

## **TITLE IX. SPECIAL USES**

### **Section 9.01 Purpose**

Special Uses are those uses of land which are not essentially incompatible with uses permitted in a District by right, but possess characteristics or location qualities which require individual review and discretion in order to avoid incompatibility with the character of the surrounding area, public services and facilities, and adjacent uses of land. Protection of surrounding property values and compatibility with existing and intended uses of the land are important considerations. The purpose of this Title is to establish equitable procedures and criteria that shall be applied in the determination of requests to establish Special Uses. The criteria for decision and the requirements provided for under the provisions of this Title shall be in addition to those required elsewhere in this Ordinance.

### **Section 9.02 Application and Review Procedures**

- A. Special Uses may only be authorized if the land use is specifically listed for the Zoning District in which the property is located.
- B. An application for approval to establish a Special Use shall be submitted in accordance with the following procedures:
  1. Applications for a Special Use shall be submitted to the Board of Zoning Appeals through the Town Administrator who will review the application for completeness and then transmit it to the Board of Zoning Appeals. Applications not meeting the requirements shall be returned to the applicant for completion.
  2. An application for a Special Use shall consist of the following:
    - a. A completed application form, as provided by the Building and Zoning Department.
    - b. Payment of a fee, in accordance with a fee schedule, as determined by the Town Council from time to time; to be paid when the application is determined complete and accepted by the Town Administrator.
    - c. A legal description, tax key numbers, and addresses of the entire property that is the subject of the Special Use.
    - d. A statement with regard to compliance with the criteria required for approval in Section 9.03.C, and other specific criteria imposed by Section 9.06 affecting the Special Use under consideration.
    - e. Other materials as may be required by the Town Administrator or Board of Zoning Appeals.
  3. A special use shall comply with all applicable requirements of this Ordinance, unless specifically modified by the requirements of this Title for a particular use.

### **Section 9.03 Basis of Determination**

Prior to approval of a Special Use application, the Board of Zoning Appeals and Town Council shall ensure that the standards specified in this Section, as well as applicable standards established elsewhere in this Ordinance, shall be satisfied by the completion and operation of the Special Use under consideration.

- A. Pursuant to the requirements of Indiana Code 36-7-4-918.6, as amended from time to time, when the Board of Zoning Appeals considers a Petition for Special Use, the Board shall, after public hearing, make one of the following recommendations to the Town Council: FAVORABLE, UNFAVORABLE or NO RECOMMENDATION. This recommendation, based on the standards listed in this Section, shall then be filed with the Town Clerk-Treasurer
- B. The Town Council shall give notice as required by Indiana Code 5-14-1.5-5, as amended, of its intentions to consider the petition for Special Use at its first regular meeting after the Board of Zoning Appeals files its recommendation.
- C. The Council shall review the recommendation from the Board of Zoning Appeals and the particular circumstances of the application under consideration in terms of the following standards. The petition shall only be approved upon a finding of compliance with each of the following standards, as well as applicable standards established elsewhere in this Ordinance:
  - 1. The establishment, maintenance or operation of the Special Use will not be detrimental to or endanger the public health, safety, comfort, morals or general welfare, and is in accordance with the Comprehensive Plan of the Town;
  - 2. The Special Use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted nor substantially diminish and impair property values within the community;
  - 3. The establishment of the Special Use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the Zoning District;
  - 4. The Special Use shall be required to comply with reasonable time limitations on commencement of construction;
  - 5. Adequate utilities, access roads, drainage and/or other necessary facilities will be provided to serve the Special Use;
  - 6. Adequate measures will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets; and
  - 7. The Special Use shall, in all other respects, conform to the applicable regulations of the Zoning Ordinance and the Zoning District in which the use is located.
- D. The Board of Zoning Appeals may recommend and the Town Council may impose conditions with the approval of a Special Use that are necessary to ensure compliance with the standards for approval stated in this Section and any other applicable standards contained in this Ordinance. Such conditions shall be considered an integral part of the Special Use permit and shall be enforced by the Town Administrator. Conditions that affect the site development plan shall be reflected on the development plan subsequently submitted for development plan review.
- E. The Board of Zoning Appeals may recommend and the Town Council may require a performance guarantee to be posted by the applicant to ensure that the Special Use complies with the conditions of approval.

- F. Following approval of the Special Use petition by the Town Council. The applicant shall submit a development plan for the use, in accordance with the provisions of Title VII of this Ordinance.
- G. If, after its establishment, the Special Use is found in noncompliance with the conditions of approval, the noncompliance shall be corrected in sixty (60) days to eliminate the noncompliance, as determined by the Town Administrator. If infractions are not corrected within the sixty (60) days, the enforcement provisions of Section 12.03 shall be initiated.

#### **Section 9.04 Approval Term and Expiration**

- A. A Special Use, including conditions imposed, is attached to and shall run with the land for which the approval is granted, and shall be binding upon subsequent owners and all occupants of the subject land, and shall be recorded by the applicant with the Lake County Recorder's Office within ninety (90) days of approval and prior to the issuance of a zoning or building permit.
- B. A Special Use must be initiated within twelve (12) months from the date of approval, or the Special Use permit shall be null and void. The Town Council may grant up to a one (1) year extension, with adequate explanation from the applicant, provided the approval has not been revoked as provided in Section 9.05, or the Special Use has been initiated, or construction necessary for such use has been initiated and is proceeding meaningfully toward completion.
- C. If, by the end of the one (1) year extension, one of the following exists, the Special Use shall be deemed expired and no longer valid, and any zoning or building permit issued shall be revoked:
  - 1. The Special Use has not been initiated.
  - 2. Construction necessary for the Special Use has not been initiated.
  - 3. Construction has been initiated but is not proceeding meaningfully toward completion.
- D. Reapplication for approval of an expired Special Use shall be considered in the same manner as the original application.

#### **Section 9.05 Revocation of Special Use**

The Town Council may revoke any Special Use or take any other action allowed by law, if the applicant fails to comply with any of the applicable requirements in this Title, any conditions placed on the approval, or any other applicable provisions of this Ordinance. Prior to revoking a Special Use approval, the Board of Zoning Appeals shall conduct a public hearing.

#### **Section 9.06 Development Requirements**

The following Special Uses shall be subject to the requirements of the Zoning District in which they are located, in addition to all the applicable conditions, standards, and regulations as cited in this Section. The following conditions, standards, or regulations are applicable to certain special uses. Compliance with these specific requirements shall be determined during the Development Plan review, in accordance with Title VIII.

- A. **Airports**
  - 1. The minimum lot size shall be twenty (20) acres.
  - 2. All structures directly associated with the use shall be set back a minimum of one hundred (100) feet from all property lines.

3. The airport shall not be located within five hundred (500) feet of any school, church, or other public meeting places.
4. The facility shall comply with all federal and State requirements for the proposed facility size and classification.

