

Updated November 2015

TOWN OF BURNS HARBOR, INDIANA

TOWN CODE

CHAPTER 4

TOWN OF BURNS HARBOR, INDIANA BUILDING CODE

ARTICLE I BUILDING COMMISSIONER AND BUILDING PERMITS

Sec. 4-1. TITLE.

This ordinance, and all ordinances supplemental or amendatory hereto, shall be known as the "Building Code of the Town of Burns Harbor, Indiana," may be cited as such, and will be referred to herein as "this code".

Sec. 4-2. PURPOSE.

The purpose of this code is to provide minimum standards for the protection of life, health, environment, public safety and general welfare, and for the conservation of energy in the design and construction of buildings and structures.

Sec. 4-3. AUTHORITY.

The Town of Burns Harbor hereby creates the office of Building Commissioner. The Building Commissioner is hereby authorized and directed to administer and enforce all of the provisions of this code. Whenever in this code, it is provided that anything must be done to the approval of or subject to the direction of the Building Commissioner or any other officer of the Town of Burns Harbor, this shall be construed to give such office only the discretion of determining whether this code has been complied with; and no such provision shall be construed as giving any office discretionary powers as to what this code shall be, or power to require conditions not prescribed by ordinances or to enforce this code in an arbitrary or discriminatory manner. Any variance from adopted building rules are subject to approval under I.C. 22-13-2-7(b).

Sec. 4-4. SCOPE.

The provisions of this code apply to the construction, alterations, repair, use, occupancy, maintenance and additions to all buildings and structures, other than fences, in the Town of Burns Harbor, Indiana.

Sec. 4-5. ADOPTION OF RULES BY REFERENCE.

Updated November 2015

A. Building rules of the Indiana Fire Prevention and Building Safety Commission as set out in the following Articles of Title 675 of the Indiana Administrative Code are hereby incorporated by reference in this (ordinance, chapter, code) and shall include later amendments to those Articles as the same are published in the Indiana Register or the Indiana Administrative Code with effective dates as fixed therein:

1. Article 13 - Building Codes
 - a. Fire and Building Safety Standards
 - b. Indiana Building Code
 - c. Indiana Building Code Standards
 - d. Indiana Handicapped Accessibility Code
2. Article 14 - One and Two Family Dwelling Codes
 - a. Council of American Building Officials One and Two Family Dwelling Code
 - b. CABO One and Two Family Dwelling Code; Amendments
 - c. Standards for Permanent Installation of Manufactured Homes
3. Article 16 - Plumbing Codes
 - a. Indiana Plumbing Code
4. Article 17 - Electrical Codes
 - a. Indiana Electrical Code
 - b. Safety Code for Health Care Facilities
5. Article 18 - Mechanical Codes
 - a. Indiana Mechanical Code
6. Article 19 - Energy Conservation Codes
 - a. Indiana Energy Conservation Code
 - b. Modifications to the Model Energy Code
7. Article 20 - Swimming Pool Codes
 - a. Indiana Swimming Pool Code

- B. *Indiana Code 16-41-27-1, et se, providing for the licensing and regulation of mobile home parks by the State Department of Health and the resulting rules set out in the Indiana Administrative Code beginning at 410 IAC 60601 et seq for mobile park sanitation and safety are hereby incorporated by reference in the Burns Harbor Building Code which incorporation shall include later amendments to said Indiana Code and Administrative Code as the same are officially published by the State of Indiana from time to time with effective dates as are fixed from time to time in the official versions of said Indiana Code and Administration Code. (Ordinance 169, 12/26/2001)***
- C. Copies of adopted building rules, codes and standards are on file in the office of the Burns Harbor Clerk- Treasurer.
- D. No occupancy permit shall be issued for any structure containing a subgrade basement unless the basement contains a means of egress. (*Ordinance 231, 11/11/2009*)

Sec. 4-6. APPLICATION FOR PERMITS.

No building permit shall be issued for the foregoing purposes, unless the application for a permit is accompanied by a plat or sketch of the proposed location showing lot boundaries, and by plans and specifications showing the work to be done. In addition, a copy of a Design Release, issued by the State Building Commissioner and the State Fire Marshal pursuant to I.C. 22-15-3-1, shall be provided to the Building Commissioner before issuance of a permit for construction covered by such Design Release.

Sec. 4-7. PERMIT REQUIRED.

- A. A permit shall be required for beginning construction on any building or structure or for the restoration or repair of any building or structure if the cost of the construction, repair or restoration exceeds \$1,000.00. A permit shall be required prior to the erection of any fence or prior to the construction, restoration or repair of any deck, or shed, regardless of the cost of such construction, restoration or repair. (*Ordinance 230-2009*)
- B. A permit shall be required for beginning construction and for the alteration or repair of any residential swimming pool as is such is defined in 675 IAC Article 20.
- C. All temporary, non-permanent pools with a depth exceeding twenty-four inches (24" shall be registered with the Building Commissioner. No temporary pool exceeding

Updated November 2015

twenty-four inches (24") shall be maintained within the Town without obtaining a temporary pool permit from the Building Commissioner.

Sec. 4-8. OTHER ORDINANCES.

All work done under any permit shall be in full compliance with all other ordinances pertaining thereto, and in addition to the fees for permits, there shall be paid the fees prescribed in such ordinances, including but not limited to, all engineering and legal fees of the Town's paid staff incurred in the review of applications for approval of subdivisions or planned unit development districts under Chapter 14. (*Ordinance 214, 4/9/2008*)

Sec. 4-9. REVIEW OF APPLICATION.

Prior to the issuance of any building permit, the Building Commissioner shall:

- A. Review all building permit applications to determine full compliance with the provisions of this code.
- B. Review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding.
- C. Review building permit applications for major repairs within the flood plain area having special flood hazards to determine that the proposed repair (1) uses construction materials and utility equipment that are resistant to flood damage, and (2) uses construction methods and practices that will minimize flood damage.
- D. Review building permit applications for new construction or substantial improvements within the flood plain area having special flood hazards to assure that the proposed construction (including prefabricated and mobile homes) (1) is protected against flood damage, (2) is designed (or modified) and anchored to prevent flotation, collapse, or lateral movement of the structure, flood damage, and (3) uses construction methods and practices that will minimize flood damage.

The Building Commissioner shall give Town Council Members a copy of all papers filed for application of an Improvement Location Permit prior to issuing the Improvement Location Permit. (Resolution 91-112)

Updated November 2015

- E. Determine whether there are any unpaid fees owed by the developer or owner of the subdivision or the planned unit development district in which the improvement location permit site is located, including but not limited to, all engineering and legal fees of the Town's paid staff incurred in the review of applications for approval of subdivisions or planned unit development districts under Chapter 14. (*Ordinance 214, 4/9/2008*)

Sec. 4-10. INSPECTIONS.

After the issuance of any building permit, the Building Commissioner shall make, or shall cause to be made, inspections of the work being done as are necessary to insure full compliance with the provisions of this ordinance and the terms of the permit. Reinspections of work found to be incomplete or not ready for inspection are subject to assessment of reinspection fees as prescribed in this code.

