CHAPTER 1

PROVISIONS OF COMMON APPLICABILITY

Section 1.01 Title.

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

Section 1.02 Statutory Authority.

(A) This Ordinance is adopted pursuant to the authority contained in Indiana Code 36-7-4 et seq.

(B) Whenever any provision of this Ordinance refers to or cites a section of the Indiana Code, and that section is later amended or superseded, this Ordinance shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

Section 1.03 Purpose.

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

(A) Securing adequate light, air, convenience of access, and safety from fire, flood, and other danger;

(B) Lessening or avoiding congestion in public ways;

(C) Promoting the public health, safety, comfort, morals, convenience, and general welfare;

(D) Guiding the future development of the Town;

(E) Ensuring that residential areas provide healthful surroundings for family life;

(F) Ensuring that the needs of business and industry be recognized in future growth;
(G) Ensuring that growth be commensurate with and promote the efficient and economical use of public funds; and

(H) Otherwise accomplishing the purposes of Indiana Code 36-7-4 et seq.

Section 1.04 Findings for Adoption of this Ordinance.

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

(A) The general policies and patterns of development set out in the Comprehensive Plan for the Town;

(B) Current conditions and the character of current structures and uses in each district;

(C) The most desirable use for which the land in each district is adapted;

(D) The conservation of property values throughout the Town; and,

(E) The responsible development and growth of the Town.

Section 1.05 Effective Date.

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

Section 1.06 Prior or Conflicting Ordinances.

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

Section 1.07 Separability.

It is hereby declared to be the intention of the Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and, if any such section, paragraph, sentence, clause, or phrase is declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or decree, such unconstitutionality or invalidity shall not affect any remaining sections, paragraphs, sentences, clauses or phrases of this Ordinance because the same would have been enacted without the incorporation into this Ordinance of such unconstitutional or invalid section, paragraph, sentence, clause, or phrase.
Section 1.08  Eminent Domain or Use.

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

(1) United States of America. The exercise of the power of eminent domain by the United States of America or by any department or agency of the United States of America, or the use of property owned or occupied by the United States of America or any department or agency of the United States of America; or,

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

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

In their interpretation and application, the provisions of this Ordinance shall be held to be the minimum requirements for the promotion of the health, safety, comfort, morals, convenience, and the general welfare of the public. In the case of any conflict or inconsistency between two (2) or more provisions of this Ordinance (e.g., the restrictions set forth in an overlay district versus the restrictions set forth in a primary district) or any other ordinance of the Town, the provision which imposes the greater or higher or more restrictive standard of performance shall control.

Section 1.10  Jurisdiction.

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

Section 1.11  Subdivision of Land.

The subdivision of land may occur in any and all districts established by this Ordinance. Whenever a subdivision occurs, the rules, regulations and procedures of the Town Subdivision Control Ordinance, or any subsequently adopted replacement Subdivision Control Ordinance for the Town shall apply.
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Section 1.12 Scope and Application.

Except as expressly provided otherwise in this Ordinance:

(A) No person may use or occupy any land, building, structure or improvement or authorize or permit the use or occupancy of any land, building, structure or improvement under his or her control except in accordance with the applicable provisions of this Ordinance;

(B) No land, building, structure or improvement shall be used and no building, structure or improvement shall be erected, reconstructed or structurally altered, which is arranged, intended or designed to be used for any purpose other than a use which is permitted in the district in which such land, building, structure or improvement is located; and

(C) No building, structure or improvement shall be placed, erected, moved or structurally altered with respect to height, area, bulk, or setback except in compliance with the regulations of this Ordinance.

Section 1.13 Private Provisions.

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

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

(A) It is recognized that this Ordinance may require interpretation to assign all possible uses to individual districts. Therefore, any use which is not specifically set forth in this Ordinance shall be reviewed by the Zoning Administrator for consistency with the intent set forth in each district and for compatibility with use characteristics typical of uses permitted within those districts. Based upon this review, the Zoning Administrator shall determine the appropriate district for any use which is not specifically set forth herein.