**B. Banquet hall, catering establishment**

1. The establishment shall be located on property with direct access to an arterial or collector street.
2. Where the site abuts a Residential District, screening shall be provided along that property line. Grass, plant materials, and sight obscuring fences or walls, of a type approved by the Plan Commission, shall be placed within the buffer zone, in accordance with Section 8.05 D.
3. Parking shall be located to minimize negative impacts on adjacent properties.

**C. Bed and breakfast establishments**

1. The establishment shall be serviced by adequate municipal or private water and sanitary sewer services.
2. The establishment shall be located on property with direct access to a public street.
3. The use shall only be established in a single-family dwelling which shall be inhabited as the principal residence of the owner or operator of the establishment.
4. Parking shall be located to minimize negative impacts on adjacent properties.
5. The number of guest rooms in the establishment shall not exceed five (5), plus one (1) additional guest room for each ten thousand (10,000) square feet of lot area, or major fraction thereof, in excess of one (1) acre of lot area, not to exceed a maximum of nine (9) guest rooms.
6. Exterior refuse storage facilities beyond what is normally expected for a single-family dwelling shall not be located in any front yard and shall be screened according to Section 8.06.
7. Accessory uses including, but not limited to, gift shop or bakery shall be available only to overnight guests of the establishment.
8. Meals, other than those taken by the operator's family, shall be limited to breakfast and shall not be available to the general public, other than guests of the bed and breakfast establishment.
9. The exterior design of the establishment must retain its single family characteristics.
10. All guest rooms must have interior access to common areas (e.g., dining, sitting, restrooms, etc.)

**D. Campgrounds, public or private**

1. Campsites shall not be located within one hundred (100) feet of any property line.
2. Minimum lot area shall be ten (10) acres.

3. Retail commercial uses may be permitted within the campground provided that the following requirements are met:
  - a. All commercial uses allowed shall occupy no more than two thousand (2,000) square feet.
  - b. No merchandise for display, sale or lease shall be located in any manner outside the main building, except for those specific items approved by the Board of Zoning Appeals.
  - c. All commercial uses shall be setback two hundred (200) feet from any property line.
4. Each campsite shall have a minimum area of five hundred (500) square feet.
5. Common area shall be provided at the ratio of one thousand (1,000) square feet for each campsite.
6. Driveways and parking areas shall be at least one hundred (100) feet from any adjacent property line.

E. **Child care centers, child care homes, daycare centers, and child care ministries.**

1. There shall be provided, equipped and maintained, on the premises, a minimum of one hundred fifty (150) square feet of outdoor recreation area for each child for which the facility is licensed.
2. The outdoor recreation area shall be located in the rear yard and fenced with a minimum four (4) foot high fence.
3. Where the child care center abuts a Residential District, the recreation area shall be screened from the residential property, in accordance with Section 10.05 D.
4. Off-street parking shall be provided at a ratio of one (1) space per four (4) children of licensed capacity.
5. In addition to required off-street parking, off-street pick-up and drop-off areas shall be provided that allow queuing for at least six (6) vehicles.

F. **Commercial extraction and processing of topsoil, stone, rock, sand, gravel, lime or other soil or mineral resources**

1. In addition to the information required for Development Plan review, the application for Commercial Extraction and Processing of Soil, Sand, Gravel, or Other Mineral Resources, shall include the following:
  - a. A written legal description of all of the lands proposed for the use.
  - b. Sufficient copies of a plan for mineral removal, drawn and sealed by a registered civil engineer, and including the following, at a minimum:
    - i. A north arrow, scale, and date;
    - ii. Shading indicating the extent of land area on which mineral removal operations and activities will take place;

- iii. The location, width, and grade of all easements or rights-of-way on or abutting the lands;
  - iv. The location and nature of all structures on the lands;
  - v. The location and direction of all water courses and flood control channels that may be affected by the mineral removal operations;
  - vi. Existing elevations of the lands at intervals of not more than two (2);
  - vii. Typical cross sections showing the estimated extent of overburden, and estimated extent of mineral material location in, or on the lands, and the water table;
  - viii. Mineral processing, recycling, and storage areas (including crushing, washing, asphalt and concrete plants);
  - ix. Proposed fencing, gates, parking areas, and signs;
  - x. Streets for ingress to, and egress from the lands, including on-site streets, other areas to be used for movement of vehicles and a description of the proposed measures to limit dust generated by mineral removal activities and movement of vehicles;
  - xi. A map showing access routes between the subject lands and the nearest paved arterial street;
  - xii. Areas to be used for ponding;
  - xiii. Proposed method of managing overburden (e.g., seeding, grading, erosion and sedimentation control, etc.); and
  - xiv. The area anticipated to be mined in a five (5) year timeframe. Extraction operations encompassing more area than the initial 5-year estimate shall have a separate approval process.
- c. A narrative description and explanation of the proposed extraction operations and activities, including:
- i. The date of commencement.
  - ii. Proposed hours and days of operation.
  - iii. Estimate of type and quantity of mineral materials to be removed.
  - iv. Description of extraction and processing methods, including dewatering, proposed equipment and the noise rating of each type thereof.
  - v. A summary of the procedures and practices that will be used to ensure compliance with the conditions of this subsection.

- vi. Description of size of trucks and daily volume of traffic entering and leaving the site, and the on-site circulation pattern.
- d. A site rehabilitation plan including the following:
  - i. A written description of planned site rehabilitation and end-use(s), including potential methods of accomplishment.
  - ii. A phasing plan, if the excavation of the site is to be accomplished in phases. This plan shall indicate the area and extent of each phase and the approximate timing of each phase.
  - iii. A plan showing:
    - (a) Final grades of the lands as rehabilitated, at contour intervals not exceeding two (2) feet;
    - (b) Water courses, ponds, or lakes, if any;
    - (c) Landscaping and plantings;
    - (d) Areas of cut and fill; and
    - (e) All of the components of the proposed end-use(s);
- e. A description of the proposed methods or features that will ensure that the end-use is feasible, and can comply with all applicable requirements of this Ordinance.
- f. Each site rehabilitation plan shall be reviewed by the Plan Commission and shall comply with all of the following standards and requirements:
  - i. Topsoil shall be replaced on the site to a depth of not less than six (6) inches, except where the end-use activities or features do not involve the planting of lawns or growing of vegetation.
  - ii. Slopes shall be graded and stabilized to such extent as will accommodate the proposed end-use. Final slopes shall have a ratio of not more than one (1) foot of elevation to three (3) feet of horizontal distance.
  - iii. The plan shall indicate the phasing of site rehabilitation, if the same is to take place in phases, and if so, topsoil shall be replaced and slopes shall be graded and stabilized before mineral removal operations or activities are commenced in another area of the site.
  - iv. Plantings of grass, shrubs, trees, and other vegetation shall be made so as to maximize erosion protection, screen less attractive areas of end-uses, and enhance the beauty of the site as rehabilitated.
  - v. No machinery shall be erected or maintained within one hundred (100) feet of any exterior property line. No cut or excavation shall be made

closer than fifty (50) feet to any street right-of-way line or property line in order to ensure subterranean support to surrounding property. The Board of Zoning Appeals may require greater distances for the location of machinery, storage or parking of equipment, or limits of excavation where the site is located within two hundred (200) feet of any residential district or use. Measure shall be taken to minimize noise from equipment including but not limited to generators.

