

GENERAL PROVISIONS

§ 151.001 TITLE.

This chapter shall be known, cited and referred to as “The Town of Roseland Zoning Ordinance” (1989 Code, § 10-1) (Ord. 40A, passed 7-11-1966)

§ 151.002 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCESSORY BUILDING OR USE. One which:

- (1) Is subordinate to and serves a principal building or principal uses;
- (2) Is subordinate in area, extent or purpose to the principal building or principal use served;
- (3) Contributes to the comfort, convenience or necessity of occupants of the principal building or principal use served; and
- (4) Is located on the same lot as the principal building or principal use served, with the single exception of such accessory off-street parking facilities as are permitted to locate elsewhere than on the same lot with the building or use served.

ADULT BOOK STORE. Any establishment having a significant portion of its stock in trade, books, magazines, other periodicals or any other publications which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas; or an establishment which sells or displays a significant number of such books, magazines, other periodicals or other publications.

ADULT BUSINESS. Any adult book store, adult mini motion picture theater, adult motion picture theater, adult cabaret or massage establishment.

ADULT CABARET. Any establishment at which topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators or similar entertainers perform or at which topless dancing, go-go dancing, exotic dancing, striptease, male or female impersonation or similar activities are performed.

ADULT MINI MOTION PICTURE THEATER. An enclosed building having a seating capacity of 150 or less persons used for presenting material distinguished or characterized by an emphasis upon matter depicting, describing or relating to specified sexual activities or specified anatomical areas, for observation by patrons therein.

ADULT MOTION PICTURE THEATER. An enclosed building having a seating capacity of more than 150 persons used for presenting material distinguished or characterized by an emphasis upon matter depicting, describing or relating to specified sexual activities or specified anatomical areas, for observation by patrons therein.

ADVERTISING DEVICE. An advertising sign, billboard or poster panel which directs attention to a business, commodity, service or entertainment not exclusively related to the premises where such a sign is located or to which it is affixed; but does not include those advertising signs, billboards or poster panels which direct attention to the business on the premises or to a brand name of a product or commodity with which the business is specifically identified and which is sold on the premises.

ALLEY. A public right-of-way which normally affords a secondary means of access to abutting property.

ANIMAL HOSPITAL. A building or portion thereof designed or used for the care, observation or treatment of domestic animals.

AUTOMOBILE LAUNDRY. A building, or portion thereof, containing facilities for washing more than two automobiles, using production line methods with a chain conveyor, blower, steam cleaning device or other mechanical devices.

AUTOMOBILE SERVICE STATION. A building or portion thereof or premises used for dispensing, or offering for sale at retail, gasoline when stored only in underground tanks, kerosene, lubricating oil or grease, for operation of automobiles, and where tires, batteries and similar automobile accessories may be offered for sale on the premises at retail, including motor services and installations customarily incidental thereto; and facilities other than an automobile laundry, for washing cars, only if enclosed in a building. **AUTOMOBILE SERVICE STATIONS** do not include open sales lots as defined herein.

AUTOMOBILE WRECKING YARD. An area of land where two or more motor vehicles, or vehicles, machinery or equipment drawn or operated by attaching to motor vehicles or mechanical unit, not in running or operable condition, or parts thereof are stored in the open and any land, building or structure used for wrecking or storing of such motor vehicles, vehicles, machinery or equipment or parts thereof.

BUILDING HEIGHT. The vertical distance from the curb level to the highest point of the under side of the ceiling beams in the case of a flat roof; to the deck line of a mansard roof; and to the mean level of the under side of the rafters between the eaves and the ridge of a gable, hip or gambrel roof. Chimneys, spires, towers, elevator pent houses, tanks and similar projections other than signs shall not be included in calculating the **HEIGHT**.