In the case of any inspection requiring the location of public utilities, the person, firm or corporation requesting the location inspection shall pay the costs of the inspection to the Town, as shall be set forth in the current schedule on file with the office of the Clerk-Treasurer. Provided, that no such location inspection fee shall be charged for location inspection requests performed in conjunction with residential building and improvement location permits. (*Ordinance 245, 12/14/2011*)

Sec. 4-11. INSPECTION ASSISTANCE.

The Chief of the Fire Department, or his designated representative, shall assist the Building Commissioner in the inspection of fire suppression, detection and alarm systems and shall provide reports of such inspection to the Building Commissioner.

Sec. 4-12. ENTRY.

Upon presentation of proper credentials, the Building Commissioner or his duly authorized representatives may enter at reasonable times any building, structure or premises in the Town of Burns Harbor to perform any duty imposed upon him by this code.

Sec. 4-13. STOP ORDER.

Whenever any work is being done contrary to the provisions of this code, the Building Commissioner may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such person shall

Updated November 2015

forthwith stop such work until authorized by the Building Commissioner to proceed with the work.

The Building Commissioner shall be authorized to stop work by written notice at any location improvement site where it is determined there are any unpaid fees owed by the developer or owner of the subdivision or the planned unit development district in which the improvement location site is located, including but not limited to, all engineering and legal fees of the Town's paid staff incurred in the review of applications for approval of subdivisions or planned unit development districts under Chapter 14. The Clerk-Treasurer shall forward to the Building Commissioner a list, by subdivision or planned unit development district, where there are legal or engineering fees that have been unpaid for more than thirty (30) days. (*Ordinance 214, 4/9/2008*)

Sec. 4-14. CERTIFICATE OF OCCUPANCY.

No certificate of occupancy for any building or structure erected, altered or repaired after the adoption of this ordinance shall be issued unless such building or structure was erected, altered or repaired in compliance with the provisions of this ordinance. It shall be unlawful to occupy any such building or structure unless a full, partial, or temporary certificate of occupancy has been issued by the Building Commissioner.

No occupancy permit shall be issue unless the owner has completed landscaping in accordance with the requirements of Chapter 15 or has provided sufficient security in the form of a \$3,000 cash bond or other surety bond or letter of credit with an accompanying schedule for completion of the landscaping required in a form acceptable to the Building Commissioner. In cases where the landscaping requirements are secured by a bond or letter of credit, occupancy shall be conditioned upon completion of the landscaping requirements. No occupancy permit shall be issued for any property unless all sidewalks or driveways have been installed. Conditional occupancy may be granted in cases where weather conditions o not permit the installation of the sidewalk or driveway, provided that a cash bond or other surety bond or letter of credit in the amount of the greater of \$10,000 or the Building Commissioner's estimate of the one hundred ten percent (110%) of the costs of installing the unfinished sidewalk or driveway, along with an accompanying schedule for completion, is posted with the Town. No conditional occupancy permit issued pursuant to this Section shall be issued for a period of more than one hundred eighty (180) days. (*Ordinance 261-2015*)

Sec. 4-15. WORKMANSHIP.

All work on the construction, alteration and repair of building and other structures shall be performed in a good and workmanlike manner according to accepted standards and practices in the trade.

Sec. 4-16. VIOLATIONS.

It shall be unlawful for any person, firm or corporation, whether as owner, lessee, sub-lessee, or occupant to erect, construct, enlarge, alter, repair, improve, remove, convert, demolish, equip, use, occupy or maintain any building or structure, other than fences, in the Town of Burns Harbor or cause or permit the same to be done, contrary to or in violation of the provisions of this code.

Sec. 4-17. RIGHT OF APPEAL.

All persons shall have the right to appeal the Building Commissioner's decision first through the Town Council of the Town of Burns Harbor and then to the Fire Prevention and Building Safety Commission of Indiana in accordance with the provisions of I.C. 22-13-2-7 and I.C. 4-21.5-3-7.

Sec. 4-18. REMEDIES.

If the Building Commissioner finds any violation of this Chapter or the Town Code pertaining to the use and occupancy of Buildings or land within the Town, he shall in the name of the Town of Burns Harbor bring actions for mandatory and injunctive relief in the enforcement of and to secure compliance with any order or orders made, and any such action or mandatory or injunctive relief may be joined with an action to recover the penalties provided for in Town Code. In any action commenced under this paragraph or otherwise brought to enforce the provisions of this Chapter, and in the event the Town prevails, the Town shall recover, in addition to any penalty, its attorney fees and staff costs incurred in connection with such proceedings at the rates on file with the Clerk-Treasurer. *(Ordinance 230, 10/14/2009)*

Sec. 4-19. PERMIT FEES.

REFER TO CHAPTER 15 ADDENDUM

Updated November 2015

Sec. 4-20. PERMIT FEE REQUIRED.

That no application will be considered until the building permit fee is received.

Sec. 4-21. PENALTIES.

If any person, firm or corporation shall violate any of the provisions of this ordinance, or shall do any act prohibited herein, or shall fail to perform any duty lawfully enjoined, within the time prescribed by the Building Commissioner, or in connection with the provisions of this ordinance for each such violation, failure or refusal, such person firm or corporation may be fined in any sum not less than \$500.00 nor more than \$2,000.00. Each day of such unlawful activity as is prohibited by the first sentence of this section shall constitute a separate offense. (Ord. No. 115, 1988)

ARTICLE II. UNSAFE BUILDING

Sec. 4-22. UNSAFE BUILDING LAW ESTABLISHED.

Under the provisions of Indiana Code 36-7-9, there is hereby established the Burns Harbor Unsafe Building Law.

Sec. 4-23. INDIANA CODE ADOPTED BY REFERENCE.

Indiana Code 36-7-9-1 through 36-7-9-28 is hereby adopted by reference as the Burns Harbor Unsafe Building Law. All proceedings with the Town of Burns Harbor for the inspection, repair, and removal of unsafe buildings shall be governed by said law and the provisions of this ordinance. In the event the provisions of this ordinance conflict with the provisions of Indiana Code 36-7-9-1 through 36-7-9-28, then the provisions of the state statute shall control. Two copies of I.C. 36-7-9-1 through 36-7-9-28 are on file for public review in the office of the Clerk-Treasurer of the Town of Burns Harbor.

Sec. 4-24. UNSAFE BUILDING TO BE REPAIRED OR REMOVED.

All building or portions thereof within the Town of Burns Harbor which are determined after inspection by the Building Commissioner to be unsafe as defined in this ordinance are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal.

Sec. 4-25. ENFORCEMENT.

The Burns Harbor Building Commissioner, as chief administrative officer of the Building Department of the Town of Burns Harbor, is the enforcement authority under this ordinance and shall be authorized to administer and proceed under the provisions of said law in ordering the repair or removal of any buildings found to be unsafe as specified herein or as specified hereafter. The hearing authority under the terms of this ordinance and Indiana law shall be the Town Council of the Town of Burns Harbor.

Sec. 4-26. OFFICER'S AUTHORITY RE: ENFORCEMENT.