- vi. No business buildings or structures of a permanent nature shall be erected, except when such building is a permitted use within the district in which the excavation pit is located.
2. The Plan Commission, when reviewing a proposed Development Plan, shall request that the Town Engineer recommend routes for truck movement to and from the site in order to minimize the wear on public streets, and to prevent hazards and damage to properties in the community. Access streets within the area of operation shall be provided with a dustless surface and the entry street shall be hard surfaced for a distance established by the Plan Commission to minimize dust, mud, and debris being carried onto the public street. Portions of driveways or streets may be required to be paved to minimize nuisance dust.
  3. Proper measures shall be taken to minimize the nuisance of noise and flying dust or rock. Such measures may include, when considered necessary, limitations upon stockpiling techniques of excavated material upon the site.
  4. Mineral resource extraction operations shall not operate prior to 7:00 a.m. or after 6:00 p.m., Monday through Friday. Saturday operations shall not operate prior to 8:00 a.m. or after 5:00 p.m. Operations shall not operate any time on Sundays or holidays. Crushing operations shall receive separate scheduled approval.
  5. Access to the site shall be located according to Lake County Highway Department and/or Indiana Department of Transportation requirements as applicable.
  6. The Plan Commission may request studies regarding dewatering processes to ensure that groundwater resources are not unreasonably disrupted by the operation.
  7. The Plan Commission may require compliance with such other conditions as may be necessary to ensure compliance with the terms of this subsection. Such conditions may include, though need not be limited to, weed control, erosion and sedimentation control, fencing and visual screening including berms, requirements for groundwater monitoring wells, preservation of trees and other vegetation, and fuel loading and storage requirements.
  8. An applicant for a permit shall submit a performance guarantee in accordance with the requirements of this Ordinance, naming the Town of Cedar Lake as the insured party, and conditioned upon the timely and faithful performance by the applicant of all of the terms and conditions of the permit. The bond shall have such other terms and shall be in such amount as is recommended by the Town Administrator as reasonably necessary to ensure compliance with all of the terms and conditions of this subsection and the permit.
    - a. The performance bond shall not be refunded, reduced, or transferred until the mineral removal operations and activities, land reclamation or restoration, and all other required activities have received final inspection by the Town

Administrator. The performance bond may be partially released as phases are completed in a phased development.

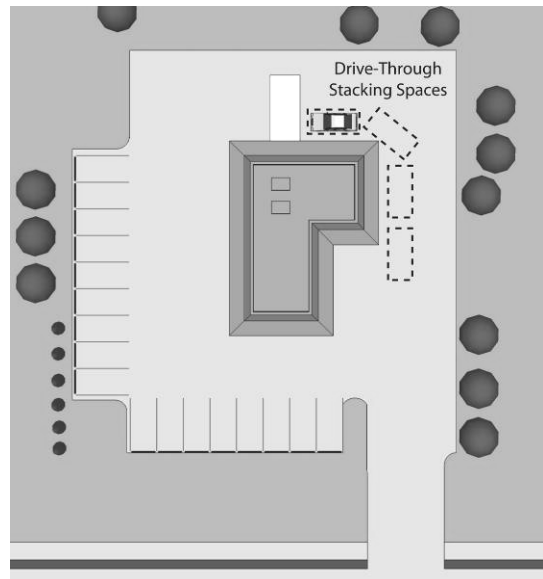
- b. The timely and faithful compliance with all of the provisions of the performance bond shall be a condition of any mineral removal operations. In the absence of any such compliance with the terms of the performance bond, or if the Special Use is revoked, expires, or is not renewed, the Board of Zoning Appeals need not approve the renewal of any permit, even if the applicant has otherwise complied with all other terms and provisions of the current permit.
9. All owners/operators of property involved in mineral resource extraction operations shall be required to carry personal injury and property damage insurance while any unreclaimed or unrehabilitated area exists, in the amount set by the Town Council for injury or damage to more than one person or one person's property arising out of one occurrence. Such insurance shall cover injury or damage occurring upon the site of the operations as well as upon properties adjoining thereto, as a result of conditions or activities existing upon the site. A copy of the policy shall be submitted annually to the Town Clerk-Treasurer.
10. To insure compliance with the Special Use approval, the Town Administrator shall conduct periodic inspections and shall file a written annual report to the Town Council. The operator shall be required to pay an annual fee to cover the cost of inspections.

**G. Drive through facility, other than a restaurant**

1. At least three (3) vehicle stacking spaces shall be provided at each drive-through window or kiosk to ensure traffic does not extend into the public right-of-way nor interfere with internal circulation of vehicles.
2. The parking and maneuvering areas of the site shall be fenced and screened from the view of any abutting Residential district or use by a decorative fence or wall, or a landscaped equivalent, in accordance with the requirements of Section 10.05.
3. Outdoor speakers for the drive through facility shall be located in a way that minimizes sound transmission toward adjacent property.
4. Driveway access shall meet the standards of Section 6.04, regardless of whether the property is located within the Access Management Overlay District.

**H. Drive through restaurant**

1. The main and accessory buildings shall be set back a minimum of sixty (60) feet from any adjacent Residential District and a suitable wall, fence, or landscaped buffer shall be provided, in accordance with the requirements of Section 8.05D.
2. Driveway access to the site shall comply with the access management requirements of Sections 6.04 of this Ordinance, regardless of whether the property is



located within the Access Management Overlay District.

3. The site shall be designed to provide a minimum of eight (8) vehicle stacking spaces for drive through customers without obstructing access to off-street parking spaces, interfering with traffic circulation within the site, or causing vehicles to queue off the site.
4. Outdoor speakers for the drive through facility shall be located in a way that minimizes sound transmission toward adjacent property.

**I. Funeral homes and mortuary establishments**

1. Minimum lot area shall be two (2) acres and minimum lot width shall be one hundred and fifty (150) feet.
2. An off-street vehicle staging area shall be provided to accommodate funeral processions and activities. This area shall be in addition to the required off-street parking and its related maneuvering area.
3. No waiting lines of vehicles shall extend off-site or onto any public street.
4. Driveways and parking areas shall be at least fifty (50) feet from any adjacent property line.

**J. Hotels and motels**

1. Minimum lot area shall be four (4) acres and minimum lot width shall be two hundred (200) feet.
2. Parking areas shall have a minimum front yard setback of twenty (20) feet and side and rear yard setbacks of ten (10) feet.
3. Ingress and egress shall be from a paved arterial or collector street.
4. Minimum floor area of each guest unit shall be two hundred and fifty (250) square feet.