(B) In case of disagreement with the determination of the Zoning Administrator in assigning a use to an appropriate district, any aggrieved party may file an appeal with the Board of Zoning Appeals pursuant to the provisions of Section 15.03 Board of Zoning Appeals, of this Ordinance.

(C) If it is determined by the Zoning Administrator that a particular use is not permitted in any residential, office, commercial, industrial or other district provided for in this Ordinance, and no appeal of the Zoning Administrator's decision is filed with the Board of Zoning Appeals pursuant to the provisions of Section 15.03 Board of Zoning Appeals, of this Ordinance; or it is determined upon appeal that a particular use is not permitted in any residential, office, commercial, industrial or other district provided for in this Ordinance, then such use may be deemed to require the PUD district and shall be considered to be a
permitted use only in a PUD district in which such use is specifically included and described in the PUD district Ordinance.

Section 1.15 Saving Provision for Pending Enforcement Actions.

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

(A) Nullify or make void any action pending under, or by virtue of, any prior Zoning Ordinance or Subdivision Control Ordinance;

(B) Discontinue, nullify, void, abate, modify or alter any penalty accruing or about to accrue under, or by virtue of, any prior Zoning Ordinance or Subdivision Control Ordinance;

(C) Affect the liability of any person, firm, or corporation under, or by virtue of, any prior Zoning Ordinance or Subdivision Control Ordinance;

(D) Waive any right of the Town under any section or provision of any prior Zoning Ordinance or Subdivision Control Ordinance; or,

(E) Vacate or annul any rights obtained by any person, firm, or corporation by lawful action of the Town under, or by virtue of, any prior Zoning Ordinance or Subdivision Control Ordinance.

Section 1.16 Transition Rules.

(A) Pending Permit Applications (per IC 36-7-4-1109).

(1) As used in this section, the term “Zoning Approval or Permit” shall include the following: an improvement location permit; a building permit; a certificate of occupancy; approval of a site-specific development plan; approval of a primary plat or secondary plat; approval of a conditional use, special exception use; or, approval of a planned unit development.
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(2) For any full and complete application for a zoning approval or permit required by the prior existing Zoning Ordinance of the Town and which application is pending on the effective date of this Ordinance, the granting of said zoning approval or permit, and the granting of any secondary, additional, or related permits or approvals required from the Town with respect to the general subject matter of the application of said permit, are governed for at least three (3) years after the date of application by the statutes, ordinances, rules, development standards, and regulations in effect and applicable to the real estate when the application is filed, even if: before the issuance of the permit or while the permit approval process is pending; or, before the issuance of any secondary, additional, or related permits or approvals or while the secondary, additional, or related permit or approval process is pending, the statutes, ordinances, rules, development standards, or regulations governing the granting of the permit or approval are changed by the general assembly or the Council. However, this subsection shall not apply if the development or other activity to which the permit relates is not completed within seven (7) years after the development or activity is commenced.

(B) Zone Map Amendments.

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

(1) If the proposed use would no longer be permitted in the proposed district as a result of changes to that district resulting from the adoption of this Ordinance, such application shall be deemed amended to request the district of this Ordinance in which the proposed use is first permitted; or,

(2) If the proposed district would no longer be in existence as a result of the adoption of this Ordinance, such application shall be deemed to be amended to request the district of this Ordinance which is most comparable to the zoning classification requested in such application for zone map amendment.

(C) Special Exception Use; Variance of Development Standards

Any application before the Board of Zoning Appeals (i.e., special exception use or variance of development standards) which has been filed with the Board of Zoning Appeals, and which application is full and complete under the provisions of the prior existing Zoning Ordinance of the Town, shall be allowed to continue to be processed to completion pursuant to the terms and conditions of the prior existing Zoning Ordinance of the Town. However:
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(1) If such application is no longer required by the terms of this Ordinance, such application shall be considered dismissed for lack of jurisdiction; or,

(2) If the proposed use or development requires additional approvals from the Board of Zoning Appeals pursuant to the terms and conditions of this Ordinance (and which additional approvals from the Board of Zoning Appeals were not required by the terms and conditions of the prior existing Zoning Ordinance of the Town), the application shall be deemed amended to include only those additional approvals which are minimally required and within the jurisdiction of the Board of Zoning Appeals to approve for the proposed use or site plan for the development.