Wherever in the building regulations of the State of Indiana or the Burns Harbor Unsafe Building Law, it is provided that anything must be done to the approval of or subject to the direction of the Building Commissioner, or any other officer of the Town, this shall be construed to give such officer only the discretion of determining whether the rules and standards established by ordinance have been complied with; and no such provisions shall be construed as giving any officer discretionary powers as to what such regulations or standards shall be, power to require conditions not prescribed by ordinance, or to enforce ordinance provisions in an arbitrary or discretionary manner.

Sec. 4-27. DEFINITION OF UNSAFE BUILDING.

The description of an unsafe building contained in Indiana Code 36-7-9-4 is hereby supplemented to provide minimum standards for building condition or maintenance in the Town of Burns Harbor, Indiana, by adding the following definition:

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

- A. Whenever any door, aisle, passageway, or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.
- B. Whenever the stress in any materials, member, or portion thereof, due to all dead and live loads, is more than one and one-half times the working stress or stresses allowed for new buildings of similar structure, purpose or location.

- C. Whenever any portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements for new buildings of similar structure, purpose, or location.
- D. Whenever any portion, member or appurtenance thereof is likely to fail, to become detached or dislodged, or to collapse and thereby injure persons or damage property.
- E. Whenever any portion of a building, or any member, appurtenance, or ornamentation on the exterior thereof is not of sufficient strength or stability or is not so anchored, attached, or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified for new buildings of similar structure, purpose, or location without exceeding the working stresses permitted for such buildings.
- F. Whenever any portion thereof has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.
- G. Whenever the building or structure, or any portion thereof, because of (1) dilapidation, deterioration, or decay; (2) faulty construction; (3) the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; (4) the deterioration, decay or inadequacy of its foundation; or (5) any other cause, is likely to partially or completely collapse.
- H. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.
- I. Whenever the exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.
- J. Whenever the building or structure, exclusive of the foundation, shows thirty-three percent or more damage or deterioration of its supporting member or members, or fifty percent damage or deterioration of its non- supporting members, enclosing or outside walls or coverings.

- K. Whenever the building or structure has been so damaged by fire, wind, earthquake, or flood or has become so dilapidated or deteriorated so as to become (1) an attractive nuisance to children, or (2) freely accessible to persons for the purpose of committing unlawful acts.
- L. Whenever any building or structure has been constructed, exists, or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this Town, or of any law or ordinance of this state or town relating to the condition, location or structure of buildings.
- M. Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances has in any non-supporting part, member or portion less than fifty percent, or in any supporting part, member or portion less than sixty-six percent of the (1) strength, (2) fire-resisting qualities or characteristics, or (3) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height, and occupancy in the same location.
- N. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangements, inadequate light, air or sanitation facilities, or otherwise, is determined by the Health Official to be unsanitary, unfit for human habitation, or in such a condition that is likely to cause sickness or disease.
- O. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections, or heating apparatus, or other cause, is determined by the Building Commissioner to be a fire hazard.
- P. Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six (6) months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

Updated November 2015

Sec. 4-28. SUBSTANTIAL PROPERTY INTEREST.

The definition of "substantial property interest" set forth in I.C. 36-7-9-2 is hereby incorporated by reference herein as copied in full.

Sec. 4-29. WORK STANDARDS.

All work for the reconstruction, alteration, repair or demolition of buildings and other structures shall be performed in a good workmanlike manner according to the accepted standards and practices in the trade. The provisions of the rules pertaining to construction, plumbing, electrical, mechanical, and one and two family dwellings, promulgated by the Administrative Building Council of Indiana, shall be considered standard and acceptable practice for all matters covered by this ordinance or orders issued pursuant to this ordinance by the Building Commissioner of the Town of Burns Harbor, Indiana.

Sec. 4-30. FUND ESTABLISHED.

An Unsafe Building Fund is hereby established in the operating budget of the Town of Burns Harbor in accordance with the provisions of I.C. 36-7-9-14.

Sec. 4-31. VIOLATION PENALTIES.

No person, firm, or corporation, whether as owner, lessee, sub-lessee or occupant, shall erect, construct, enlarge, alter, repair, move, improve, remove, demolish, equip, use, occupy, or maintain any building or premises, or cause or permit the same to be done, contrary to or in violation of any of the provisions of this ordinance or any order issued by the Town. Any person violating the provisions of this ordinance shall be subject to a fine of not more than \$2,500.00.

ARTICLE III CULVERTS

Sec. 4-32. CULVERTS REQUIRED.

*Where required to facilitate proper roadside drainage, each party installing a driveway entrance shall be required to install and maintain a 12 inch minimum diameter 12 gauge or heavier corrugated galvanized steel pipe at least 20 feet in length with flared end sections or concrete head walls designated so as not to create a hazard to the under part of automobiles, at the entrance of each driveway.
(Ordinance 198, 2006)*

Sec. 4-33. BLOCKING OF DITCHES PROHIBITED.

No party shall fill or otherwise block roadside drainage ditches. They shall be permitted to install field tile or other suitable conduit for roadside water, providing the top of the cover over such tile or conduit is at least 12 inches below the surface of the pavement adjacent to said tile or conduit. All such tile installed shall be the property owners to maintain.

Sec. 4-34. RESPONSIBILITY OF LANDOWNER.

It shall be the duty of each party to insure the culvert or drain is of sufficient capacity and in the proper location to comply with Sec. 4-40 and 4-41 above. It is recommended that parties request the advice of the Burns Harbor Street Commissioner before making said installation and should such facility be inadequate or require replacement, it shall be the obligation of the party using the driveway entrance and shall in no way be any liability to the Burns Harbor Street Commissioner.

ARTICLE IV. NUMBERING OF STRUCTURES

Sec. 4-35 NUMBERING OF STRUCTURES REQUIRED.

It shall be the duty of the owner or occupant of each house, business structure or other structure within the Town of Burns Harbor, Porter County, Indiana, now existing or hereafter erected which has been assigned a mailing address for the receipt of mail through the United States Postal system to place on such structure within 90 days from the date of passage of this ordinance, letters or numerals not less than 3 inches high showing the number of the mailing address of each such structure. The aforesaid letters or numerals shall be placed on said structures so that they are visible from the street and shall contrast with the color of the structure. In addition, in the event that the structure is not visible from the street, then the mailing address should be placed in such a way that it is visible from the street, making it possible for emergency vehicles to easily locate and identify the structure. (*Ordinance 123, 6/28/89*)

Sec. 4-36. VIOLATIONS; PENALTIES.

Violations of this Ordinance shall be punishable by a fine of one hundred dollars (\$100.00) for a first offense. Second and subsequent violations shall be subject to the general penalty provisions found in Sec. 1-9 of the Town Code. (*Ordinance 230*)

Article V: Manufactured Floors & Roofs
(Ordinance 242, 4/13/2011)

4-37. DEFINITIONS. The following definitions shall apply throughout this Chapter:

- A. “Manufactured floor” shall mean any floor support system, including I-beam joists, trusses, rim boards or headers, constructed in whole or in part with manufactured or engineered wood products as opposed to conventional or natural wood products.
- B. “Manufactured roof” shall mean any roof support system, including I-beam joists, trusses, or rafters, constructed in whole or in part with manufactured or engineered wood products as opposed to conventional or natural wood products.