**K. Mini-storage, commercial**

1. The use shall be developed on lots of at least two (2) acres, but not more than five (5) acres in size. No more than sixty percent (60%) of the lot may be used for buildings, parking lots and access.
2. The lot shall abut and gain access from a paved street.
3. A six (6) foot, solid fence of a material acceptable to the Town Council, Plan Commission, or designee, shall enclose the area occupied by the use. The fence shall be set back at least ten (10) feet from the front property line and any easement or right of way line.
4. The front yard, up to the fence, shall be landscaped.
5. Outdoor storage of boats and recreational vehicles is permitted provided the storage area is properly screened.
6. Minimum side and rear yards, as specified for the district, shall be maintained.
7. There shall be a minimum of thirty-five (35) feet between storage facilities for driveway, parking, and fire lane purposes. Where no parking is provided within the building separation areas, the building separation need only be twenty-five (25) feet.

8. Traffic direction and parking shall be designated by signs or painting.
9. The lot area used for parking shall be provided with a paved surface and shall be drained so as to dispose of all surface water.
10. Where the site abuts a residential district, screening that complies with Section 8.05 shall be provided along that property line.

L. **Nursing or convalescent home**

1. Minimum lot size shall be three (3) acres with at least two hundred (200) feet of frontage.
2. The lot location shall be such that at least one (1) property line abuts an arterial or collector street. The ingress and egress for off-street parking areas for guests and patients shall be directly from that thoroughfare.
3. Main and accessory buildings shall be set back at least seventy-five (75) feet from all property lines.
4. The facility shall be designed to provide a minimum of two hundred (200) square feet of open space for every bed used or intended bed to be used. This open space shall include landscaping and shall not include off-street parking, driveways, required yard setbacks and accessory uses.

M. **Outdoor seating**

1. **Plan:** A site development plan shall be provided for the seating area, or the seating area may be reviewed as part of a larger development.
2. **Area:** The area devoted to outdoor seating must be ancillary to the main use of an indoor restaurant, bakery, coffee shop, delicatessen, specialty food store, or similar establishment.
3. **Sidewalks:** Pedestrian circulation and access to the building entrance shall not be impaired. A minimum of five (5) feet of sidewalk parallel to the building and leading to the entrance to the establishment must be maintained free of tables, chairs, and other encumbrances.
4. **Location:** The seating area shall be limited to the area directly adjoining the permitted use to which the seating area is accessory and shall not extend into adjacent sites.
5. **Character:** Tables, chairs, umbrellas, canopies, planters, waste receptacles, and other elements of street furniture shall be compatible with the architectural character of the principal building.
6. **Landscaping:** Outdoor seating areas shall be landscaped and may be required to be walled or fenced off from other activity areas.
7. **Amplifiers:** Outdoor amplification shall not be disruptive to surrounding uses.
8. **Encroachments:** The area devoted to outdoor service shall not encroach upon or extend over any required parking area. An outdoor seating area may encroach upon a public alley or right-of-way if approved as a condition of the special use.
9. **Visibility:** The outdoor seating area shall not obstruct visibility of on-coming pedestrians or vehicular traffic.

10. Removal: All outdoor furnishings shall be completely removed from public sidewalk areas December 1 through March 1 of each year.
11. Upkeep: The area devoted to such outdoor dining area shall be maintained in a safe, clean, and sanitary manner.
12. Roof: Roof seating shall comply with the building code.

N. **Sexually Oriented Businesses**

1. Purpose: It is the purpose of this Ordinance to regulate sexually oriented businesses to promote the health, safety, morals and general welfare of the citizens of the Town, and to establish reasonable and uniform regulations to prevent the deleterious effects of sexually oriented businesses from occurring within the Town. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of this Ordinance to restrict or deny access by adults to sexually oriented materials which are protected by the First Amendment of the United States Constitution or the Indiana State Constitution, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent or effect of this Ordinance to, in any way, condone or legitimize the distribution of obscene material or material harmful to minors.
2. Definitions: The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:
  - a. "Employee" means a person who works or performs in and/or for a sexually oriented business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.
  - b. "Establishment" means and includes any of the following:
    - i. The opening or commencement of any such sexually oriented business as a new business;
    - ii. The conversion of an existing business, regardless of whether it currently exists as a sexually oriented business, to any of the sexually oriented businesses defined in this Article;
    - iii. The addition of any of the sexually oriented businesses defined in this Article to any other existing sexually oriented business; or
    - iv. The relocation of any such sexually oriented business.
  - c. "Lewd matter" means any matter which:
    - i. the average person finds, when applying contemporary community standards and when considered as a whole, appeals to the prurient interest; and
    - ii. depicts or describes patently offensive representations simulated; or

- (a) ultimate sexual acts, normal, perverted, or actual; or
  - (b) masturbation, excretory functions, or the exhibition of the genitals or genital area.
- iii. Nothing herein is intended to include or proscribe any matter which, when considered as a whole and in the context in which it is used, possesses serious literary, artistic or political scientific value.
- d. "Licensed Premises" shall mean any premises that requires a license for operation and that is classified as a sexually oriented business.
- e. "Licensee" shall mean a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license and/or license.
- f. "Live entertainment" is defined as a person who appears nude, semi-nude, or a performance which is characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."
- g. "Matter" shall mean a motion picture film or a publication, or both.
- h. "Motion picture film" shall mean any:
  - i. film or plate negative; or
  - ii. film or plate positive; or
  - iii. film designed to be projected on a screen for exhibition;
  - iv. films, glass slides or transparencies, either in negative or positive form, designed for exhibition by projection on a screen; or
  - v. video tape or any other medium used to electronically reproduce images on a screen.
- i. "Nudity" or "State of Nudity" shall mean:
  - i. the appearance of bare human buttocks, anus, male or female genitals, or the areola or nipple of the female breast; or
  - ii. a state of dress which fails to opaquely and fully cover a human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.
- j. "Operator" shall mean and include the owner, license holder, custodian, manager, operator or other person in charge of any licensed or licensed premises.
- k. "Publication" shall include any books, magazine, article, pamphlet, writing, painting, illustration, picture, sound recording, or motion picture film which is offered for sale or exhibition in a coin-operated machine.

- l. "Semi-Nude" or "Semi-Nudity" shall mean a state of dress in which clothing covers no more than the genitals, anus, pubic region and areola of the female breast, as well as portions of the body covered by supporting straps or devices.
- m. "Sexually Oriented Business" shall mean an adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, massage parlor, sexual encounter establishment, escort agency or nude model studio, each of which are more particularly defined as follows:
  - i. "Adult arcade" shall mean an establishment where, for any form of consideration, one (1) or more still or motion picture projectors, slide projectors, or similar machines, or other image producing machines, for viewing by five (5) or fewer persons each, are regularly used to show films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."
  - ii. "Adult bookstore," "Adult novelty shop" or "Adult video store" shall mean a commercial establishment which has as a significant or substantial portion of its stock-in-trade, or derives a significant or substantial portion of its revenues, or devotes a significant or substantial portion of its interior business or advertising to the sale, rental or viewing, for any form of consideration, of any one (1) or more of the following:
    - (a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."
    - (b) Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.
    - (c) An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials depicting or describing "specified sexual activities" or "specified anatomical areas," and still be categorized as adult bookstore, adult novelty shop or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore, adult novelty shop or adult video store, so long as one (1) of its principal business purposes is the offering for sale, rental or viewing, for any form of consideration, the specified materials which depict or describe "specified anatomical areas" or "specified sexual activities."