CONTROLLED USE. Any use of property which is recognized as having serious objectional characteristics, particularly when several of them are concentrated, which have or may have a deleterious effect upon adjacent areas, specifically including, but not necessarily limited to:

- (1) Adult book store;
- (2) Adult mini motion picture theater;
- (3) Adult motion picture theater;
- (4) Adult cabaret;
- (5) Establishment for the sale of beer or intoxicating beverages for consumption on the premises, excluding restaurants at which the serving of such beverages is incidental to the serving of food as the principal activity;
- (6) Massage establishment;
- (7) Pawnshop;
- (8) Pool or billiard hall; or
- (9) Public dance hall.

CURB LEVEL. The level of the established curb in front of such building measured at the center of such front. (Where no **CURB LEVEL** has been established, the pavement elevation at the street centerline similarly measured, or the mean elevation of the finished lot grade immediately adjacent to a building shall be considered the **CURB LEVEL**.)

DRIVE-IN ESTABLISHMENT. One which accommodates on the lot its patron's automobiles, from which the occupants may watch, purchase and the like.

DWELLING, MULTI-FAMILY. A building consisting of three or more dwelling units, including condominiums, with varying arrangements of entrances and party walls.

DWELLING, SINGLE-FAMILY. A residential building unit designed or intended for occupancy by one family only. **SINGLE-FAMILY DWELLING** includes only site constructed homes; modular homes; and manufactured homes, Type A.

FAMILY. One or more persons related by blood, legal adoption or marriage, living and cooking as a single housekeeping unit, exclusive of household servants. A number of persons, but not exceeding three, living and cooking together as a single housekeeping unit though not related by blood, legal adoption or marriage, shall be deemed to constitute a **FAMILY**. A person or persons residing with a **FAMILY** as hereinabove defined by reason of placement by a publicly licensed placement agency shall be considered as members of that **FAMILY**. Four or more persons living and cooking together as a single housekeeping unit though not related by blood, legal adoption or marriage shall be deemed to constitute a multi-family household.

FEDERAL INSURANCE ADMINISTRATION. For purposes of this chapter, the administrative office for the National Flood Insurance Program. January 28, 2014.

FLOOD. A general and temporary condition of partial or complete inundation of normally dry land resulting from the overflowing of a river, stream or other body of water or the unusual or rapid accumulation of runoff surface water; the collapse or subsidence of land along the shore of a lake or other body of water resulting from erosion or undermining caused by waves or currents exceeding anticipated cyclical levels or by an unusually high water level accompanied by a severe storm or other force of nature. For purposes of this chapter, the **REGULATORY FLOOD** shall be the **100-YEAR FLOOD**.

FLOOD HAZARD AREA. The portion of a floodplain which is not adequately protected from flooding by means of dikes, levees, reservoirs or other works approved by the Natural Resources Commission.

FLOOD PROTECTION GRADE. The lowest elevation around the perimeter of a building at which flood water may enter the interior of the building.

FLOOD WATER. The water of any river or stream which is above its banks and/or outside its channels and banks. For purposes of this chapter, the **REGULATORY FLOOD** shall be the **100-YEAR FLOOD**.

FLOODPLAIN. The area adjoining a river or stream which has been or which may hereafter be flooded, so designated by the Federal Insurance Administrator.

FLOODPROOFING. A combination of structural and non-structural additions, changes or adjustments to properties and structures which minimize or eliminate flood damage to lands, water and sanitary facilities, structures and contents of buildings.

FLOODWAY. The channel of a river or stream and those portions of the floodplain which are reasonably required to efficiently carry and discharge the flood water of the river or stream, so designated by the Federal Insurance Administrator.

FLOODWAY FRINGE. The portion of a flood hazard area outside the limits of the floodway, so designated by the Federal Insurance Administrator.

FLOOR AREA.

(1) **FLOOR AREA** for determining floor area ratio, is the sum of the gross horizontal areas of the several floors of the building measured from the exterior faces of the exterior walls or from the centerline of walls separating two buildings.

