 670 F.2d 943 (11th Cir. 1982); Board of County Commissioners v. Dexterhouse, 348 So.2d 916 (Ct. App. Fla. 1977); International Food & Beverage Systems v. Ft. Lauderdale, 794 F.2d 1520 (11th Cir. 1986); and other cases; and on reports of secondary effects occurring in and around sexually

oriented businesses, including, but not limited to, Planning Department of Phoenix, Arizona (1979) "Adult Business Study"; "Report of the Attorney General's Working group on the Regulation of Sexually Oriented Businesses" State of Minnesota (1989); Houston City Council (1997) "Sexually Oriented Business Ordinance Revision Committee Legislative Report"; Department of Metropolitan Development of Indianapolis, Indiana (1984) "Adult Entertainment Businesses in Indianapolis"; Planning Department, City of Amarillo, Texas (1977) "A Report of Zoning and Other Methods of Regulating Adult Entertainment in Amarillo"; Garden Grove, California (1991) "Negative Secondary Effects of Sexually Oriented Businesses: Summaries of Key Reports"; Department of City Planning, Los Angeles, California (1977) "Study of the Effects of the Concentration of Adult Entertainment Establishments"; Staff Report, Whittier, California (1978) "Amendment to Zoning Regulations"; City Council of Austin, Texas (1986) "Report on Adult Oriented Businesses in Austin"; Community Development Department, Oklahoma City, Oklahoma (1986) "Adult Entertainment Businesses in Oklahoma City"; Peter Malin, Dallas, Texas (1997) "An Analysis of the Effects of SOBs on Surrounding Neighborhoods'"; Insight Associates, New York Times Square Study (1994) "Report on the Secondary Effects of the Concentration of Adult Use Establishments in the Times Square Area"; Phoenix, Arizona (1995-98) "Adult Cabarets Factual Record"; Richard McCleary, Ph.D., Greensboro, North Carolina (2003) "A Methodological Critique of the Linz-Yao Report: Report to the Greensboro City Attorney"; and, based upon reports concerning secondary effects occurring in and around sexually oriented businesses in and around LaPorte County: A Study of Sexually Oriented Businesses, Final Report, LaPorte County, Indiana, by Duncan Associates, dated August, 2012.

(3) The LaPorte County Board of Commissioners now finds:

a. Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, public safety risks, prostitution, potential spread of disease, lewdness, public indecency, illicit sexual activity, illicit drug use and drug trafficking, negative impacts on surrounding properties, litter, and sexual assault and exploitation.

b. Each of the foregoing negative secondary effects constitutes a harm which the County has a substantial government interest in preventing and/or abating in the future. This substantial government interest in preventing secondary effects, which is the County's rationale for this section, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the County's interest in regulating sexually oriented businesses extends to future secondary effects that could occur in the County related to current sexually oriented businesses as well as sexually oriented businesses that may locate in the County in the future. The County finds that the cases and secondary effects documentation relied on in this section are reasonably believed to be relevant to said secondary effects.

(4) Definitions:

a. *"Adult Bookstore or Adult Video Store"* means a commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas." A "principal business activity" exists where the commercial establishment meets any one or more of the following criteria:

(i) At least 35% of the establishment's displayed merchandise consists of said items; or,

(ii) At least 35% of the wholesale value of the establishment's displayed merchandise consists of said items; or,

(iii) At least 35% of the retail value (defined as the price charged to customers) of the establishment's displayed merchandise consists of said items; or,

(iv) At least 35% of the establishment's revenues derive from the sale or rental, for any form of consideration, of said items; or,

(v) The establishment maintains at least 35% of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items shall be included in "floor space" maintained for the display, sale, or rental of said items); or,

(vi) The establishment maintains at least five hundred square feet (500 sq. ft.) of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items shall be included in "floor space" maintained for the display, sale, or rental of said items); or,

(vii) The establishment regularly offers for sale or rental at least two thousand (2,000) of said items; or,

(viii) The establishment regularly features said items and regularly advertises itself or holds itself out, by using "adult," "adults-only," "XXX," "sex," "erotic," "novelties," or substantially similar language, as an establishment that caters to adult sexual interests; or,

(ix) The establishment maintains an "adult arcade," which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting "specified sexual activities" or "specified anatomical areas."

b. *"Adult Cabaret"* means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, regardless of whether alcoholic beverages are served, which regularly features live conduct characterized by semi-nudity. No establishment shall avoid classification as an adult cabaret by offering or featuring nudity.

c. *"Adult Motion Picture Theater"* means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas" are regularly shown to more than five people for any form of consideration.

d. *"Semi-Nude Model Studio"* means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a class operated:

(i) By a college, junior college, or university supported entirely or partly by taxation;

(ii) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or,

(iii) In a structure:

(1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and,

(2) Where, in order to participate in a class a student must enroll at least three days in advance of the class.

e. *"Sexual Device Shop"* means a commercial establishment that regularly features sexual devices. This definition shall not be construed to include any pharmacy, drug store, medical clinic, any establishment primarily dedicated to providing medical or healthcare products or services, or any establishment that does not limit access to its premises or a portion of its premises to adults only.

f. "*Sexually Oriented Bath House"* means an enterprise where a portion of its business is offering baths and/or showers with other persons present who are nude or displaying specified anatomical areas.

g. *"Sexually Oriented Body Painting Studio"* means an establishment where a portion of its business is the application of paint or other substance to or on the human body by any means of application, technique, or process when the subject's body displays for the patron's view specified anatomical areas.

h. *"Sexually Oriented Business"* means an "adult bookstore or adult video store," an "adult cabaret," an "adults motion picture theater," a "semi-nude model studio," or a "sexual device shop," sexually oriented bath house," "sexually oriented body painting studio," or a "sexually oriented encounter center."

i. *"Sexually Oriented Encounter Center"* means a business or enterprise that offers physical contact between two or more persons when one or more of the persons are in a state of nudity or semi-nudity, for the purpose of engaging in specified sexual activity or touching specified anatomical areas, but not including a sexually oriented cabaret or nightclub.