- iii. “Adult cabaret” shall mean a nightclub, bar, restaurant “bottle club,” or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features:
  - (a) persons who appear nude or in a state of nudity or semi-nudity;
  - (b) live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities,” or
  - (c) films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”
  
- iv. “Adult motel” shall mean a motel, hotel or similar commercial establishment which:
  - (a) offers public accommodations, for any form of consideration, which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas” and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including, but not limited to, newspapers, magazines, pamphlets, leaflets, radio or television; and
  - (b) offers a sleeping room for rent for a period of time less than ten (10) hours or allows a tenant or occupant to sub-rent the sleeping room for a time period of less than ten (10) hours.
  
- v. “Adult motion picture theater” shall mean a commercial establishment where films, motion pictures, video cassettes, slides or similar photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas” are regularly shown for any form of consideration.
  
- vi. “Adult theater” shall mean a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear nude, in a state of nudity or semi-nudity, or live performances which are characterized by exposure of “specified anatomical areas” or by “specified sexual activities.”
  
- vii. “Escort” shall mean a person who, for any form of consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

- viii. ”Escort agency” shall mean a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.
- ix. ”Massage parlor” shall mean any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment or manipulation of the human body which occurs as a part of, or in connection with, “specified sexual activities,” or where any person providing such treatment, manipulation, or service related thereto, exposes his or her “specified anatomical areas.” The definition of sexually oriented businesses shall not include the practice of massage in or by any licensed hospital, licensed physician, surgeon, chiropractor, osteopath, or any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, or by trainers for any amateur, semiprofessional or professional athlete or athletic team or school athletic program, or by any person so licensed to perform such activities.
- x. ”Nude model studio” shall mean any place where a person who regularly appears in a state of nudity or displays “specified anatomical areas” for money or any form of consideration and is to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.
- xi. ”Sexual encounter establishment” shall mean a business or commercial establishment that, as one (1) of its primary business purposes offers, for any form of consideration, a place where two (2) or more persons may congregate, associate, or consort for the purpose of engaging in “specified sexual activities” or the exposure of “specified anatomical areas,” or activities when one (1) or more of the persons is in a state of nudity or semi-nudity. The definition of sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.
- n. ”Specified Anatomical Areas” shall mean any of the following:
  - i. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areola; or
  - ii. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- o. ”Specified Sexual Activities” shall mean any of the following:
  - i. The fondling or other intentional touching of human genitals, pubic region, buttocks, anus or female breasts;

- ii. Sexual acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
  - iii. Masturbation, actual or simulated;
  - iv. Human genitals in a state of sexual stimulation, arousal or tumescence; or
  - v. Excretory functions as part of, or in connection with, any of the activities set forth in subdivisions i. through iv. of this subsection.
- p. ”Substantial enlargement of a sexually oriented business” shall mean an increase in the floor areas occupied by a sexually oriented business by more than fifteen percent (15%), as the floor areas exist on the date this Ordinance takes effect.
- q. ”Transfer of ownership or control of a sexually oriented business” shall mean any of the following:
- i. The sale, lease or sublease of the business;
  - ii. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or
  - iii. The establishment of a trust, gift or other similar legal devise, which transfers ownership or control of the business, except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control.”
3. License Required: In addition to the special use requirements of this Title, no person shall conduct, maintain, operate, or cause to be conducted, maintained, or operated, any sexually oriented business within the corporate limits of the Town without being licensed under this Section, in accordance with the following:
- a. The Town of Cedar Lake Administrator, or its designee, is responsible for granting, denying, revoking, renewing, suspending, and canceling sexually oriented business licenses for proposed or existing sexually oriented businesses. The Town of Cedar Lake Administrator, or its designee, is also responsible for ascertaining whether a proposed sexually oriented business for which a license is being requested complies with all applicable zoning laws and/or regulations now in effect or as amended or enacted subsequent to the effective date of this Ordinance in the Town and the Town's Comprehensive Plan.
  - b. The Town of Cedar Lake Code Enforcement Officer shall be responsible for inspecting a proposed, licensed or non-licensed sexually oriented business in order to ascertain whether it is in compliance with applicable statutes and ordinances.
  - c. If a special use approval is granted by the Board of Zoning Appeals, in accordance with the requirements and procedures of this Title, an application for a license to operate a sexually oriented business shall be made on a form

provided by the Town of Cedar Lake Administrator for that purpose. An original and two (2) copies of a sworn license application on the application form shall be provided to the Town Administrator or its designee.

- d. The completed application shall contain the following information and shall be accompanied by the following documents:
  - i. In the event that an applicant is:
    - (a) an individual, the individual shall state his/her legal name, and all aliases, and shall submit satisfactory proof that he/she is at least eighteen (18) years of age;
    - (b) a partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;
    - (c) a corporation or limited liability company, such entity shall state its complete name, the date of its incorporation or organization, evidence that the entity is in good standing under the laws of the State of Indiana, the names and capacity of all officers, directors, principal stockholders and/or members, and the name and address of the individual registered as agent for service of process.
  - ii. In the event that an applicant intends to operate the sexually oriented business under a name other than that of the applicant, he/she must:
    - (a) include the sexually oriented business's name in the application; and
    - (b) submit the required Indiana registration documents for said name.
  - iii. Whether the applicant or any other individual listed in the application holds any other licenses and/or licenses under this Ordinance or other similar sexually oriented business ordinance from another city, town, county, or state and, if so, the names and locations of such other licensed businesses.
  - iv. The single classification of license for which the applicant is filing.
  - v. The location of the proposed sexually oriented business, including a legal description of the property, common street address, and telephone number(s), if any.
  - vi. The applicant's business mailing address.
  - vii. A sketch or diagram showing the interior configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be

drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

- viii. A site development plan, in accordance with the requirements of Title VII. In addition, the site development plan shall show or be accompanied by a drawing or aerial photo depicting the property lines of any established religious institution/synagogue, school, or public park or recreation area within one thousand feet (1,000') of the property to be certified and the property lines of any residentially zoned area or residential property within one thousand feet (1,000') of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.
- ix. In the event that a person who wishes to operate a sexually oriented business is an individual, he/she must sign the application for a license as applicant. If a person wishes to operate a sexually oriented business collectively with a group of individuals, each individual who has a ten percent (10%) or greater interest in the business must sign the application for a license as applicant. If a corporation or limited liability company is listed as owner of a sexually oriented business or as the entity that intends to operate such a business, each individual having a ten percent (10%) or greater interest in the entity must sign the application for a license as applicant.
- x. In the event that a person wishes to operate a sexually oriented business which shall exhibit films, video cassettes or other video reproductions on the premises which depict specified sexual activities or specified anatomical areas, then said person shall comply with the application requirements stated at Section 9.06N.12.
- e. Applicants for a license under this Section shall have a continuing duty to promptly supplement application information required by this Section in the event that said information changes in any way from what is stated on the application. The failure to comply with said continuing duty within thirty (30) days from the date of such change shall be a valid and lawful basis for suspension of a license.
- f. In the event that the Town of Cedar Lake Administrator, or its designee, determines or learns at any time that the applicant has improperly completed the application for a proposed sexually oriented business, it shall promptly notify the applicant of such fact and allow the applicant ten (10) days within which to properly complete the application. (The time period for granting or denying a license shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application.)
- g. An applicant must be qualified according to the provisions of this Ordinance, and the premises must be inspected and found to be in compliance with all applicable health, fire and building codes and laws, and any other applicable federal or state laws.

- h. By applying for a license under this Ordinance, an applicant shall be deemed to have consented to the provisions of this Ordinance and to the exercise by the Town of Cedar Lake Administrator, or its designee, and all other Town agencies charged with enforcing the laws, ordinances and codes applicable in the Town, of their respective responsibilities under this Ordinance.
- i. An applicant shall be required to provide the Town with the names of any and all employees who are required to be licensed pursuant to Section 9.06N.11. of this Ordinance. This shall be a continuing obligation of an applicant even after a license is granted or renewed.

4. Issuance of License:

- a. The Town of Cedar Lake Administrator, or its designee, shall grant or deny an application for a license within thirty (30) days from the date of its proper filing. Upon the expiration of said thirty (30) days, and unless an applicant requests and is granted a reasonable extension of time, an applicant shall be licensed to begin operating the business for which the license is sought, unless and until the Town of Cedar Lake Administrator, or its designee, notifies the applicant of the denial of the application and states the reasons(s) for that denial.
- b. The Town of Cedar Lake Administrator, or its designee, shall grant the application unless one (1) or more of the criteria set forth below is present.
  - i. An applicant is under eighteen (18) years of age.
  - ii. An applicant has failed to provide all of the information required by this Section or the license application itself for the issuance of the license, or has falsely answered a question or request for information on the application form.
  - iii. The premises to be used for the sexually oriented business have been inspected by the appropriate and responsible Town departments and/or agencies and have been found to be in violation of applicable Town and/or State health, fire and building codes.
  - iv. The application or license fees required by this Ordinance have not been paid.
  - v. An applicant of the proposed sexually oriented business is in violation of, or is not in compliance with, any of the provisions of this Ordinance or the Town of Cedar Lake Zoning Ordinance.
  - vi. The granting of the application would violate a federal or state law, statute, ordinance, or court order.
  - vii. An applicant knowingly has in his/her employ, an employee who does not have a valid license as required by this Section.
- c. The license, if granted, shall state on its face the name of the person, or persons, to whom the license is granted, the license's expiration date and the address of the

sexually oriented business. The license shall also indicate that the sexually oriented business shall be subject to prohibitions against Public Nudity and Indecency pursuant to I.C. 35-45-4-1, as amended. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it can be read easily at any time.

- d. In the event that the Town of Cedar Lake Administrator, or its designee, denies the application, it shall notify an applicant of the denial and state the reason(s) therefore.
- e. In the event that a person applies for a license for a particular location within a period of twelve (12) months from the date of denial of a previous application for a license at that location, and there has not been an intervening change in the circumstances which could reasonably be expected to lead to a different decision regarding the former reason(s) for denial, the application shall be denied.

5. Inspection:

- a. An applicant or licensee shall allow duly designated representatives of the Town of Cedar Lake and Lake County, Indiana, to enter and inspect the premises of a sexually oriented business for the purpose of insuring compliance with any and all applicable laws, statutes, codes, ordinances, and the like, at any time it is occupied or open for business.
- b. A person who refuses to allow such inspection of the premises at any time that it is occupied or open for business, as described in sub-section a. above, shall be in violation of this Ordinance.

6. Expiration of License:

- a. Each license shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section 9.06N.3. of this Ordinance (for applications for license renewals, filing of the original survey shall be sufficient). An application for renewal shall be made at least thirty (30) days before the license expiration date and, when made less than thirty (30) days before the license expiration date, the expiration of the license will not be affected.
- b. When the Town of Cedar Lake Administrator, or its designee, denies renewal of a license, the applicant shall not be issued a license under this Ordinance for a period of one (1) year from the date of denial. If, subsequent to denial, the Town of Cedar Lake Administrator, or its designee, determines that the basis for denial of the renewal of the license has been corrected, the applicant shall be granted a license if at least ninety (90) days have elapsed since the date denial became final.

7. Suspension of License:

- a. The Town of Cedar Lake Administrator, or its designee, shall suspend a license for a period not to exceed thirty (30) days if it determines that a licensee, or an employee of a licensee, has:

- i. violated or is not in compliance with any section of this Ordinance; or
  - ii. been under the influence of alcoholic beverages or any controlled substances while working in or on the premises of the sexually oriented business; or
  - iii. refused to allow an inspection of the premises of the sexually oriented business as authorized by this Ordinance; or
  - iv. knowingly licensed gambling by any person on the premises of the sexually oriented business; or
  - v. knowingly employed a person who does not have a valid license as required in Section 9.06N.11.; or
  - vi. operated the sexually oriented business in violation of a building, fire, health, or zoning statute, code, ordinance or regulation, whether federal, state or local, said determination being based on investigation by the division, department or agency charged with enforcing said rules or laws. In the event of such state or federal statute, code, ordinance or regulation violation, the Town of Cedar Lake Administrator, or its designee, shall promptly notify the licensee of the violation and shall allow the licensee a three (3) day period in which to correct the violation. If the licensee fails to correct the violation before the expiration of the three (3) day period, the Town of Cedar Lake Administrator, or its designee, shall forthwith suspend the license and shall notify the licensee of the suspension.
- b. The suspension of the license shall remain in effect until the violation of the applicable statute, code, ordinance or regulation has been corrected.