(2) The **FLOOR AREA** of a building includes the basement **FLOOR AREA** when more than one-half of the basement height is above the established curb level, elevator shafts and stairwells at each floor, floor space used for mechanical equipment (except equipment, open or enclosed, located on the roof), penthouses, attic space having headroom of seven feet, ten inches or more, interior balconies and mezzanines, enclosed porches and floor area devoted to accessory uses. **FLOOR AREA** devoted to off-street parking or loading shall not be included in the **FLOOR AREA** of a building.

(3) The **FLOOR AREA** of structures devoted to bulk storage of materials, including, but not limited to, grain elevators and petroleum storage tanks, shall be determined on the basis of the height of such structure in feet; ten feet in height shall be deemed to be equal to one floor. If a structure measures more than five feet over such floor equivalent, it shall be construed to have an additional floor.

FLOOR AREA OF A BUILDING.

(1) For determining off-street parking and loading requirements, shall be the sum of the gross horizontal areas of the several floors of the building, or portions thereof, devoted to a specific use, including accessory storage areas located within selling or working space such as counters, racks or closets and any basement floor area devoted to retailing activities, to the production or processing of goods, or to business or professional offices.

(2) **FLOOR AREA** shall not include:

- (a) Floor area devoted primarily to storage purposes, except as otherwise noted herein;
- (b) Floor area devoted to off-street parking or loading facilities, including aisles, ramps and maneuvering space; or
- (c) Basement floor area other than area devoted to retailing activities, to the production or processing of goods, or to business or professional offices.

FLOOR AREA RATIO. The floor area of a building or buildings on a lot divided by the area of such lot. **FLOOR AREA RATIO REQUIREMENTS** shall be determine the maximum floor area allowable for the building or buildings, including both principal and accessory buildings, in direct ratio to the gross lot area.

HOME OCCUPATION.

(1) Any occupation or profession carried on by a member of the immediate family residing on the premises, in connection with which:

- (a) There is used no sign or display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a dwelling;
- (b) There is no commodity sold upon the premises;
- (c) No person is employed other than a member of the immediate family residing on the premises; and

(d) No mechanical or electrical equipment is used except such as is permissible for purely domestic or household purposes.

(2) A professional person may use his or her residence for consultation, emergency treatment or performance of religious rites but not for the general practice of his or her profession; no accessory building shall be used for such **HOME OCCUPATION**.

JUNKYARD. An open area where waste or scrap materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled, including, but not limited to, scrap iron and other metals, paper, rags, rubber tires and bottles. A **JUNKYARD** includes an auto wrecking yard, but does not include uses established entirely within enclosed buildings, nor does it include an establishment engaged only in the processing of scrap iron or other metals to be sold specifically for the manufacture of steel or metal alloys.

KENNEL. Any premises or portions thereof on which more than four dogs, cats or other household domestic animals over four months of age are kept, or on which more than two such animals are maintained, boarded, bred or cared for in return for remuneration, or are kept for the purpose of sale.

LOT AREA, GROSS. The area of a horizontal plane bounded by the front, side and rear lot lines, but not including any area occupied by the waters of a duly recorded lake, river or floodplain area.

LOT DEPTH. The mean horizontal distance between the front lot line and the rear lot line of a lot, measured within the lot boundaries.

LOT LINE, FRONT. The boundary of a lot which is along an existing or dedicated public street, or where no public street exists, is along a public way; where such public way is not a dedicated street. The right-of-way of such public way shall be deemed to be 60 feet, unless otherwise provided. (The owner of a corner lot may select either street lot line as the **FRONT LOT LINE**.)

LOT LINE, REAR. The boundary of a lot which is most distant from, and is, or is most nearly, parallel to, the front lot line.

LOT OF RECORD. A lot which is part of a subdivision, the plat of which has been recorded in the office of the Recorder of Deeds of the county; or a parcel of land, the deed to which was recorded in the office of said Recorder prior to the adoption of this chapter.

LOT WIDTH. The horizontal distance between the side lot lines of a lot, measured at the narrowest width within the first 30 feet of lot depth immediately in back of the required front yard setback line.