(5) *Locational Requirements for Sexually Oriented Businesses.*

a. No sexually oriented businesses shall be located within five hundred (500) feet of any unincorporated area in LaPorte County Residential District.

b. No sexually oriented business may be located within One Thousand (1,000) feet from the following:

1. Public, private or parochial school;
2. Library;
3. Park, playground or other recreation facility which admits minors;
4. Day care center or nursery schools;
5. Church, temple or other similar place of worship;
6. Any establishment having a liquor license;

d. *Method of Measuring Distances.* Distances shall be measured from property line to property line along the shortest distance between property lines, without regard to the route of normal travel.

(6) *Nonconforming Sexually Oriented Businesses*. Sexually oriented businesses which have been established at their existing locations as of the effective date of this Amendment, which have become nonconforming as a result of the adoption of this Amendment may be continued or maintained only in conformance with Article 29 of this Ordinance regarding nonconformities.

(7) *Prohibited Uses*:

The following sexually oriented businesses are prohibited:

a. Massage studio business not operated by or under the supervisions of a medical professional, or by a person licensed to practice massage therapy in the State of Indiana;

b. Sexually oriented bathhouse;

c. Sexually oriented encounter center;

d. Any other sexually oriented business not included under the permitted sexually oriented uses, except for in this Chapter.

(8) *Permitted Sexually Oriented Uses*:

The following sexually oriented businesses are permitted uses, subject to the provisions of this Article, and the Joint Zoning Ordinance of LaPorte County.

a. Adult bookstore;

b. Adult video store;

c. Adult cabaret;

d. Adult motion picture theater;

e. Sexual device shop;

f. Sexually oriented body painting studio;

g. Semi-nude model studio.

(9) *Effect on Other Ordinances.*

Nothing in this Article shall be construed to supersede any other Ordinance which affects sexually oriented businesses under the LaPorte County Ordinances. In the event of a conflict with any other LaPorte County Ordinance, the more stringent interpretation shall apply.

(b) **Boat Clubs, Marinas and Boat Storage**

(1) All areas used for dry-dock boat storage shall be screened from any adjacent residential district or public road with a landscape buffer zone A in accordance with section 17.02(c).

(c) **Casinos**

(1) The casino must be licensed by the State in accordance with IC 4-33-2.

(2) The casino must be developed in conjunction with a hotel that provides at least 250 hotel rooms, an indoor public space used for exhibit space, meeting rooms, banquet rooms, restaurants, show theaters and retail shops.

(3) A minimum buffer/setback of 50 feet shall be provided between any adjacent residential district and the building, parking lot, and loading area landscaped in accordance with section 17.02(c).

(d) **Commercial Outdoor Recreation Facilities Such as Batting Cages, Driving Ranges and Putt-Putt Golf**

(1) The minimum front, side and rear yard building setbacks shall be 40 feet, which shall apply to all buildings, recreation activity areas, spectator seating and any other structural appurtenances.

(2) The use and parking area shall be screened from adjacent major thoroughfares with a landscape greenbelt in accordance with section 17.02(b)(4).

(3) Devices for the transmission of broadcasting of voices or music shall be so directed as to prevent sound from being audible beyond the lot lines of the site.

(4) Whenever any such use abuts a residential district or use, a transitional buffer area shall be provided between all operations, buildings and structures, including fences, and the residential property. Landscaping, walls and/or fences shall be required as part of this buffer as determined by the enforcement official based upon the nature of the use and the noise impact that the use may have on surrounding uses.

(5) Storage buildings; restroom facilities; facilities for the sale and consumption of food, beverages and refreshments; and other similar accessory uses shall comply with all standards of the county or city.

Section 14.10 Civic, Religious, Social Assistance Organizations

The following requirements shall be complied with for the specified use:

(a) **Cemetery**

(1) Before granting or selling any burial right in any part of a cemetery developed and platted after March 6, 1953, the owner of the cemetery shall record an accurate survey and plat of that part of the property in which the owner proposes to grant or sell burial rights in the County Recorder's Office, in accordance with the Subdivision Ordinance.

(2) The minimum lot area shall be 10 acres.

(3) Grave sites shall be setback a minimum of 25 feet from any lot line adjoining a residentially zoned or used lot. Existing vegetation shall be preserved within the required side and rear yard setback.

(4) Off-street parking spaces and circulation aisles shall be setback 25 feet from all lot lines.

(5) Mausoleum, columbarium, chapel or other similar structures shall be setback a minimum of 50 feet from all lot lines.

(6) If a crematory is included as part of a cemetery, it shall meet the following requirements:

a. Crematories shall be setback 200 feet from any lot line adjoining a residentially zoned or used lot and 50 feet from any nonresidential lot line.

b. All required state permits, licenses and certifications shall be obtained.

c. Crematories shall not emit any noticeable odor or particulates.

d. Crematories shall have emission stacks covered or shrouded with materials safe for such uses and that are compatible in design and architecture with the building housing the crematory.

The crematory facility and emission stack shall be compatible with other buildings in the cemetery.

(7) Perpetual care and maintenance shall be provided for in accordance with IC 23-14-48.

(b) **Churches, Chapels, Temples, Synagogues and Similar Places of Worship**

(1) The regulations of this section only apply to churches, chapels, temples, synagogues and similar places of worship located in agricultural and residential districts. When located in nonresidential districts, the requirements applicable to other similar institutional uses shall apply.

(2) The minimum front, side and rear yard building setbacks shall be 25 feet.

(3) Off-street parking spaces and circulation aisles shall not be located within 25 feet of the front lot line.

(4) Accessory child day care shall be permitted subject to the requirements of Section 14.08(a).

Section 14.11 Educational Services

Reserved for future use.

Section 14.12 Public Administration

Reserved for future use.

Section 14.13 Transportation and Warehousing

The following requirements shall be complied with for the specified use:

(a) **Airstrips**

(1) The area of the "runway protection zone or clear zone" shall be within the land area under airstrip ownership. This requirement shall apply to privately owned airstrips and does not apply to public airports in the Airport District.

(b) **Freight and Intermodal Terminals**

(1) The site shall be designed so all vehicles are able to enter and leave the site without having to back-out onto the street. Driveways shall be curbed for their full length in the front yard.