4-38. APPLICABILITY. The provisions of Sections 4-37 through 4-43 shall apply to all commercial and residential new construction and to alterations of structures and accessory structures, as such alterations are defined by Section 15-2-2 (10), located within the Town of Burns Harbor and for which a final occupancy permit has not been issued as of the effective date of this Ordinance.

4-39. IDENTIFICATION REQUIRED. The builder or owner of any structure containing a manufactured floor or manufactured roof shall clearly identify the existence of such manufactured floor or manufactured roof within the structure. It shall be a condition of the issuance of a final occupancy permit that fire resistant tags be conspicuously posted on the gas or electric utility meter located on the outside of the structure. Structures containing manufactured floors shall be designated with a tag indicating “F” and structures containing manufactured roofs shall be designated with a tag indicating “R”. Structures containing both manufactured floors and manufactured roofs shall be designated with a tag indicating “RF”.

4-40. DISCLOSURE REQUIRED ON PERMIT APPLICATION. Builders and owners shall disclose the use of manufactured floors or manufactured roofs on the application for an improvement location permit.

4-41. TAGS. The Town of Burns Harbor Building Commissioner shall make available the tags required by this Chapter, which shall be purchased by the builder or owner and installed prior to occupancy. Any individual who removes a tag installed pursuant to this Chapter shall be subject to a fine in accordance with Section 4-43 of this Chapter.

4-42. INSPECTIONS. All structures and accessory structures for which an improvement location permit is applied for after the effective date of this Ordinance shall be subject to inspection by the Town of Burns Harbor Building Commissioner to ensure compliance with the provisions of this Ordinance. In order to ensure compliance with this Ordinance, the Building Commissioner or his designee shall have the right of entry into any structure or accessory structure subject to the provisions of this Ordinance.

Updated November 2015

4-43. PENALTIES. Any person who violates Section 4-39 or 4-41 of this Chapter shall be fined \$250.00 for a first violation and up to \$2,500.00 for any second or subsequent violation. Each violation of Section 4-39 or Section 4-41 shall constitute a separate offense, and each day that the violation continues shall constitute a separate offense. This Section shall not be construed as limiting any remedy available to the Town, including injunctive relief or the General Penalty provisions of the Town Code, which are found at Section 1-9.

ARTICLE VI: LOCK BOXES
(Ordinance 253)

SECTION 4.37. DEFINITIONS.

- A. Building – shall mean any structure used or intended for supporting or sheltering any occupancy.
- B. Code Official - shall mean the Town of Burns Harbor Fire Chief or his designee responsible for enforcement of this ordinance.
- C. Lock Box – shall mean a high security key vault, which is listed under the UL 1610 and the UL 1037 standards, master, keyed configuration, provided by the Fire Department that provides contracted services to the Town of Burns Harbor.
- D. Fire Department – shall mean the fire company contracted to provide fire/rescue protection and services to the Town of Burns Harbor.

SECTION 4-38. APPLICABILITY.

This ordinance applies to any commercial or industrial structures, multi-family residential and apartment complexes, structures that have restricted access through locked doors, governmental buildings, nursing care facilities, educational buildings, places of assembly (churches), and other at-risk properties that are not occupied 24 hours a day without interruption. This ordinance shall not apply to owner occupied one and two family dwellings and individual townhouse units that have shared entranceways. For the purpose of this ordinance, individual townhouse units are considered single family by unit.

SECTION 4-39. SECURITY FENCE, GATES PADLOCKS.

When property contains a building or structure that is protected by a locked fence or gate, the Code Official may require a Padlock to be installed at a location and in a manner approved by the Code Official.

SECTION 4-40. MANDATORY LOCK BOXES FOR HAZARDOUS MATERIALS.

The Code Official shall require a Lock Box to be installed for any facilities, firm, or corporation which handles, uses, or stores hazardous materials and/or is required to prepare the emergency services material safety data sheets (MSDS) or hazardous chemical inventory forms under SARA Title III. All pertinent documents shall be stored in a Lock Box Document Vault. This includes any facility, firm or corporation operating structures that handle, use or store hazardous materials. The key shall be of a type and size approved by the Code Official.

SECTION 4-41. LOCK BOXES.

The owner or operator of a structure subject to this ordinance is required at all times to assure at all times the key(s) in the Lock Box will allow access to the structure. The box shall

Updated November 2015

contain the following:

- a. Keys to locked points of egress, whether interior or exterior of such buildings;
- b. Keys to locked mechanical rooms;
- c. Keys to locked elevator rooms or controls;
- d. Keys to any fence or secured areas;
- e. A card containing the emergency contact people and phone numbers of said people;
and
- f. An inventory of all keys placed inside the Lock Box.

SECTION 4-42. INSTALLATION.

The Lock Box shall be approved by the Code Official and shall be installed on the front of the building near the main entry door and between six (6) and eight (8) feet above the ground unless approved at a higher or lower level by the Code Official. A registration form with the Town of Burns Harbor is required prior to the installation of a Lock Box in order to verify proper mounting, location and keying of the Lock Box.

SECTION 4-43. COMPLIANCE.

All existing buildings shall comply with this ordinance one (1) year from the effective date of this ordinance. All newly constructed buildings not yet occupied or buildings currently under construction, and all buildings or businesses applying for certificate of occupancy, shall comply immediately upon the effective date of this ordinance.

SECTION 4-44. ENFORCEMENT.

Any person, entity or corporation who has violated any provisions of this Article or who has failed to comply with an order concerning this Article issued by the Code Official of the Town of Burns Harbor shall be punished by a fine of not more than Three Hundred Dollars (\$300.00). Each day a violation continues shall be considered a separate offense.

ARTICLE VII. FLOOD ORDINANCE (*Ordinance 262*)

Article 1. Statutory Authorization, Findings of Fact, Purpose, and Objectives.

Section A. Statutory Authorization.

The Indiana Legislature has in Indiana Code 36-7-4 granted the power to local government units to control land use within their jurisdictions. Therefore, the Town Council of the Town of Burns Harbor does hereby adopt the following floodplain management regulations.

Section B. Findings of Fact.

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

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

Section C. Statement of Purpose.

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

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

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

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

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

Updated November 2015

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

(6) Make federal flood insurance available for structures and their contents in the Town by fulfilling the requirements of the National Flood Insurance Program.

Section D. Objectives.

The objectives of this ordinance are:

- (1) To protect human life and health.
- (2) To minimize expenditure of public money for costly flood control projects.
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- (4) To minimize prolonged business interruptions.
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in floodplains.
- (6) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas.

Article 2. Definitions.

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

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

Zone A: Areas subject to inundation by the one-percent annual chance flood event. Because detailed hydraulic analyses have not been performed, no base flood elevation or depths are shown.