MANUFACTURED HOME, TYPE A. A manufactured home which:

- (1) Was constructed after January 1, 1981;
- (2) Has more than 950 square feet of occupied space and is composed of more than one section;
- (3) Is placed onto a permanent underfloor foundation in accordance with approved installation standards, as specified in § 151.153(A) (2);
- (4) Is placed onto a permanent perimeter enclosure, in accordance with approved installation standards, as specified in § 151.153(A) (1);
- (5) Has wheels, axles and hitch mechanism removed;
- (6) Has siding material of a type customarily used on site constructed homes, as specified in § 151.153 (B); and
- (7) Has roofing material of a type customarily used on site constructed homes, as specified in original § 151.153 (C).

MASSAGE ESTABLISHMENT. Any establishment, location or place where a person for any form of consideration whatsoever engages in, conducts, carries on or permits, be engaged in, conducted or carried on, massages or baths.

MOBILE HOME. A trailer designed and constructed for dwelling purposes.

MODULAR HOME. A dwelling unit, designed and built in a factory, for installation or assembly at the building site, and which bears a seal certifying that it was built in compliance with Indiana Public Law 360, Acts of 1971, as promulgated by the Indiana Administrative Building Council.

MOTEL. An establishment consisting of a group of attached or detached living or sleeping accommodations with bathroom and closet space, located on a single lot and designed for use by transient automobile tourists. In a **MOTEL** less than 50% of the living and sleeping accommodations are occupied or designed for occupancy by persons other than transient automobile tourists.

MOTOR VEHICLE. A passenger vehicle, truck, truck-trailer, trailer or semi-trailer propelled or drawn by mechanical power.

NATIONAL MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS CODE. Title VI of the 1974 Housing and Community Development Act (43 U.S.C. §§ 5401 et seq.), as amended (previously known as the Federal Mobile Home Construction and Safety Act), rules and regulations adopted thereunder (including information supplied by the home manufacturer, which has been stamped and approved by a Design Approval Primary Inspection Agency, an agent of the U.S. Department of Housing and Urban Development pursuant to HUD Rules), and regulations and interpretations of said code by the Indiana Administrative Building Council; all of which became effective for mobile/manufactured home construction on June 15, 1976.

NATURAL RESOURCES COMMISSION. The Natural Resources Commission of the state.

NONCONFORMING BUILDING OR STRUCTURE. A building or structure which:

(1) Does not comply with all of the regulations of this chapter or of any amendment hereto governing bulk for the zoning district in which such building or structure is located; or

(2) Is designed or intended for a nonconforming use.

NONCONFORMING USE. A use of land, buildings or structures which does not comply with all of the regulations of this chapter or of any amendment hereto governing use for the zoning district in which such use is located.

OCCUPIED SPACE. The total area of earth horizontally covered by the structure, excluding accessory structures, such as but not limited to garages, patios and porches.

ONE- AND TWO-FAMILY DWELLING CODE. The nationally recognized model building code prepared by the Council of American Building Officials, adopted by the Indiana Administrative Building Council (ABC) as mandated though Public Law 360, Acts of 1971, and which, includes those supplements and amendments promulgate by the ABC.

OPEN SALES LOT. Land used or occupied for the purpose of buying or selling merchandise stored or displayed out-of-doors prior to sale. (Such merchandise includes, but is not limited to, passenger cars, trucks, motor scooters, motorcycles, boats and monuments.)

PERMANENT PERIMETER ENCLOSURE. Permanent perimeter structural system completely enclosing the space between the floor joists of the home and the ground.

PLAN COMMISSION. The Area Plan Commission of St. Joseph County.

REGULATORY FLOOD PROFILE. A longitudinal profile along the thread of a river or stream showing the maximum water surface attained by the regulatory flood.

SECTION. A component of a manufactured home, type A, which is at least 12 body feet in width and 30 body feet in length and which does not by itself constitute a dwelling unit.

SETBACK. The minimum horizontal distance between the front line of a building or structure and the front property line.

SITE CONSTRUCTED HOME. A home, primarily constructed on the site where it is to be occupied, meeting the building codes in effect at the time of construction.