(2) The plan commission shall determine that traffic will be no more hazardous nor the volume of traffic any greater than is normal for the road involved, taking into consideration vehicular turning movements in relation to routes of traffic flow, proximity and adequacy of interchanges. All access to the site shall be from paved class A roads.

(3) A traffic impact study shall be required. The standards used in preparing and approving the traffic impact study shall comply with the "Applicant's Guide to Traffic Impact Studies," published by the Indiana Department of Transportation.

(4) There shall be a five (5) foot tall landscape berm along the road frontage and any side of the site that adjoins a non-industrial district. A minimum of two (2) evergreen trees and one (1) canopy tree shall be planted on the berm for every 40 feet of berm length. The plan commission may modify the screening requirement to permit an eight (8) foot tall wall along interior lot lines instead of a landscape berm.

(5) All truck or trailer storage or staging areas shall be setback 40 feet from the front lot line.

(6) A minimum buffer/setback of 100 feet for buildings, parking and storage areas shall be provided from any adjacent residential district. The buffer/setback shall be landscaped with a buffer zone A in accordance with section 17.02(c).

(c) **Self-Storage Facilities**

(1) Minimum building and parking setback shall be 40 feet from any public street right-of-way line or any adjacent residential zoning district.

(2) Where self storage warehouses are being developed through a condominium or subdivision for sale of individual storage buildings or units, building shall be spaced a minimum of 10 feet from all other buildings and shall be setback a minimum of 10 feet from the internal circulation road.

(3) The front yard and any side yards adjacent to residential districts shall include wrought iron or similar decorative fencing and evergreen plantings spaced a maximum of 10 feet on-center.

(4) All storage shall be within completely enclosed buildings or structures, unless a separate special exception approval is granted for commercial outdoor storage on the premises.

(5) The use shall be limited to storage only. The premises shall not be used for operating any other business or repairing of any vehicles, except truck rental may be approved as an accessory use.

(6) No storage of combustible or flammable liquids, combustible fibers, or explosive materials as defined in the fire prevention code, or toxic materials, shall be permitted within the self-storage buildings or upon the premises.

Section 14.14 Manufacturing

The following requirements shall be complied with for the specified use:

(a) **Petroleum Tank Farm**

(1) All front, side and rear yard setbacks for buildings and storage tanks shall be a minimum of 300 feet.

Section 14.15 Utilities

The following requirements shall be complied with for the specified use:

(a) **Power Generation Plants**

(1) The development and operation of the power plant shall meet all state, and federal requirements. All required permits shall be kept up-to-date.

(2) All surface or sub-surface water intake and discharge must meet county, state and federal agency requirements.

(3) Air emissions must meet all state and federal agency requirements. Odor, smoke, fumes and dust shall be controlled so as not to cause a public nuisance or hazard. The effects of air pollution, noise, and vibrations shall be minimized on adjacent properties.

(4) Chimneys, cooling towers or stacks may exceed the height limits of the district; provided they are setback from any non-industrially zoned property a distance at least equal to their height and meet all requirements of Federal Aviation Administration and meet requirements of the Airport Overlay District if within the district.

(5) On-site storage of all materials shall be indicated on the site plan and shall meet all setback requirements of the district. Outdoor storage areas shall be screened by a minimum six (6) foot

tall solid screening wall in accordance with section 17.03. Any stockpiles of materials shall be contained to prevent dust erosion or other type of off-site discharge.

(b) **Wind Energy Conversion Systems (WECS)**

(1) **Single Accessory WECS.** A WECS to service the energy needs of the property where the structure is located may be allowed with special exception approval in all districts, subject to the following requirements:

a. Only one (1) WECS shall be permitted per parcel or lot.

b. The tower shall not be higher than 45 feet. The height of the overall WECS with the blade in the vertical position shall not exceed 50 feet above ground level. The allowable height may be further limited in order to meet setbacks in paragraph c below.

c. All towers shall be set back a distance at least equal to one and a half (1 ½) times the WECS height from all property lines. The height shall be measured to the top of the blade at its highest point.

d. The blade diameter (tip to tip) shall not exceed 15 feet.

e. The minimum blade or rotor clearance from the ground shall be 20 feet for a horizontal-axis WECS and 10 feet for a vertical-axis WECS. The minimum blade or rotor clearance from a building or utility line shall be 20 feet.

f. All WECS shall be equipped with both a manual brake and automatic braking systems, or governing device capable of keeping the WECS operation in high winds within 80% of its survival wind speed. All WECS shall be adequately anchored to prevent their being knocked down by high winds.

g. A WECS shall be constructed with a tubular tower. Lattice towers and guy wires shall be prohibited.

h. Towers shall not have permanent attached tower climbing devices.

i. A WECS shall be painted a non-obtrusive (light color such as white, beige or light gray) color that is non-reflective. No striping or color shall be visible on the blades or tower.

j. All distribution lines from the WECS to the building and the electrical grid connection shall be underground. The generator and all other electrical equipment, and controls shall be enclosed within the nacelle, pole or within a building.

k. Excess power may be sold back to the local electric utility provider. In the case of WECS to be interconnected with the power grid of the local electric utility, the applicant shall provide proof of written notice to the utility of the proposed interconnection and the utility's response. The resident shall comply with all requirements of the servicing utility if the WECS is interfaced with the utility grid. The utility will install appropriate electric metering (for sellback and non-sellback) and the customer will be required to install a disconnecting device adjacent to the electric meter(s).

l. Noise emissions from the operation of a WECS shall not exceed 50 decibels on the DBA scale, as measured at the nearest property line or road. Manufacturer's specifications indicating the operating noise levels of the WECS at full RPM shall be provided with the application. The enforcement official may require the owner to pay for a sound evaluation by a qualified professional following installation to determine compliance with the requirements of this section.

(2) **Commercial WECS.** WECS larger than those allowed in (1) above, wind farms and WECS Testing Facilities associated with the commercial application of a WECS may be allowed as a

special exception within the Agriculture and M1 and M2, Industrial Districts, subject to the following requirements:

a. All applications for special exception approval shall be accompanied by the following information, in addition to the site plan required by Section 23.03:

   1. Location and height of all proposed buildings, structures, electrical lines, towers, security fencing, and other above ground structures associated with the WECS.