Section 1.17 Amendments to this Ordinance.

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

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

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

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

(A) Service easements, including but not limited to those providing for: roadways; railroad lines; pipelines; electric power lines, conduits or systems; telephone lines, conduits or systems; cable television lines, conduits or systems; water mains, lines valves or fire hydrants; sanitary sewer mains, lines, laterals, manhole structures or lift stations; drainage or storm sewer inlets, pipes or roof drains; and, similar and comparable utility services and facilities, shall be exempt from the provisions of this Ordinance.

(B) Bus stations, park and ride facilities, railway terminals, gas storage tanks, power stations, utility substations, water treatment plants, pumping stations, water towers, sewage treatment plants and other facilities which generate, create or process such transportation, communication, or utility services, shall not be exempt from the provisions of this ordinance, and therefore shall be subject to all use and development standards regulations of this Ordinance.
Section 1.20  Clear Sight Area Requirements.

(A)  No building, structure or improvement, including landscaping, shall be erected, placed, planted or maintained so as to interfere with a clear sight area located between the heights of three (3) feet and ten (10) feet above the crown of a street, driveway or alley.

(B)  A clear sight area shall be established for all streets, whether public or private, in one of the following manners:

   (1)  At the intersection of streets, clear sight areas are formed at each corner by the street right-of-way lines and a line connecting points on the right-of-way lines located twenty-five (25) feet away from the intersection of such street right-of-way lines. In the case of a round or corner-cut right-of-way, the measurement shall be taken from the intersection of the right-of-way lines extended; or,

   (2)  At the intersection of a street with a driveway or alley, clear sight areas shall be formed by the intersection of the street right-of-way line and the driveway surface edge or the right-of-way of the alley and a line connecting points ten (10) feet from the intersection of such street right-of-way line and the driveway surface edge or alley right-of-way.
Section 1.21  Number of Buildings on a Lot

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

Section 1.22  Access to Lots.

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

(1) Only after obtaining a frontage variance from the Area Board of Zoning Appeals for those lots without frontage on a public street; or

(2) Through a condominium regulated by I.C. 32-25; or

(3) As part of multifamily zoning district; or

(4) As part of planned unit development.

Section 1.23  Requirements for All Private Streets and Private Alleys.

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

(1) Pavement Width for Private Streets. Minimum pavement width for that portion of a private street available for through traffic (i.e., exclusive of parking spaces):

(a) Residential Districts:
   1. 1 way traffic – 12’
   2. 2 way traffic – 24’

(b) Office, Commercial and Industrial Districts:
   1. 1 way traffic – 18’
   2. 2 way traffic – 36’

(2) Pavement Width for Private Alleys. Minimum pavement width for that portion of a private alley available for through traffic (i.e., exclusive of parking spaces):

(a) Residential Districts – 12’
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(b) Commercial Districts or Industrial Districts – 16'

(B) Depth and Materials. Minimum pavement depth and materials for that portion of a private street or private alley available for through traffic as noted above, shall be as required by the Town for public streets or public alleys. Curb sections shall be as required by the Town for public streets or public alleys.

(C) Emergency Vehicles. The geometric design of private streets or private alleys shall provide for the through movement or turn-around of emergency vehicles. Turn-around design may include cul-de-sac, hammerhead or other design approved by the Town.

(D) Maintenance / Services. Prior to the issuance of an improvement location permit or obtaining secondary plat approval, the developer or subdivider shall file documentary assurances with the Town that all lots served by the private streets or private alleys shall be provided with the following services: regular trash pick-up; leaf pick-up; snow removal; daily mail delivery service; roadway maintenance and repair, including, but not limited to, driving surface, roadway subgrade, subsurface drainage, roadside drainage, curbs, sidewalks, street lights, street name signs, traffic control signs, and traffic control signals; and, powers to enforce speed control and parking regulations. Such services shall be provided in accordance with the specifications approved by the Town, which shall include the establishment of a maintenance fund or escrow account by the developer or subdivider, which may be supplemented by regular or special assessments against each lot owner provided such assessments are at reasonable and non-discriminatory rate of charge. Such documentary assurances shall be incorporated into the applicable final plat that is recorded in the Office of the Recorder of St. Joseph County, Indiana, or otherwise provided for through legally binding perpetual agreements as approved by the Town.