SPECIFIED ANATOMICAL AREAS. Less than completely covered:

- (1) Human genitals, pubic region;
- (2) Buttock;
- (3) Female breast below a point immediately above the top of the areola; and
- (4) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES.

- (1) Human genitals in a state of sexual stimulation or arousal; and
- (2) Acts of human masturbation, sexual intercourse or sodomy and fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

STRUCTURAL ALTERATION. A change, other than incidental repairs which would prolong the life of the supporting members of the building, such as the addition, removal or alteration of bearing walls, columns, beams, girders or foundation.

SUBSTANTIAL IMPROVEMENT.

(1) For purposes of floodplain regulation, any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure, excluding the value of the land, either:

- (a) Before improvement is commenced; or
- (b) Prior to damage, if the structure has been damaged and is being restored.

(2) ***SUBSTANTIAL IMPROVEMENT*** shall be considered to occur when the first alteration of any wall, ceiling or other structural part of the building commences. The term shall not include any repair, reconstruction or improvement of structures listed on the National Register of Historic Places or the State Inventory of Historic Places or structures designated as historic landmarks by the local legislative body.

TOURIST HOME. A dwelling in which sleeping rooms are provided or offered to transient guests for compensation, not including a hotel, apartment hotel or motel.

TRAILER. A vehicle, house, car, camp car or any portable or mobile vehicle on wheels, skids, rollers or blocks, either self-propelled or propelled by any other means, which is used or designed to be used for dwelling, lodging, commercial or agricultural purposes.

USE, PERMITTED. A use which may be lawfully established in a particular district or districts (provided it conforms with all requirements, regulations and performance standards, if any, of such district.

USE, SPECIAL. A use (either public or private) which, because of its unique characteristics, cannot be properly classified as a permitted use in any particular district or districts.

WIRELESS COMMUNICATIONS FACILITY. A tower or other structure on, upon or to which area attached or mounted transmitted equipment and/or antennas used in connection with the provision of communication services, including but not limited to, television, AM and FM radio, paging services, messaging services, cellular telephones, dispatch and/or two-way radio transmissions, wireless data, and microwave transmissions.

ZONING BOARD. The Board of Zoning Appeals of the Town of Roseland, Indiana.

ZONING DISTRICT. A section or sections of the incorporated territory of the town for which the regulations and requirements governing use, lot and bulk of buildings and premises are uniform. (1989 Code, § 10-2) (Ord. 03-2009, passed - - ; Ord. 40A, passed 7-11-1966; Ord. 75, passed 3-13-1975; Ord. 77, passed 4-14-1977; Ord. 78, passed 4-14-1977; Ord. 80, passed 6-9-1977; Ord. III, passed 7-8-1982; Ord. 168-90, passed 9-3-1990; Ord. 173-91, passed 10-10-1991; Ord. 213-96, passed 2-13-1997)

Statutory reference:

Definitions of motor vehicles, see I.C. 9-13-2-105 (b)

Manufactured Homes, see I.C. 9-13-2-103.2

§ 151.003 INTERPRETATION.

(A) In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements for the promotion of the public health, safety, morals and welfare.

(B) Where the conditions imposed by any provision of this chapter, upon the use of land or buildings or upon the bulk of buildings, are either more restrictive or less restrictive than comparable conditions imposed by any other provision of this chapter or of any other law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall govern.

(C) This chapter is not intended to abrogate any easement, covenant or any other private agreement, provided that where the regulations of this chapter are more restrictive or impose higher standards or requirements than such easements, covenants or other private agreements, the requirements of this chapter shall govern.

(D) No building, structure or use which was not lawfully existing at the time of the adoption of this chapter shall become or be made lawful solely by reason of the adoption of this chapter and to the extent that, and in any manner that, said unlawful building, structure or use is in conflict with the requirements of this chapter, said building, structure or use remains unlawful hereunder.

(E) Within a special flood hazard area, the provisions of this chapter relative to land use and control and other measures designed to minimize or eliminate existing or potential flood hazards shall take precedence over any conflicting provisions of these zoning regulations.