Zone AE and A1-A30: Areas subject to inundation by the one-percent annual chance flood

Updated November 2015

event determined by detailed methods. Base flood elevations are shown within these zones. (Zone AE is on new and revised maps in place of Zones A1-A30.)

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

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

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

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

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

Addition (to an existing structure) means any walled and roofed expansion to the perimeter of a structure in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.

Appeal means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance.

Area of shallow flooding means a designated AO or AH Zone on the community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity

Updated November 2015

flow may be evident. Such flooding is characterized by ponding or sheet flow.

Base Flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE) means the elevation of the one-percent annual chance flood.

Basement means that portion of a structure having its floor sub-grade (below ground level) on all sides.

Boundary River means the part of the Ohio River that forms the boundary between Kentucky and Indiana.

Boundary River Floodway means the floodway of a boundary river.

Building see "Structure."

Community means a political entity that has the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.

Community Rating System (CRS) means a program developed by the Federal Insurance Administration to provide incentives for those communities in the Regular Program that have gone beyond the minimum floodplain management requirements to develop extra measures to provide protection from flooding.

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

D Zone means unstudied areas where flood hazards are undetermined, but flooding is possible. Flood insurance is available in participating communities but is not required by regulation in this zone.

Development means any man made change to improved or unimproved real estate including but not limited to:

- (1) construction, reconstruction, or placement of a structure or any addition to a structure;
- (2) installing a manufactured home on a site, preparing a site for a manufactured home or installing a recreational vehicle on a site for more than 180 days;

Updated November 2015

- (3) installing utilities, erection of walls and fences, construction of roads, or similar projects;
- (4) construction of flood control structures such as levees, dikes, dams, channel improvements, etc.;
- (5) mining, dredging, filling, grading, excavation, or drilling operations;
- (6) construction and/or reconstruction of bridges or culverts;
- (7) storage of materials; or
- (8) any other activity that might change the direction, height, or velocity of flood or surface waters.

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

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

Elevation Certificate is a certified statement that verifies a structure's elevation information.

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

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

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FEMA means the Federal Emergency Management Agency.

Updated November 2015

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

Flood Boundary and Floodway Map (FBFM) means an official map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated the areas of flood hazards and regulatory floodway.

Flood Insurance Rate Map (FIRM) means an official map of a community, on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) is the official hydraulic and hydrologic report provided by FEMA. The report contains flood profiles, as well as the FIRM, FBFM (where applicable), and the water surface elevation of the base flood.

Flood Prone Area means any land area acknowledged by a community as being susceptible to inundation by water from any source. (See "Flood")

Flood Protection Grade (FPG) is the elevation of the regulatory flood plus two feet at any given location in the SFHA. (see "Freeboard")

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

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

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

Floodproofing (dry floodproofing) is a method of protecting a structure that ensures that the

Updated November 2015

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

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

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

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

Fringe is those portions of the floodplain lying outside the floodway.

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

Highest adjacent grade means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

Historic structures means any structures individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.

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

Letter of Final Determination (LFD) means a letter issued by FEMA during the mapping update

Updated November 2015

process which establishes final elevations and provides the new flood map and flood study to the community. The LFD initiates the six-month adoption period. The community must adopt or amend its floodplain management regulations during this six-month period unless the community has previously incorporated an automatic adoption clause.

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

Letter of Map Amendment (LOMA) means an amendment by letter to the currently effective FEMA map that establishes that a property is not located in a SFHA through the submittal of property specific elevation data. A LOMA is only issued by FEMA.

Letter of Map Revision (LOMR) means an official revision to the currently effective FEMA map. It is issued by FEMA and changes flood zones, delineations, and elevations.

Letter of Map Revision Based on Fill (LOMR-F) means an official revision by letter to an effective NFIP map. A LOMR-F provides FEMA's determination concerning whether a structure or parcel has been elevated on fill above the BFE and excluded from the SFHA.

Lowest adjacent grade means the lowest elevation, after completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

Lowest floor means the lowest elevation described among the following:

- (1) The top of the lowest level of the structure.
- (2) The top of the basement floor.
- (3) The top of the garage floor, if the garage is the lowest level of the structure.
- (4) The top of the first floor of a structure elevated on pilings or pillars.
- (5) The top of the floor level of any enclosure, other than a basement, below an elevated structure where the walls of the enclosure provide any resistance to the flow of flood waters unless:
 - a) the walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of flood waters by providing a minimum of two openings (in addition to doorways and windows) in a minimum of two exterior walls; if a structure has more than one enclosed area, each shall have openings on exterior walls;

Updated November 2015

- b) the total net area of all openings shall be at least one (1) square inch for every one square foot of enclosed area; the bottom of all such openings shall be no higher than one (1) foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher; and,
- c) such enclosed space shall be usable solely for the parking of vehicles and building access.

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

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

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

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

National Flood Insurance Program (NFIP) is the federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the Federal Government and the private insurance industry.

National Geodetic Vertical Datum (NGVD) of 1929 as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

New construction means any structure for which the "start of construction" commenced after the effective date of the community's first floodplain ordinance.

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

Non-boundary river floodway means the floodway of any river or stream other than a boundary river.

Updated November 2015

North American Vertical Datum of 1988 (NAVD 88) as adopted in 1993 is a vertical control datum used as a reference for establishing varying elevations within the floodplain.

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

One-percent annual chance flood is the flood that has a one percent (1%) chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the one-percent annual chance flood. See "Regulatory Flood".

Physical Map Revision (PMR) is an official republication of a community's FEMA map to effect changes to base (1-percent annual chance) flood elevations, floodplain boundary delineations, regulatory floodways, and planimetric features. These changes typically occur as a result of structural works or improvements, annexations resulting in additional flood hazard areas, or correction to base flood elevations or SFHAs.

Public safety and nuisance means anything which is injurious to the safety or health of an entire community, neighborhood or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

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

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

Regulatory flood means the flood having a one percent (1%) chance of being equaled or exceeded in any given year, as calculated by a method and procedure that is acceptable to and approved by the Indiana Department of Natural Resources and the Federal Emergency Management Agency. The regulatory flood elevation at any location is as defined in Article 3 (B) of this ordinance. The "Regulatory Flood" is also known by the term "Base Flood", "One-Percent Annual Chance Flood", and "100-Year Flood".

Repetitive loss means flood-related damages sustained by a structure on two separate occasions

Updated November 2015

during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equaled or exceeded 25% of the market value of the structure before the damage occurred.

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

Special Flood Hazard Area (SFHA) means those lands within the jurisdiction of the Town of Burns Harbor subject to inundation by the regulatory flood. The SFHAs of the Town of Burns Harbor are generally identified as such on the Porter County, Indiana and Incorporated Areas Flood Insurance Rate Map dated September 30, 2015 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date. (These areas are shown on a FIRM as Zone A, AE, A1- A30, AH, AR, A99, or AO).

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

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

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have

Updated November 2015

incurred "repetitive loss" or "substantial damage" regardless of the actual repair work performed. The term does not include improvements of structures to correct existing violations of state or local health, sanitary, or safety code requirements or any alteration of a "historic structure", provided that the alteration will not preclude the structures continued designation as a "historic structure".