8. Revocation of License:

- a. The Town of Cedar Lake Administrator, or its designee, shall revoke a license if a cause of suspension in Section 9.06N.7. of this Ordinance occurs and the license has been suspended within the preceding twelve (12) months.
- b. The Town of Cedar Lake Administrator, or its designee, shall revoke a license upon determining that:
  - i. a licensee gave false or misleading information in the material submitted during the application process that tended to enhance the applicant's opportunity for obtaining a license; or
  - ii. a licensee or an employee has knowingly allowed possession, use or sale of controlled substances in or on the premises; or
  - iii. a licensee or an employee has knowingly allowed prostitution on the premises; or

- iv. a licensee or an employee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended; or
- v. on two (2) or more occasions within a twelve (12) month period, a person, or persons, committed an offense occurring in or on the licensed premises, which offense constitutes a specified criminal act for which a conviction has been obtained and the person, or persons, were employees of the sexually oriented business at the time the offenses were committed. The fact that a conviction is being appealed shall have no effect on the revocation of the license; or
- vi. a licensee is convicted of tax violations for any taxes or fees related to a sexually oriented business; or
- vii. a licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or any other specified sexual activities to occur in or on the licensed premises; or
- viii. a licensee has operated, or is operating, more than one (1) sexually oriented business under a single roof under the terms of a single license; or
- ix. a licensee has engaged in, or attempted to engage in a transfer of license, in violation of Section 9.06N.10.

c. When the Town of Cedar Lake Administrator, or its designee, revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license for a period of one (1) year from the date the revocation became effective. If, subsequent to revocation, the Town of Cedar Lake Administrator, or its designee, finds that the basis for revocation under Section 9.06N.8. has been corrected, the applicant shall be granted a license if at least ninety (90) days have elapsed since the date revocation became effective. Otherwise, if the license was revoked under Section 9.06N.12.8, an applicant may not be granted another license until the specified number of years required under Section 9.06N.4. has elapsed.”

9. Judicial Review of License Denial, Suspension or Revocation: After denial of an application, denial of a renewal of an application, or suspension or revocation of a license, the applicant or licensee may seek judicial review of the administrative action in Lake County, Indiana, Superior or Circuit Court.

10. Transfer of License:

- a. A licensee shall not operate a sexually oriented business under the authority of a license at any place other than the address designated in the application for license.
- b. A licensee shall not transfer his/her license to another person.
- c. A licensee shall not transfer his/her license to another location.

- d. Any attempt to transfer a license, either directly or indirectly, in violation of this Section is hereby declared void and the license shall be deemed revoked.

11. Sexually Oriented Business Employee Registration:

- a. Each individual who will be employed in a sexually oriented business, as defined in Section 9.06N.2., who engages in the services rendered by a nude modeling studio, escort or escort agency, sexual encounter establishment, massage parlor (except for massage parlors licensed pursuant to applicable provisions of the Cedar Lake Town Code), or a live performer or entertainer, shall be required to register as a Sexually Oriented Business Employee. Each employee shall pay a registration fee as established by the Town Council. Said fee is to cover the reasonable administrative costs of the registration process.
- b. Before any applicant may be registered a Sexually Oriented Business Employee, an applicant shall submit on a form to be provided by the Town of Cedar Lake Administrator, or its designee, the following information:
  - i. the applicant's name and any other names (including "stage" names or aliases) used by the individual;
  - ii. age, and date and place of birth;
  - iii. height, weight, hair and eye color;
  - iv. present business address and telephone number; and
  - v. acceptable written proof that the individual is at least eighteen (18) years of age.
- c. After the application is completed and filed and the registration fee is paid, the Town of Cedar Lake Administrator, or its designee, shall issue a registration certificate, unless it finds that one (1) or more of the following findings is true:
  - i. the applicant has knowingly made any false, misleading, or fraudulent statement of a material fact in the application, or in any report or record required to be filed with the Town of Cedar Lake Administrator or any other department of the Town;
  - ii. the applicant is under eighteen (18) years of age;
  - iii. the Sexually Oriented Business Employee registration is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by particular provisions of this Ordinance;
- d. A registration granted pursuant to this Section shall be subject to annual renewal by the Town of Cedar Lake Administrator, or its designee, upon the written application of the employee and a finding that the employee has not committed any act during the existence of the previous registration period which would be grounds to deny the initial application. A fee, as established by the Town Council, may be charged for the renewal.

12. Exhibition of Sexually Explicit Films or Videos in Video Booths:

- a. A person who operates, or causes to be operated, a sexually oriented business, other than a sexually oriented motel/hotel, regardless of whether or not a license has been issued to said business under this Ordinance, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
  - i. Upon application for a sexually oriented business license, an application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) or more manager's stations, the location of all overhead lighting fixtures and designating any portion of the premises wherein patrons will not be licensed. A manager's station may not exceed thirty-two (32) square feet of floor area with no dimension greater than eight feet (8'). The diagram shall also designate the place where the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north, or to some designated street or object, and should be drawn to a designated scale with marked dimensions sufficient to show the various internal dimension of all areas of the interior of the premises to an accuracy of plus or minus six inches (6"). The Town's Zoning Administrator, or his/her designee, may waive the filing of the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
  - ii. The application shall be sworn to be true and correct by the applicant.
  - iii. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Town of Cedar Lake Administrator, or its designee.
  - iv. It is the duty of the owner(s) and operator of the premises to insure that at least one (1) employee is on duty and situated at each manager's station at all times that any patron is present inside the premises.
  - v. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is licensed access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises have two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is licensed access, for any purpose, from at least one (1) of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
  - vi. It shall be the duty of the owner(s) and operator of the premises, and it shall also be the duty of any agents and employees present on the

premises, to insure that the view area specified in sub-section v. above remains unobstructed by any doors, walls, merchandise, display racks or other materials or persons at all times, and to insure that no patron is licensed access to any area of the premises which has been designated as an area in which patrons will not be licensed in the application filed pursuant to sub-section i above.

- vii. No viewing room may be occupied by more than one (1) person at any one (1) time. No holes, commonly known as "glory holes," shall be allowed in the walls or partitions which separate each viewing room from an adjoining viewing room or restroom.
- viii. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are licensed access and shall provide an illumination of not less than two (2.0) foot candles, as measured at the floor level. It shall be the duty of the owner(s) and operator of the premises, and it shall also be the duty of any agents and employees present on the premises, to insure that the illumination described herein is maintained at all times that any patron is present on the premises.

13. Prohibitions Regarding Minors and Sexually Oriented Businesses:

- a. It shall be unlawful for a person who operates, or causes to be operated, a sexually oriented business, regardless of whether or not a license has been issued for said business under this Ordinance, to knowingly or, with reasonable cause, license, suffer or allow:
  - i. admittance of a person under eighteen (18) years of age to the business premises.
  - ii. a person who is under eighteen (18) years of age to work at the business premises as an employee.
- b. It shall be the duty of the operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance at all times during such sexually oriented business's regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen (18) years from entering the establishment. It shall be presumed that an attendant knew a person was under the age of eighteen (18) unless the attendant asked for and was furnished:
  - i. a valid operator's, commercial operator's or chauffeur's license; or
  - ii. a valid personal identification certificate issued by the State of Indiana reflecting that such person is eighteen (18) years of age or older.