(1989 Code, § 10-3) (Ord. 40A, passed 7-11-1966; Ord. 75, passed 3-13-1975)

§ 151.004 SEPARABILITY.

It is declared to be the intention of the Town Council that the several provisions of this chapter are separable, in accordance with the following.

(A) If any court of competent jurisdiction shall adjudge any provision of this chapter or amendments thereto to be invalid, such judgment shall not affect any other provisions of this chapter or amendment thereto, not specifically included in said judgment.

(B) If any court of competent jurisdiction shall adjudge invalid the application of any provision of this chapter or amendments thereto a particular property, building or other structure, such judgment shall not affect the application of said provision to any other property, building or structure not specifically included in said judgment.

(1989 Code, § 10-4) (Ord. 40A, passed 7-11-1966)

§ 151.005 SCOPE OF REGULATIONS.

(A) All buildings erected hereafter, all uses of land or buildings established hereafter, all structural alteration or relocation of existing buildings occurring hereafter shall be subject to all regulations of this chapter which are applicable to the zoning districts in which the building, uses or land shall be located. In a residential district, a single-family dwelling may be erected upon a lot of record existing on the effective date of this chapter even though such lot of record does not conform with the area in width requirements for the district in which such lot is located and provided that there is compliance with all other regulations contained in this chapter.

(B) Where the Building Commissioner of the town has been issued a permitted use permit, a special use permit or a permit for a variance pursuant to the provisions of this chapter, such permit shall become null and void unless work thereon is substantially underway within 12 months of the date of the issuance of such permit, or within the period of time beyond six months granted by the Board of Zoning Appeals for a specific permit.

(1989 Code, § 10-5) (Ord. 40A, passed 7-11-1966)

§ 151.006 NUMBER OF BUILDINGS ON LOT.

In residential districts not more than one principal detached dwelling shall be located on a lot, nor shall a principal detached dwelling be located on the same lot with any other principal building except as may be authorized as a special use in accordance with procedures set forth herein.

(1989 Code, § 10-6) (Ord. 40A, passed 7-11-1966) Penalty, see § 151.999

§ 151.007 ACCESSORY BUILDINGS, STRUCTURES AND USES.

(A) Accessory buildings, structures and uses shall be compatible with the principal use and shall not be established prior to the establishment of the principal use.

(B) No accessory building, structure or use shall encroach upon that side yard of a corner lot which is adjacent to the street, upon that side yard of a reversed corner lot which is adjacent to the street, upon that part of a rear yard, of a through lot, which is within 35 feet from the street line abutting the rear lot line, or upon a front yard, except as permitted herein for specific uses.

(C) No building or structure, accessory to dwelling uses, shall have more than one story nor exceed 17 feet in height unless otherwise permitted for authorized special uses.

(1989 Code, § 10-7) (Ord. 40A, passed 7-11-1966) Penalty, see § 151.999

§ 151.008 TRAILERS, MOBILE HOMES AND TENTS.

(A) Trailers and mobile homes shall not be permitted in any district as accessory buildings.

(B)(1) Mobile homes or travel trailers shall not be parked or stored or occupied for dwelling or lodging purposes within the town.

(2) A mobile home or travel trailer, belonging to a guest of the occupant of a dwelling in a residential district may be parked and occupied for lodging purposes on the same lot as the dwelling but not for more than 24 hours in a 30-day period.

(C) Trailers or mobile homes may be used as temporary offices or storage space incidental to construction of a building development for a period of time such construction is actively undertaken provided the trailer or mobile home is located on the same lot as the building development.

(D) Tents shall not be erected, used or maintained for dwelling, lodging or other purposes.

(1989 Code, § 10-8) (Ord. 40A, passed 7-11-1966)

Statutory reference:

Standards and requirements for manufactured homes built in compliance with Manufactured Housing

Construction and Safety Standard Laws of 1974 (42 U.S.C. §§ 5401 et seq., see I.C. 36-7-4-1106