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

Variance is a grant of relief from the requirements of this ordinance, which permits construction in a manner otherwise prohibited by this ordinance where specific enforcement would result in unnecessary hardship.

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

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

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

Zone means a geographical area shown on a FIRM that reflects the severity or type of flooding in the area.

Zone A (see definition for A zone)

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

Article 3. General Provisions.

Updated November 2015

Section A. Lands to Which This Ordinance Applies.

This ordinance shall apply to all SFHAs and known flood prone areas within the jurisdiction of the Town of Burns Harbor.

Section B. Basis for Establishing Regulatory Flood Data.

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

(1) The regulatory flood elevation, floodway, and fringe limits for the studied SFHAs within the jurisdiction of the Town of Burns Harbor shall be as delineated on the one-percent annual chance flood profiles in the Flood Insurance Study of Porter County, Indiana and Incorporated Areas dated September 30, 2015 and the corresponding Flood Insurance Rate Map dated September 30, 2015 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date.

(2) The regulatory flood elevation, floodway, and fringe limits for each of the SFHAs within the jurisdiction of the Town of Burns Harbor, delineated as an "A Zone" on the Porter County, Indiana and Incorporated Areas Flood Insurance Rate Map dated September 30, 2015 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date, shall be according to the best data available as provided by the Indiana Department of Natural Resources; provided the upstream drainage area from the subject site is greater than one square mile. Whenever a party disagrees with the best available data, the party needs to replace existing data with better data that meets current engineering standards. To be considered, this data must be submitted to the Indiana Department of Natural Resources for review and subsequently approved.

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

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

Section C. Establishment of Floodplain Development Permit.

A Floodplain Development Permit shall be required in conformance with the provisions of this

Updated November 2015

ordinance prior to the commencement of any development activities in areas of special flood hazard.

Section D. Compliance.

No structure shall hereafter be located, extended, converted or structurally altered within the SFHA without full compliance with the terms of this ordinance and other applicable regulations. No land or stream within the SFHA shall hereafter be altered without full compliance with the terms of this ordinance and other applicable regulations.

Section E. Abrogation and Greater Restrictions.

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Section F. Discrepancy between Mapped Floodplain and Actual Ground Elevations.

- (1) In cases where there is a discrepancy between the mapped floodplain (SFHA) on the FIRM and the actual ground elevations, the elevation provided on the profiles shall govern.
- (2) If the elevation of the site in question is below the base flood elevation, that site shall be included in the SFHA and regulated accordingly.
- (3) If the elevation (natural grade) of the site in question is above the base flood elevation and not located within the floodway, that site shall be considered outside the SFHA and the floodplain regulations will not be applied. The property owner shall be advised to apply for a LOMA.

Section G. Interpretation.

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

- (1) Considered as minimum requirements.
- (2) Liberally construed in favor of the governing body.
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

Section H. Warning and Disclaimer of Liability.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of

Updated November 2015

study. Larger floods can and will occur on rare occasions. Therefore, this ordinance does not create any liability on the part of the Town of Burns Harbor, the Indiana Department of Natural Resources, or the State of Indiana, for any flood damage that results from reliance on this ordinance or any administrative decision made lawfully thereunder.

Section I. Penalties for Violation.

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

- (1) A separate offense shall be deemed to occur for each day the violation continues to exist.
- (2) The Town of Burns Harbor through its Plan Commission shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a Standard Flood Insurance Policy to be suspended.
- (3) Nothing herein shall prevent the Town from taking such other lawful action to prevent or remedy any violations. All costs connected therewith shall accrue to the person or persons responsible.

Article 4. Administration.

Section A. Designation of Administrator.

The Town Council of the Town of Burns Harbor hereby appoints the Building Commissioner to administer and implement the provisions of this ordinance and is herein referred to as the Floodplain Administrator.

Section B. Permit Procedures.

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

- (1) Application Stage.

- a) A description of the proposed development.
- b) Location of the proposed development sufficient to accurately locate property and structure(s) in relation to existing roads and streams.
- c) A legal description of the property site.
- d) A site development plan showing existing and proposed development locations and existing and proposed land grades.
- e) Elevation of the top of the planned lowest floor (including basement) of all proposed buildings. Elevation should be in NAVD 88 or NGVD.
- f) Elevation (in NAVD 88 or NGVD) to which any non-residential structure will be floodproofed.
- g) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. A hydrologic and hydraulic engineering study is required and any watercourse changes submitted to DNR for approval and then to FEMA as a Letter of Map Revision. (See Article 4, Section C. (6) for additional information.)

(2) Construction Stage.

Upon establishment of the lowest floor of an elevated structure or structure constructed on fill, it shall be the duty of the applicant to submit to the Floodplain Administrator a certification of the NAVD 88 or NGVD elevation of the lowest floor, as built. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by the same. The Floodplain Administrator shall review the lowest floor elevation survey data submitted. The applicant shall correct deficiencies detected by such review before any further work is allowed to proceed. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project. Any work undertaken prior to submission of the elevation certification shall be at the applicant's risk.

Upon establishment of the floodproofed elevation of a floodproofed structure, it shall be the duty of the applicant to submit to the Floodplain Administrator a floodproofing certificate. Certification shall be prepared by or under the direct supervision of a registered professional engineer and certified by same. (The Floodplain Administrator shall review the floodproofing certification submitted.) The applicant shall correct any deficiencies detected by such review before any further work is allowed to proceed. Failure to submit the floodproofing certification or failure to make correction required shall be cause to issue a stop-work order for the project.

(3) Finished Construction.

Upon completion of construction, an elevation certification (FEMA Elevation Certificate Form 81-31 or any future updates) which depicts the “as-built” lowest floor elevation is required to be submitted to the Floodplain Administrator. If the project includes a floodproofing measure, floodproofing certification (FEMA Floodproofing Certificate Form 81-65 or any future updates) is required to be submitted by the applicant to the Floodplain Administrator.

Section C. Duties and Responsibilities of the Floodplain Administrator.

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

Duties and Responsibilities of the Floodplain Administrator shall include, but are not limited to:

- (1) Review all floodplain development permits to assure that the permit requirements of this ordinance have been satisfied.
- (2) Inspect and inventory damaged structures in the SFHA and complete substantial damage determinations.
- (3) Ensure that construction authorization has been granted by the Indiana Department of Natural Resources for all development projects subject to Article 5, Section E and G (1) of this ordinance, and maintain a record of such authorization (either copy of actual permit/authorization or floodplain analysis/regulatory assessment).
- (4) Ensure that all necessary federal or state permits have been received prior to issuance of the local floodplain development permit. Copies of such permits/authorizations are to be maintained on file with the floodplain development permit.
- (5) Maintain and track permit records involving additions and improvements to residences located in the floodway.
- (6) Notify adjacent communities and the State Floodplain Coordinator prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA.
- (7) Maintain for public inspection and furnish upon request local permit documents, damaged structure inventories, substantial damage determinations, regulatory flood data, SFHA maps, Letters

Updated November 2015

of Map Change (LOMC), copies of DNR permits, letters of authorization, and floodplain analysis and regulatory assessments (letters of recommendation), federal permit documents, and “as-built” elevation and floodproofing data for all buildings constructed subject to this ordinance.