   2. Locations and height of all adjacent buildings, structures, and above ground utilities located within 300 feet of the exterior boundaries of the lot or parcel where the proposed WECS will be located. Specific distances to other on-site buildings, structures, and utilities shall also be provided.

   3. The location of all existing and proposed overhead and underground electrical transmission or distribution lines shall be shown.

   4. Existing and proposed setbacks for the WECS from all structures located on the property where the WECS will be located.

   5. The site plan submittal shall contain a written description of the procedures to be used to maintain the WECS. The description shall include maintenance schedules, types of maintenance to be performed, and removal procedures and schedules in the event the WECS becomes obsolete or is abandoned.

   6. A copy of the manufacturer's installation instructions and blueprints shall be provided to the county or city.

   7. Drawings and engineering calculations shall be certified by a registered engineer licensed in the State of Indiana.

   8. A noise modeling and analysis report showing noise levels at property lines at full RPM.

   9. A shadow flicker analysis shall be prepared if there is any residential buildings, livestock areas or public roadways within 1,000 feet of the proposed system.

b. The permitted maximum total height of a WECS shall be 200 feet (with the blade in the vertical position).

   1. A WECS shall be designed at a height that will not require aviation hazard lighting by the FAA. A determination of no hazard letter issued by the FAA shall demonstrate that lighting is not required prior to approval of the special exception. If construction of the WECS requires FAA or Indiana Department of Aviation approval or review, then a final decision must be provided before the Board of Zoning Appeals may conduct any public hearing on a request for special exception.

   2. The La Porte Airport Authority Board and the Michigan City Board of Aviation Commissioners shall be given written notice at least 60 days prior to the hearing that a permit has been filed requesting the approval of a special exception for a WECS.

   3. Any new WECS within the Airport Overlay District shall comply with the height limits of the overlay district, measured relative to the airport elevation.

c. A WECS shall be constructed with a tubular tower, not a lattice tower.

d. The setback for placement of a WECS shall be equal to one and a half (1 ½) times the height of the WECS from each property line and any public road right-of-way. This may be reduced from an adjacent property that also contains a WECS, provided the spacing requirement of paragraph f below is met.

e. A commercial WECS shall be setback a minimum of 1,000 feet from any residential subdivision or school.

f. The minimum distance between two (2) WECS shall be equal to the combined height of both WECS.

g. Blade arcs created by a WECS shall have a minimum of 75 feet of clearance over and from any structure, adjoining property or tree. The minimum blade or rotor clearance above ground level shall be at least 20 feet.

h. Each WECS shall be equipped with both a manual and automatic braking device capable of stopping the WECS operation in high winds within 80% of design limits of the rotor.

i. To prevent unauthorized climbing, WECS must provide an anti-climb device.

j. Each WECS shall have one (1) sign, not to exceed two (2) square feet in area, posted at the base of the tower. The sign shall contain high voltage warning, emergency numbers and emergency shutdown procedures. If the facility is fenced, signs shall be placed on the fence.

k. A lighting plan for each WECS shall be approved by the county or city. The lighting plan must describe all lighting that will be utilized, including any lighting that may be required by the FAA. The plan shall include, but is not limited to, the number and location of lights, light color and whether any lights will be flashing. Strobe lights are discouraged and must be shielded from the ground if allowed. All efforts shall be made not to affect any resident with any strobe effect.

l. A WECS shall be painted a non-obtrusive color (light environmental color such as white, beige or gray) that is non-reflective. The wind turbine base and blades shall be of a color consistent with all other turbines in the area. No striping of color or advertisement shall be visible on the blades or tower.

m. All distribution lines from the WECS to the electrical grid connection shall be installed underground.

n. WECS shall be designed, constructed and operated so as not to cause radio and television interference. In the event that electromagnetic interference is experienced, the applicant must provide alternate service to each individual resident or property owner affected.

o. Noise emissions from the operation of a WECS shall not exceed 50 decibels on the dBA scale, as measured at the nearest property line or road. Equipment shall be placed so that the WECS will not exceed the maximum permitted sound pressure levels. After installation of the WECS, sound pressure level measurements shall be done by a third party, qualified professional according to the procedures in the most current version of ANSI S12.18. All sound pressure levels shall be measured with a sound meter that meets or exceeds the most current version of ANSI S1.4 specifications for a Type II sound meter. Documentation of the sound pressure level measurements shall be provided to enforcement official within 60 days of the commercial operation of the project.

p. A shadow flicker analysis shall be prepared if there is any residential building, livestock area or public roadway within 1,000 feet of the proposed system. Shadow flicker caused by wind turbines is defined as alternating changes in light intensity due to the moving blade shadows cast on the ground and objects. The analysis shall identify the locations of shadow flicker that may be caused by the WECS blade rotation and the expected durations of the flicker at these locations from sun-rise to sun-set over the course of a year. The analysis shall identify problem areas where shadow flicker may affect residents livestock and traffic. The analysis shall also show measures that shall be taken to eliminate or mitigate the problems.

q. WECS must be kept and maintained in good repair and condition at all times. If a WECS is not maintained in operational and reasonable condition or poses a potential safety hazard, the applicant shall take expeditious action to correct the situation. The applicant shall keep a maintenance log on each WECS, which the county or city can review on a monthly basis.

r. Any WECS not used for six (6) successive months or longer shall be deemed to be abandoned and shall be promptly dismantled and removed from the property. All above and below ground materials must be removed. The ground must be restored to its original condition within 60 days of removal.

s. Any public roads that will be used for transporting WECS equipment shall be identified with the application. The county highway engineer and county sheriff shall approve the proposed routes on any county road and the city engineer and city police chief shall approve the proposed routes on any city street. Any road damage caused by the transportation of WECS equipment shall be repaired to the satisfaction of the county highway engineer or city engineer. A performance guarantee for road repair shall be required in accordance with the provisions of Section 26.03.

t. If a special exception is approved pursuant to this section, a performance guarantee shall be required in accordance with the provisions of Section 26.03, which will be furnished by the applicant to the county or city in order to ensure full compliance with this subsection and any conditions of approval. At a minimum, the performance guarantee shall be in an amount determined by the county or city to be sufficient to have the WECS fully removed and the land returned to its original state should the structure or structures become abandoned, dangerous or obsolete, or not in compliance with this Ordinance or the special exception approval. The performance guarantee shall be kept in full force and effect during the entire time while a WECS exists.