Section 1.24 Additional Setback Provisions

(A) In the case where the thoroughfare plan does not include a proposed right-of-way, or where the existing right-of-way is greater than the proposed right-of-way, the existing right-of-way line shall be used for setback measurement.

(B) The minimum front yard and minimum building setback from the right-of-way line of a private street shall be the same as for all other streets in the applicable district.

(C) In any block in any district contained in this Ordinance in which an existing front yard setback is established by existing, legally established nonconforming buildings or structures on more than sixty percent (60%) of the total number of lots within the same block face fronting on the same public street, the minimum front yard setback for any new building, structure or addition along such block face shall be the average of such established front yards, if such average dimension is less than the minimum front yard setback established by this Ordinance.
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(D) That portion of a double frontage lot which abuts any perimeter street in which a "non-access easement" is provided for by a properly approved and recorded plat, shall be subject to setback and landscaping requirements of this Ordinance applicable to minimum rear yards.

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

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

Section 1.26 Environmental Performance Standards.

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

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

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

(A) Parapet walls may exceed the maximum building height, provided such parapet wall does not exceed four (4) feet in height above the roof line; and,

(B) Roof mounted or roof piercing chimneys, cooling towers, elevator bulkheads, mechanical penthouses, stacks, stage towers, scenery lofts, water towers, radio or television antenna, ornamental towers, cupolas, domes, steeples and spires, may exceed the maximum building height, provided such structures do not exceed twenty-five (25) feet in height above the roof line, or to such height as is necessary to accomplish the purpose they are to serve.
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Section 1.28  Wetlands.

(A) The wetlands of the Town are a valuable natural resource requiring careful management to maintain their usefulness to public health, safety and welfare. In their natural state, wetlands serve to control flooding and water pollution, buffer shorelines and stream banks against erosion and maintain supplies of potable ground water. Wetlands also provide high-quality wildlife habitat and offer opportunities for recreation, scientific study and natural resource education.

(B) It is the policy of the Town to avoid or minimize damage to wetlands, to permit reasonable economic use of wetlands in ways that are compatible with sound wetlands conservation practices; to encourage development not dependent on a water-related location to be sited in upland areas; to allow wetlands losses only when unavoidable; to promote development at adjacent upland sites that will have minimal or no adverse impact on wetlands; and to coordinate the planning and zoning process with federal and state programs designed to preserve, protect or enhance wetlands values.

(C) Applicability. This section shall apply to all lands in or within twenty-five (25) feet of a wetland located within the jurisdiction of the Town.

(D) Areas shown on the National Wetlands Inventory, published by the U.S. Fish and Wildlife Service, as being wetlands are presumed to be wetlands consistent with the definitions thereof. Wetlands not shown on the National Wetlands Inventory are presumed to exist and are hereby designated as such and are protected under all of the terms and provisions of this section.

(E) Certification of No Adverse Impact. Persons applying for subdivision or planned unit development approval, or for a building permit for any residential, office, commercial or industrial use, must certify that the proposed subdivision, planned unit development or structure or use for which a building permit is being sought, is in full compliance with all federal and state laws protecting wetlands. Any action within a wetland, such as, but not limited to, grading, dredging, draining and filling may require a permit from the Indiana Department of Natural Resources, the Indiana Department of Environmental Management or the Us. Army Corps of Engineers or other state or federal agency, as applicable. It is hereby deemed the responsibility of the applicant to obtain the necessary permits, or to obtain certification from the appropriate state and federal agencies that said permits are not applicable.

Section 1.29  Greenway Connection.

Residential developments, schools, religious uses, businesses or other uses which encourage public access, and which are located on a lot or parcel which abuts any portion of a greenway
designated on an officially adopted plan of the City of Mishawaka, Elkhart County, St. Joseph County or the Town, shall provide a direct linkage from the project to such Greenway.

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

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