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

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

(10) Review certified plans and specifications for compliance.

(11) Verify and record the actual elevation of the lowest floor (including basement) of all new or substantially improved structures, in accordance with Article 4 Section B.

(12) Verify and record the actual elevation to which any new or substantially improved structures have been floodproofed in accordance with Article 4, Section B.

(13) Perform a minimum of three inspections to ensure that all applicable ordinance and floodplain development requirements have been satisfied. The first upon the establishment of the Flood Protection Grade reference mark at the development site; the second upon the establishment of the structure’s footprint/establishment of the lowest floor; and the final inspection upon completion and submission of the required finished construction elevation certificate. Authorized Town officials shall have the right to enter and inspect properties located in the SFHA.

(14) Stop Work Orders

a) Upon notice from the floodplain administrator, work on any building, structure or premises that is being done contrary to the provisions of this ordinance shall immediately cease.

b) Such notice shall be in writing and shall be given to the owner of the property, or to his agent, or to the person doing the work, and shall state the conditions under which work may be resumed.

(15) Revocation of Permits

a) The floodplain administrator may revoke a permit or approval, issued under the provisions of the ordinance, in cases where there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.

b) The floodplain administrator may revoke a permit upon determination by the floodplain administrator that the construction, erection, alteration, repair, moving, demolition, installation, or

Updated November 2015

replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this ordinance.

Article 5. Provisions for Flood Hazard Reduction.

Section A. General Standards.

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

- (1) New construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.
- (3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage below the FPG.
- (4) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage.
- (5) Electrical, heating, ventilation, plumbing, air conditioning equipment, utility meters, and other service facilities shall be located at/above the FPG or designed so as to prevent water from entering or accumulating within the components below the FPG. Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the FPG.
- (6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (9) Any alteration, repair, reconstruction or improvements to a structure that is in compliance with the provisions of this ordinance shall meet the requirements of “new construction” as contained in this ordinance.

(10) Parking lots, driveways, and sidewalks within the SFHA shall be constructed with permeable materials.

(11) Whenever any portion of the SFHA is authorized for use, the volume of space which will be occupied by the authorized fill or structure below the BFE shall be compensated for and balanced by an equivalent volume of excavation taken below the BFE. The excavation volume shall be at least equal to the volume of storage lost (replacement ratio of 1 to 1) due to the fill or structure.

a) The excavation shall take place in the floodplain and in the same property in which the authorized fill or structure is located.

b) Under certain circumstances, the excavation may be allowed to take place outside of but adjacent to the floodplain provided that the excavated volume will be below the regulatory flood elevation, will be in the same property in which the authorized fill or structure is located, will be accessible to the regulatory flood water, will not be subject to ponding when not inundated by flood water, and that it shall not be refilled.

c) The excavation shall provide for true storage of floodwater but shall not be subject to ponding when not inundated by flood water.

d) The fill or structure shall not obstruct a drainage way leading to the floodplain.

e) The grading around the excavation shall be such that the excavated area is accessible to the regulatory flood water.

f) The fill or structure shall be of a material deemed stable enough to remain firm and in place during periods of flooding and shall include provisions to protect adjacent property owners against any increased runoff or drainage resulting from its placement.

g) Plans depicting the areas to be excavated and filled shall be submitted prior to the actual start of construction or any site work; once site work is complete, but before the actual start of construction, the applicant shall provide to the Floodplain Administrator a certified survey of the excavation and fill sites demonstrating the fill and excavation comply with this article.

Section B. Specific Standards.

In all SFHAs, the following provisions are required:

(1) In addition to the requirements of Article 5, Section A, all structures to be located in the SFHA shall be protected from flood damage below the FPG. This building protection requirement

Updated November 2015

applies to the following situations:

- a) Construction or placement of any structure having a floor area greater than 400 square feet.
- b) Addition or improvement made to any existing structure where the cost of the addition or improvement equals or exceeds 50% of the value of the existing structure (excluding the value of the land).
- c) Reconstruction or repairs made to a damaged structure where the costs of restoring the structure to its before damaged condition equals or exceeds 50% of the market value of the structure (excluding the value of the land) before damage occurred.
- d) Installing a travel trailer or recreational vehicle on a site for more than 180 days.
- e) Installing a manufactured home on a new site or a new manufactured home on an existing site. This ordinance does not apply to returning the existing manufactured home to the same site it lawfully occupied before it was removed to avoid flood damage.
- f) Reconstruction or repairs made to a repetitive loss structure.
- g) Addition or improvement made to any existing structure with a previous addition or improvement constructed since the community's first floodplain ordinance.

(2) Residential Structures. New construction or substantial improvement of any residential structure (or manufactured home) shall have the lowest floor, including basement, at or above the FPG (two feet above the base flood elevation). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of Article 5, Section B (4).

(3) Non-Residential Structures. New construction or substantial improvement of any commercial, industrial, or non-residential structure (or manufactured home) shall either have the lowest floor, including basement, elevated to or above the FPG (two feet above the base flood elevation) or be floodproofed to or above the FPG. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of Article 5, Section B (4). Structures located in all "A Zones" may be floodproofed in lieu of being elevated if done in accordance with the following:

- a) A Registered Professional Engineer or Architect shall certify that the structure has been designed so that below the FPG, the structure and attendant utility facilities are watertight and capable of resisting the effects of the regulatory flood. The structure design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice. Such

Updated November 2015

certification shall be provided to the floodplain administrator as set forth in Article 4, Section C (12).

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

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

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

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

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

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

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

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

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

g) Openings are to be not less than 3 inches in any direction in the plane of the wall. This requirement applies to the hole in the wall, excluding any device that may be inserted such as typical foundation air vent device.

h) Property owners shall be required to execute a flood openings/venting affidavit acknowledging that all openings will be maintained as flood vents, and that the elimination or alteration of the openings in any way will violate the requirements of Article 5, B. (4). Periodic inspections will be conducted by the Floodplain Administrator to ensure compliance. The affidavit shall be recorded in the office of the Porter County Recorder.

i) Property owners shall be required to execute and record with the structure's deed a non-conversion agreement declaring that the area below the lowest floor (where the interior height of the enclosure exceeds 6 feet) shall not be improved, finished or otherwise converted; the community will have the right to inspect the enclosed area. The non-conversion agreement shall be recorded in the office of the Porter County Recorder.

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

a) The fill shall be placed in layers no greater than 1 foot deep before compacting to 95% of the maximum density obtainable with either the Standard or Modified Proctor Test method. The results of the test showing compliance shall be retained in the permit file.

b) The fill shall extend 10 feet beyond the foundation of the structure before sloping below the BFE.

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

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

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

f) Fill shall be composed of clean granular or earthen material.

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

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

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

(ii) Fully enclosed areas formed by foundation and other exterior walls below the FPG shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Article 5, Section B. 4.