(c) **Wireless Communication Facilities and Services**

(1) **Purpose and Intent.** The regulations of this Section are intended to conform to federal laws and administrative rules governing facilities needed to operate wireless communication systems and to set forth procedures and standards for review and approval for the location of such facilities within the county or city.

a. It is the intent to reasonably regulate the location and design of such facilities to retain the integrity of neighborhoods and the character, property values and aesthetic quality of the county or city.

b. Given the increase in the number of wireless communication facilities requested as a result of the new technology and the Federal Telecommunications Act of 1996, it is the policy that all users should collocate attached wireless communication facilities and wireless communication towers, where practicable. Collocation is proposed in order to assure the most economic use of land and to prevent the proliferation of duplicative structures.

c. In recognition of the concern that technological advances may render certain wireless communication facilities obsolete or unnecessary in the future, requirements are set forth for the removal of unused or unnecessary facilities in a timely manner and provide security for removal.

(2) **Zoning Districts and Approval Process for Wireless Communication Facilities.** Wireless Communication Facilities may be located, as follows:

Table 9.15
Wireless Communication Facilities

Type/Location of Wireless	Districts Permitted	Approval Procedure

Communication Facility		
Attached Wireless Communication Facilities on Existing Structures		
Attached to an existing building or structure that will not be materially altered or changed in appearance	All districts, except on lots occupied by a single family residential use	Approval by the enforcement official
Attached to an existing utility structure that will not be modified or materially alter the pole or impair sight lines or compromise safety	All districts	Approval by the enforcement official
Collocation upon an existing wireless communication facility	All districts	Approval by the enforcement official
New Wireless Communication Tower		
Monopole up to 150 feet in height	A district or on civic, educational, public, and religious sites in all districts, except AP	Special exception and site plan by the board of zoning appeals
Monopole up to 199 feet in height	B1, B2, B3, O1, MD, M1 and M2	Special exception and site plan by the board of zoning appeals
Lattice tower up to 199 feet in height where it can be demonstrated that a monopole is not feasible	M1 and M2 districts	Special exception and site plan by the board of zoning appeals

(3) **Application Requirements - Collocation.** The following information shall be provided with the application, in addition to other site plan submittal requirements for an attached wireless communication facility collocated on an existing structure:

a. The name, address and phone number of the person to contact for engineering, maintenance and other notice purposes. This information shall be continuously updated during all times the facility is on the premises.

b. The owner and/or operator of the existing tower or structure.

c. Legal description of the parent tract and leased parcel (if applicable).

d. Elevation drawings and construction details of all existing and proposed wireless communication facilities, including accessory structures and equipment shelters.

e. The reason or purpose for the wireless communication facility with specific reference to the provider's coverage, capacity and/or quality needs, goals and objectives.

f. Identification of the entities providing the backhaul network for the tower described in the application and other cellular sites owned or operated by the applicant in the county or city.

g. The structural capacity and whether it can accommodate the facility, as proposed or modified.

h. Limits and type of fencing, the method of screening and location and type of illumination.

i. A description of compliance with this section and all applicable federal, state or local laws.

j. A description of performance guarantee to be posted upon issuance of a building permit to ensure removal of the facility if it is abandoned or is no longer needed.

(4) **Application Requirements for New Wireless Communication Tower.** The following information shall be provided with the application to construct any new wireless communication tower, in addition to the submittal requirements in subsection (3) above:

a. A description of performance guarantee to be posted at the time of receiving a permit for the facility to ensure removal of the facility when it is abandoned or is no longer needed. The applicant shall demonstrate that funds will be available to the county or city for removal of

any structure used for wireless communication in an amount which reasonably reflects the cost of removal of the facility and restoration of the property or structure upon which the facility is located or placed. Adequate funds shall also be provided to cover the county or city's administrative costs in the event that the applicant or its successor does not remove the Wireless Communication Facility in a timely manner.

b. Inventory all existing towers, antennas, or sites approved for towers that are within three (3) miles of the proposed site, including specific information about the location, height, and design of each tower.

c. In recognition of the policy to promote collocation, a written agreement, transferable to all successors and assigns, that the operator shall make space available on the facility for collocation.

d. A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower.

e. Prior to issuing an improvement location permit, a signed certification by a professional structural engineer licensed by the State of Indiana shall be provided to the county or city that describes the manner in which the proposed structure will fall in the event of damage, accident or injury (i.e. "fall zone"), and that the designated setback area shall accommodate the structure in the event it falls or breaks and will provide a reasonable buffer in the event the structure fails.

f. The La Porte Airport Authority Board and the Michigan City Board of Aviation Commissioners shall be given written notice at least 60 days prior to the hearing that a permit has been filed requesting the approval of a new wireless communication tower.

g. A determination of no hazard letter issued by the FAA shall demonstrate that lighting is not required prior to approval of the special exception. If construction, and or use of the telecommunications requires FAA or Indiana Department of Aviation approval or review, then a final decision must be provided before the Board of Zoning Appeals may conduct any public hearing on a request for special exception.