(iii) Flexible skirting and rigid skirting not attached to the frame or foundation of a manufactured home are not required to have openings.

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

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

(ii) Fully enclosed areas formed by foundation and other exterior walls below the FPG shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Article 5, Section B. 4.

(iii) Flexible skirting and rigid skirting not attached to the frame or foundation of a manufactured home are not required to have openings.

c) Recreational vehicles placed on a site shall either:

(i) be on site for less than 180 days;

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

(iii) meet the requirements for “manufactured homes” as stated earlier in this section.

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

a) Shall not be used for human habitation.

b) Shall be constructed of flood resistant materials.

Updated November 2015

- c) Shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters.
 - d) Shall be firmly anchored to prevent flotation.
 - e) Service facilities such as electrical and heating equipment shall be elevated or floodproofed to or above the FPG.
 - f) Shall be designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Article 5, Section B. 4.
- (8) Above Ground Gas or Liquid Storage Tanks. All above ground gas or liquid storage tanks shall be anchored to prevent flotation or lateral movement.

Section C. Standards for Subdivision Proposals.

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions), which is greater than the lesser of fifty (50) lots or five (5) acres.
- (5) All subdivision proposals shall minimize development in the SFHA and/or limit density of development permitted in the SFHA.
- (6) All subdivision proposals shall ensure safe access into/out of SFHA for pedestrians and vehicles (especially emergency responders).

Section D. Critical Facility.

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA. Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor

Updated November 2015

elevated to or above the FPG at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the FPG shall be provided to all critical facilities to the extent possible.

Section E. Standards for Identified Floodways.

Located within SFHAs, established in Article 3, Section B, are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and has erosion potential. If the site is in an identified floodway, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources and apply for a permit for construction in a floodway. Under the provisions of IC 14 28 1 a permit for construction in a floodway from the Indiana Department of Natural Resources is required prior to the issuance of a local building permit for any excavation, deposit, construction, or obstruction activity located in the floodway. This includes land preparation activities such as filling, grading, clearing and paving etc. undertaken before the actual start of construction of the structure. However, it does exclude non-substantial additions/improvements to existing (lawful) residences in a non-boundary river floodway. (IC 14-28-1-26 allows construction of a non-substantial addition/ improvement to a residence in a non-boundary river floodway without obtaining a permit for construction in the floodway from the Indiana Department of Natural Resources. Please note that if fill is needed to elevate an addition above the existing grade, prior approval for the fill is required from the Indiana Department of Natural Resources.)

No action shall be taken by the Floodplain Administrator until a permit or letter of authorization (when applicable) has been issued by the Indiana Department of Natural Resources granting approval for construction in the floodway. Once a permit for construction in a floodway or letter of authorization has been issued by the Indiana Department of Natural Resources, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in Article 5 of this ordinance have been met. The Floodplain Development Permit cannot be less restrictive than the permit for construction in a floodway issued by the Indiana Department of Natural Resources. However, a community's more restrictive regulations (if any) shall take precedence.

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

For all projects involving channel modifications or fill (including levees) the Town shall submit the

Updated November 2015

data and request that the Federal Emergency Management Agency revise the regulatory flood data per mapping standard regulations found at 44 CFR § 65.12.

Section F. Standards for Identified Fringe.

If the site is located in an identified fringe, then the Floodplain Administrator may issue the local Floodplain Development Permit provided the provisions contained in Article 5 of this ordinance have been met. The key provision is that the top of the lowest floor of any new or substantially improved structure shall be at or above the FPG.

Section G. Standards for SFHAs without Established Base Flood Elevation and/or Floodways/Fringes.

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

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

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

Once the Floodplain Administrator has received the proper permit for construction in a floodway (including letters of authorization) or floodplain analysis/regulatory assessment approving the proposed development, a Floodplain Development Permit may be issued provided the conditions of the Floodplain Development Permit are not less restrictive than the conditions received from the Indiana Department of Natural Resources and the provisions contained in Article 5 of this ordinance have been met.

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

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

Upon receipt, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in Article 5 of this ordinance have been met.

Updated November 2015

(3) The total cumulative effect of the proposed development, when combined with all other existing and anticipated development, shall not increase the regulatory flood more than 0.14 of one foot and shall not increase flood damages or potential flood damages.

Section H. Standards for Flood Prone Areas.

All development in known flood prone areas not identified on FEMA maps, or where no FEMA published map is available, shall meet applicable standards as required per Article 5.

Article 6. Variance Procedures.

Section A. Designation of Variance and Appeals Board.

The Town of Burns Harbor Board of Zoning Appeals shall hear and decide appeals and requests for variances from requirements of this ordinance.

Section B. Duties of Variance and Appeals Board.

The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this ordinance. Any person aggrieved by the decision of the board may appeal such decision to the Porter County Circuit Court.

Section C. Variance Procedures.

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

- (1) The danger of life and property due to flooding or erosion damage.
- (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- (3) The importance of the services provided by the proposed facility to the community.
- (4) The necessity of the facility to a waterfront location, where applicable.
- (5) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.
- (6) The compatibility of the proposed use with existing and anticipated development,

Updated November 2015

- (7) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
- (8) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (9) The expected height, velocity, duration, rate of rise, and sediment of transport of the floodwaters at the site.
- (10) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

Section D. Conditions for Variances.

- (1) Variances shall only be issued when there is:
 - a) A showing of good and sufficient cause.
 - b) A determination that failure to grant the variance would result in exceptional hardship.
 - c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.
- (2) No variance for a residential use within a floodway subject to Article 5, Section E or Section G (1) of this ordinance may be granted.
- (3) Any variance granted in a floodway subject to Article 5, Section E or Section G (1) of this ordinance will require a permit from the Indiana Department of Natural Resources.
- (4) Variances to the Provisions for Flood Hazard Reduction of Article 5, Section B, may be granted only when a new structure is to be located on a lot of one half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade.
- (5) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (6) Variances may be granted for the reconstruction or restoration of any structure individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and

Updated November 2015
Structures.

(7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Flood Protection Grade and the elevation to which the lowest floor is to be built and stating that the cost of the flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation (See Article 6, Section E).

(8) The Floodplain Administrator shall maintain the records of appeal actions and report any variances to the Federal Emergency Management Agency or the Indiana Department of Natural Resources upon request (See Article 6, Section E).

Section E. Variance Notification.

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

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

(2) Such construction below the flood protection grade increases risks to life and property. A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

The Floodplain Administrator shall maintain a record of all variance actions, including justification for their issuance.

Section F. Historic Structure.

Variances may be issued for the repair or rehabilitation of “historic structures” upon a determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as an “historic structure” and the variance is the minimum to preserve the historic character and design of the structure.

Section G. Special Conditions.

Upon the consideration of the factors listed in Article 6, and the purposes of this ordinance, the Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

Updated November 2015

Article 7. Severability.

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

Article 8. Effective Date.

This ordinance shall be in full force and effect on September 30, 2015.

Passed by the Town Council of the Town of Burns Harbor, Indiana on the 9th day of September, 2015.