(5) **Design Standards Applicable to All Facilities.** All wireless communication facilities shall be constructed and maintained in accordance with the following standards:

a. Facilities shall be located and designed to be harmonious with the surrounding areas.

b. Minimum six (6) foot tall fencing shall be provided for protection of the tower and associated equipment and for security from children and other persons who may otherwise access the facilities. A brick wall may be substituted for the required fencing.

c. Landscaping shall be provided to screen the structure base, accessory buildings and enclosure from adjacent uses and public rights-of-way.

d. Accessory buildings shall be a maximum of 14 feet high and shall be set back in accordance with the requirements for principal buildings in the respective zoning district.

e. All attached wireless communication facilities proposed on the roof of a building shall be designed, constructed and maintained to be architecturally compatible with the principal building. The height of the wireless communication facilities shall not exceed the maximum height of the district plus the allowable exceptions to the height limits contained in Section 15.02. The equipment enclosure may be located within the principal building or may be an accessory building. If proposed as an accessory building, it shall conform to all district requirements for principal buildings, including yard setbacks.

f. The requirements of the Federal Aviation Administration, local airport and Federal Communication Commission shall be noted.

g. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

(6) **Design Standards Applicable to New Towers.** In addition to the design standards in subsection (5) above, all wireless communication towers shall be constructed and maintained in accordance with the following standards:

a. **Feasible Collocation**. Siting or placement of new wireless communications facilities or towers shall be in accordance with the following hierarchy. The order of ranking shall be: (1) co-location first, (2) existing structure or building utilization, (3) new wireless communications facility tower location last. If a new tower is proposed, the applicant must have substantial evidence that a higher ranked alternative is not feasible or available. A permit for the construction and use of a new wireless communication facility shall not be granted until the applicant demonstrates a feasible collocation is not available for the coverage area and capacity needs.

b. **Tower in County.** Any tower located in the unincorporated areas of the county outside of cities shall be separated a minimum of two (2) miles from any existing tower. This separation requirement shall not apply to a tower that is proposed to be located in an M-1 or M-2 industrial district.

c. **Collocation Agreement**. All new and modified wireless communication facilities shall be designed and constructed to accommodate collocation, with a written agreement in a format approved by the county or city attorney. Any tower that is 150 feet or taller shall be capable of co-location of at least four (4) additional users. Any tower that is less than 150 feet shall be capable of co-location of at least two (2) additional users. The tower owner shall make space available for collocation of emergency communication equipment if requested by the county or city.

d. **Height.**

1. The maximum height for a new wireless communication tower shall be 199 feet.

2. A new wireless communication tower shall be designed at a height that will not require aviation hazard lighting by the FAA.

3. Any new tower within the Airport Overlay District shall comply with the height limits of the overlay district, measured relative to the airport elevation.

4. The applicant shall demonstrate that the requested height of the new or modified tower and antenna shall be the minimum height necessary for reasonable communication, including additional height to accommodate future collocation where appropriate.

e. **Tower Setbacks**. The wireless communication tower shall be setback from all non-residential property lines a distance at least equal to one-half (½) the height of the tower, from all residential property lines a distance at least equal to the height of the tower and from all street right-of-way lines a distance at least equal to the height of the tower.

f. **Guy Wires.** All towers shall be self-supporting and guy wires shall be prohibited.

g. **Accessory Structure Setback.** Accessory structures must satisfy the minimum zoning district building setback requirements.

h. **Access.** There shall be unobstructed access to the tower, for operation, maintenance, repair and inspection purposes, which may be provided through or over an easement. This access shall have a width and location determined by such factors as: the location of adjacent thoroughfares and traffic and circulation within the site; utilities needed to service the tower and any attendant facilities; the location of buildings and parking facilities; proximity to residential districts and minimizing disturbance to the natural landscape; and the type of equipment which will need to access the site.

i. **Soils Report.** The tower shall be constructed in accordance with all applicable building codes and shall include the submission of a soils report from a geotechnical engineer, licensed in the State of Indiana. This soils report shall include soil borings and statements confirming the suitability of soil conditions for the proposed use.

j. **Color**. Towers shall be painted a neutral color so as to reduce visual obtrusiveness or be constructed of galvanized steel.

k. **Lighting**. Towers shall not be artificially lighted and shall not exceed a height that requires aviation hazard lighting.

(7) **Collocation**

a. **Statement of Policy.** It is the policy to minimize the overall number of newly established locations for wireless communication facilities and towers throughout the county by encouraging the use of existing structures. If a provider fails or refuses to permit collocation on a facility owned or controlled by it, where collocation is feasible, the result will be that a new and unnecessary additional structure will be required, in contradiction with policy. Collocation shall be required unless an applicant demonstrates that collocation is not feasible.

b. **Antennas on Existing Towers**. An antenna which is attached to an existing tower may be approved by the enforcement official and, to minimize adverse visual impacts associated with the proliferation and clustering of towers, collocation of antennas by more than one carrier on existing towers shall take precedence over the construction of new towers, provided such collation is accomplished in a manner consistent with the following:

1. A tower which is modified or reconstructed to accommodate the collocation of an additional antenna shall be of the same tower type as the existing tower, unless the enforcement official allows reconstruction as a monopole.

2. An existing tower may be modified or rebuilt to a taller height, not to exceed 15 feet over the tower's existing height, to accommodate the collocation of an additional antenna with approval by the enforcement official. A height increase of more than 15 feet shall require approval by the Board of Zoning Appeals.

c. **Antennas Mounted on Structures or Rooftops**. Wireless communication antennas placed on the roofs of buildings may be approved by the enforcement official, if the principal use is a conforming use and the building is a conforming structure. The antenna shall not exceed the height of its supporting structure by more than 12 feet.

d. **Antennas Mounted on Utility Structures**. Wireless communication antennas attached to utility structures such as water towers or electrical transmission line towers may be approved by the enforcement official. The equipment cabinet or structure used in association with antennas shall be located in accordance with the Ordinance requirements for accessory structures.

(8) **Variances.** The Board of Zoning Appeals may consider a variance from the standards of this Section, based upon a finding that one or more of the following factors exist, as appropriate for the type of variance requested:

a. **Location**. The applicant must demonstrate that a location within a district or location in accordance with the standards of this Section cannot reasonably meet the coverage or capacity needs of the applicant.

b. **Tower Setback**. The applicant has provided engineering information documenting that the tower is self-collapsing and that the setback designated area would accommodate the structure should it fall or break and would provide a reasonable buffer in the event the structure fails.

c. **Height**. The height requested is due to signal interference due to topography, tall buildings, masses of trees, or other obstructions, or would reduce the number of towers to the benefit of the cities and county. The granting of the variance would not have a negative impact on any public use airport.

d. **Mitigation**. The applicant has proposed means to mitigate any negative impacts through provision for future collocation, if found to be appropriate by the county or city and special design of the facility and site.

e. **Design**. The wireless communication and accessory facilities shall be designed to be compatible with the existing character of the proposed site, neighborhood and general area such as a steeple, bell tower, or similar form.

(9) **Removal.** Wireless communication facilities shall be removed by the owner if the facility is no longer in use. The facilities must be removed within a year of the end of use. A performance guarantee shall be provided to the county or city at the time of receiving an improvement location permit for the facility to ensure removal of the facility when it is abandoned or is no longer needed. The applicant shall demonstrate that funds will be available to the county or city for removal of any structure used for wireless communication in an amount which reasonably reflects the cost of removal of the facility and restoration of the property or structure upon which the facility is located or placed. Adequate funds shall also be provided to cover the county or city's administrative costs in the event that the applicant or its successor does not remove the Wireless Communication Facility in a timely manner.

Section 14.16 Construction

The following requirements shall be complied with for the specified use:

(a) **Contractors' Place of Business Outdoor Storage**

(1) Outdoor storage shall be located in the side or rear yard of the lot and setback a minimum of 40 feet from any adjacent residential district. Outdoor storage areas shall be screened by a minimum six (6) foot tall solid screening wall in accordance with section 17.03.

(2) Any stockpiles of soil, fertilizer or similar loosely packaged materials shall be sufficiently covered or contained to prevent dust or blowing of materials.

(3) The height of all material and equipment stored within 20 feet of the screening wall or fence shall not exceed the height of the screening wall or fence.

(4) All loading and truck maneuvering shall be accommodated on-site.

Section 14.17 Waste Processing and Disposal

The following requirements shall be complied with for the specified use:

(a) **Processing, Storage, Transfer Stations or Incineration of Solid Waste, Hazardous Waste or Medical Waste**

(1) All processing, storage or transfer of wastes shall be within an enclosed building. There shall not be any outdoor storage of wastes.

(2) The location, size and layout of the site, and its relation to streets giving access to it, shall be such that traffic to and from the use will not conflict with the normal traffic of the area.

(3) No portion of any structure, facility, access drive, parking area or storage area shall be located within 300 feet of a residential district.

(4) All roads on the premises shall be paved with concrete or a bituminous hard surface.

(5) Storing or disposing of any kind shall not pollute a water supply or contaminate surrounding land to the extent that public health is endangered. The surface water detained on the site shall be purified of contaminants before leaving the site or must be disposed of in accordance with the requirements of the health department. All storage, processing and disposal areas shall be a minimum of 100 feet from any wetland, drain stream or body of water. This setback may be increased according to requirements of Natural Resource Preservation Guidelines.

(6) Emission of smoke, dirt, dust and fly ash shall be controlled through the use of electrostatic precipitator or other equipment of equal or better efficiency, which shall meet all applicable Federal, State and local air pollution control regulations.

(7) All sides of the site shall be landscaped with a buffer zone A in accordance with section 17.02(c).

(8) The site shall not be located within five (5) miles of any airport.

(9) The county or city may impose such reasonable conditions as it deems necessary to protect the public health, safety and general welfare from excessive noises, excessive traffic patterns, obnoxious and unhealthy odors, and any detrimental effects from the general operation of the use.

(b) Recycling Facility, Non-Hazardous

(1) The location, size and layout of the site, and its relation to streets giving access to it, shall be such that traffic to and from the use will not conflict with the normal traffic of the area.

(2) The location, size, intensity, site layout and periods of operation must be designated to eliminate any possible nuisance that might be noxious to the occupants of any other nearby permitted uses, whether by reason of odor, dust, noise, fumes, vibration, smoke or lights.

(3) Stacking area for a minimum of five (5) vehicles must be provided on site. Any area used for parking or unloading materials must be screened with a minimum six (6) foot tall wall or solid fence to prevent materials from leaving the unloading area.

(4) Storing or disposing of any kind shall not pollute a water supply or contaminate surrounding land to the extent that public or environmental health is endangered. The surface water detained on the site shall be purified of contaminants before leaving the site or must be disposed of in accordance with the requirements of the health department. All storage, processing and disposal areas shall be a minimum of 100 feet from any wetland, drain stream or body of water. This setback may be increased according to requirements of Natural Resource Preservation Guidelines.

(5) Depositing, storing or disposing of garbage or wastes shall not attract vermin, insects or other pests or allow the wastes to become a breeding place for mosquitoes, flies or other disease-carrying insects. Offensive odors shall not interfere with the enjoyment of adjacent properties.

(6) All sides of the site shall be landscaped with a buffer zone A in accordance with section 17.02(c).

(7) The site shall not be located within five (5) miles of any airport.

(8) The county or city may impose such reasonable conditions as it deems necessary to protect the public health, safety and general welfare from excessive noises, excessive traffic patterns, obnoxious and unhealthy odors, and any detrimental effects from the general operation of the use.

(c) **Salvage Yards**

(1) The minimum lot area shall be 10 acres.

(2) A minimum setback of 1,320 feet shall be provided from any adjacent residential district.

(3) The location, size and layout of the site, and its relation to streets giving access to it, shall be such that traffic to and from the use will not conflict with the normal traffic of the area.

(4) The location, size, intensity, site layout and periods of operation must be designated to eliminate any possible nuisance that might be noxious to the occupants of any other nearby permitted uses, whether by reason of odor, dust, noise, fumes, vibration, smoke or lights.

(5) The entire site must be screened with a minimum eight (8) foot tall wall or solid fence, in addition to the greenbelt and buffer zones A required by section 17.02. Material shall not be stacked higher than the screening enclosure. All material shall be screened so as to not be visible from any public road.

(6) Any area used for parking or unloading materials must be located within the site. Parking of trucks and loading or unloading of materials in the public road right-of-way shall be prohibited.

(7) Storage or disposal of any kind shall not pollute a water supply or contaminate surrounding land to the extent that public health is endangered. The surface water detained on the site shall be purified of contaminants before leaving the site or must be disposed of in accordance with the requirements of the health department. All storage, processing and disposal areas shall be a minimum of 100 feet from any wetland, drain stream or body of water.

(8) The site shall not be located within five (5) miles of any airport.

(9) The county or city may impose such reasonable conditions as it deems necessary to protect the public health, safety and general welfare from excessive noises, excessive traffic patterns, obnoxious and unhealthy odors, and any detrimental effects from the general operation of the use.

(d) **Sanitary Landfills**

(1) The minimum lot area shall be 300 acres.

(2) A minimum setback of 300 feet shall be provided from any adjacent residential district.

(3) The location, size and layout of the site, and its relation to streets giving access to it, shall be such that traffic to and from the use will not conflict with the normal traffic of the area. All truck access to and from the site shall be upon a major thoroughfare.

(4) In order to fully assess all implications and effects of the project, an in-depth environmental impact assessment shall be prepared by the petitioner and submitted for review at the public hearing and approval by the county or city.

(5) The facility shall be equipped with an approved waste water recycling system to avoid contaminated water or liquids from being discharged to ground water, surface water or storm sewers. This shall include a wash-out, wash- down, and secondary containment system to recover and recycle impurities and other by-products processed from trucks, machinery products, supplies or waste.

(6) All driveways, surface roads and storage areas on the premises shall be paved with concrete or deep strength asphalt.

(7) The site shall not be located within five (5) miles of any airport.

Section 14.18 Mining

The following requirements shall be complied with for the specified use:

(a) **Mineral and Non-Mineral Extraction & General Mining Operations**

(1) **Application.** The following additional information shall be included with the special exception and site plan applications:

a. Report by a qualified soil scientist, soils engineer or geologist regarding the effect the proposed operation will have upon the watershed of the area, with particular attention being devoted to the water table, and, if water bodies are to be created, the anticipated permanence of such.

b. A soil erosion control plan prepared in accordance with Article 22.

c. A detailed description of the method of operation including an operations and restoration plan for the extraction of the natural resources deposits. The operations and restoration plan shall include the following:

1. A progressive cell unit mining plan that divides the mining area into sections and delineates the progressive mining proposal on the extractive resources available.

2. Description of how wetlands, surface and ground waters will be protected during mining operations in accordance with La Porte, Indiana Code of Ordinances Article VI – Protection of Wetlands and Lakes. A transportation plan showing access to the site, proposed truck traffic and planned on-site roads. The applicant shall submit these proposed routings for review relative to the physical and design capabilities of these routes to accommodate the potential traffic.

3. An overburden and stockpiling plan which shows how top soil will be stripped and stored on the site as well as the stockpiling of extracted sand or gravel.

4. A re-vegetation plan which shows the staging of restoration through the grading process as well as replacing the top soil and the planting of appropriate native grasses, trees and shrubs.

5. End use plan which shows the ultimate use of the property once restored to assure the county or city the site is being restored in accordance with the county land development plan.

6. A detailed explanation of how the applicant intends to comply with the operating requirements of this section.

(2) **Operations.** The removal of sand, gravel, limestone, peat or similar materials by excavation, stripping, mining or otherwise taking, and including on-site operations appurtenant to the taking, including washing, grading, sorting, (excluding grinding operations) shall be carried on within the limits of an area approved for such activities. All extractions from new pits begun subsequent to the effective date of this Ordinance shall be washed, graded, and further processed and/or stored within the limits of the area approved, and no natural resource extracted outside the limits of this area shall be brought in for washing, grading, or further processing. Resource related industries including, but not limited to: gravel grinding operations, concrete mixing plants and asphalt batching plants shall not be permitted as a part of the operation unless the activity is located in a Zoning District which would permit such a use.

(3) **Setbacks.** Excavation, washing and stockpiling of extracted material shall not be conducted closer than 150 feet to the outer boundary of the area approved for extractive operation. The setback area shall not be used for any activity in conjunction with the extractive operation, except access roads, public notice signs and signs identifying the operation. Greenbelt plantings and landscaping shall be provided in the setback area as required by the Board of Zoning Appeals. To reduce the effects of airborne dust, dirt, and noise, all equipment for loading, weighing, and other operations structures shall not be built closer than 300 feet from any public street right-of-way or from any adjoining residentially zoned district.

(4) **Access.** All means of access to the property shall be from major thoroughfares. No access shall be allowed from residential streets. All private access roads shall be treated so as to create a dust-free surface for a distance of 300 feet from any public access road. Arrangements shall also be made to minimize dust on public access routes traveled in the county or city.

(5) **Fencing.** Any excavation operation that results in standing water for a period of at least one (1) month during the year or slopes as described below shall be subject to the following safety requirements:

a. Where slopes steeper than 30 degrees exist for a period of one (1) month or more, access to such slopes shall be barred by a cyclone fence or similarly effective barrier at least six (6) feet high, at least 50 feet outside the edge of the excavation, with suitable gates controlling access to the excavation area.

b. Where collections of water are one (1) foot or more in depth for any period of at least one (1) month, and occupying an area of 200 square feet or more, access to such collections shall be fenced, as required in subparagraph a above.

c. In those instances where the extractive area is situated in marginal land areas consisting of swamp land, or is bounded by natural bodies of water, the fence shall be required only on those sides accessible to public rights-of-way or as the Board of Zoning Appeals may determine as requiring fencing so as to secure safety. The Board of Zoning Appeals may require the posting of signs "KEEP OUT – DANGER," as needed.

(6) **Slopes.** Finished slopes of the excavation site shall not exceed a minimum of five (5) feet to one (1) foot (five feet horizontal to one foot vertical) and where ponded water results from the operations, this slope must be maintained and extended into the water to a depth of five (5) feet. These slopes shall be established as the work in any one section of the excavation is completed and proceeds to the next section. Sufficient top soil shall be stockpiled on the site so the entire area may be covered with a minimum of six (6) inches of top soil when excavating operations are completed. The replacement of top soil shall be made immediately following termination of excavating operations. In order to prevent erosion of slopes, all replaced top soil shall immediately be planted with native grasses or other native plant material acceptable to the enforcement official.

(7) **Hours of Operation.** Extraction and material processing activities permitted in the plant area shall be limited to the hours of 7:00 A.M. to 7:00 P.M., except in the following situations:

a. Where required by public authorities;

b. Where work requires a continuous flow of materials;

c. Where necessary due to public emergencies;

d. Where any necessary and reasonable repairs to equipment are required.