14. Advertising and Lighting Regulations:

- a. It shall be unlawful for the owner or operator of a sexually oriented business, regardless of whether or not a license has been issued for said business under this Ordinance, to do any of the following:

- i. advertise the presentation of any activity prohibited by any applicable state statute or local ordinance;
  - ii. display or otherwise exhibit the materials and/or performances at such sexually oriented business in any advertising or any portion of the interior premises which is visible from outside the premises. This prohibition shall not extend to advertising the existence or location of such sexually oriented business.
  - iii. allow the exterior portion of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner, except to the extent licensed by the provisions of this Ordinance.
  - iv. erect, construct, or maintain any sign for the sexually oriented business other than as licensed by the Town of Cedar Lake Zoning Ordinance, as amended from time to time, and as follows:
    - (a) Signage shall not contain photographs, silhouettes, drawings or pictorial representations, in any manner, and may contain only the legal name of the sexually oriented business.
    - (b) Each letter forming a word on a primary sign shall be of solid color, and each such letter shall be the same print-type, size, and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.
  - v. allow the exterior portions of the establishment to be painted any color other than a single achromatic color. This provision shall not apply to a sexually oriented business if the following conditions are met:
    - (a) the establishment is a part of a commercial multiunit center; and
    - (b) the exterior portions of each individual unit in the commercial multiunit center, including the exterior portions of the sexually oriented business, are painted the same color as one (1) another, or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multiunit center.
- b. All off-street parking areas and premises entrances to the sexually oriented business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one (1.0) foot candle of light on the parking surface and/or walkways. This required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the sexually oriented business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required site development plan of the premises and shall conform to the requirements of Section 8.07 of this Ordinance.

- c. Nothing contained in this Section shall relieve the operator(s) of a sexually oriented business from complying with the requirements of any other ordinance or regulation enacted by the Town of Cedar Lake.

15. Hours of Operation:

- a. It shall be unlawful for any person to operate, or cause to be operated, a sexually oriented business, regardless of whether or not a license has been issued for said business under this Ordinance, and allow such business to remain open for business or to license any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of 10:00 p.m. and 10:00 a.m. of the subsequent day.
- b. It shall be unlawful for any person, while working as an employee of a sexually oriented business, regardless of whether or not a license has been issued for said business under this Ordinance, to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service between the hours of 10:00 p.m. and 10:00 a.m. of the subsequent day.

16. Nudity at Sexually Oriented Businesses Prohibited: There shall be no nudity at any sexually oriented business.

17. Regulations Pertaining to Live Entertainment:

- a. No person shall perform live entertainment for patron(s) of a sexually oriented business establishment, except upon a stage at least eighteen (18) inches above the level of the floor, which stage is separated by a distance of at least ten feet (10') from the nearest area occupied by patron(s). No patron shall be licensed within ten feet (10') of the stage while the stage is occupied by a performer.
- b. The sexually oriented business shall provide separate dressing room facilities for female and male performers that shall not be occupied or used, in any way, by anyone other than performers.
- c. The sexually oriented business shall provide access for performers between the stage and the dressing rooms which is completely separated from the patrons. If such separate access is not physically feasible, the sexually oriented business shall provide a minimum four feet (4') wide walk aisle for performers between the dressing room area and the stage, which walk aisle shall be equipped with a railing, fence or other barrier separating the patrons and the performers and which prevents any physical contact between patrons and performers.
- d. No performer, either before, during, or after a performance, shall have physical contact with any patron and no patron shall have physical contact with any performer before, during or after a performance. This subsection shall only apply to physical contact while in or on the premises of the sexually oriented business.
- e. Fixed rails at least thirty inches (30") in height shall be maintained establishing the separations between performers and patrons that are required by this Section of this Ordinance.

- f. No patron shall directly pay or give any gratuity to any performer. A patron who wishes to pay or give a gratuity to a performer shall place the gratuity in a container that is, at all times, located separate from the performers for the purpose of preventing any physical contact between a patron and a performer. No performer shall solicit any gratuity from any patron.
- g. No operator of a sexually oriented business shall cause or allow a performer to engage in any entertainment such as a "couch" or a "straddle" dance with a patron while in or on the premises. No performer shall contract to or engage in a "couch" or "straddle" dance with a patron while in or on the premises. For purposes of this sub-section, "couch" or "straddle" dance is defined as an employee of the sexually oriented business intentionally touching or otherwise coming within ten feet (10') of any patron while engaged in the display or exposure of any "specified anatomical area" or any "specified sexual activity."
- i. This Section shall not apply to an employee of a sexually oriented business who, while acting as a waiter, waitress, host, hostess, or bartender, comes within ten feet (10') of a patron. No employee shall engage in any "specified sexual activity" or display or expose any "specified anatomical area" while acting as a waiter, waitress, host, hostess, or bartender.

18. Penalties and Injunctive Relief:

- a. Any person who violates the provisions of this Ordinance, as amended from time to time, shall be subject to a fine not to exceed Two Thousand Five Hundred and 00/100 Dollars (\$2,500) for each violation. Each day of continued violation shall constitute a separate offense.
- b. In addition to seeking penalties against any individual who violates the provisions of this Ordinance, as amended from time to time, the Town may commence any and all necessary and appropriate legal action in any court of competent jurisdiction to prevent or remedy any violation or non-compliance with this Ordinance. This shall include, but is not limited to, seeking an equitable action for injunctive relief against any individuals violating the provisions of this Ordinance or an action at law for damages, as well as the recovery of attorney fees related to the same.
- c. Nothing herein shall prevent or restrict the Town from prosecuting any violation of this Ordinance as an ordinance violation in the Town Court and seeking all available remedies licensed thereby.
- d. All remedies and penalties provided for in this Section shall be cumulative and independently available to the Town, and the Town shall be authorized to pursue any and all remedies set forth in this Section to the full extent allowed by law.

O. Utility Substation or Switching Station.

- 1. Any building shall be generally compatible with the surrounding neighborhood, with respect to materials and color.

2. Any building shall comply with yard setback requirements of the district in which it is located.
3. A security fence shall be constructed around the perimeter of the building of at least six (6) feet in height.
4. Where the site abuts a Residential District, screening shall be provided along that property line, in accordance with the requirements of Section 8.06.

**P. Vehicle Repair Facility (Major and Minor)**

1. The minimum lot size shall be one-half (½) acre with a minimum of two hundred (200) feet of frontage on an arterial street or highway.
2. The facility shall meet all pertinent licensing requirements of the State of Indiana.
3. All buildings, structures, and equipment shall be located at least forty (40) feet from any right-of-way line, and not less than forty (40) feet from any side or rear lot line. Where greater setbacks may be required for the zoning district in which the property is located, those greater requirements shall apply.
4. No part of any drive or curb opening shall be located nearer than two hundred (200) feet to any intersection or less than one hundred (100) feet from any adjacent residential district property line. No drive shall be located nearer than seventy-five (75) feet, as measured along the property line, to any other driveway measured from the nearest part of the access driveway to the nearest part of the other driveway.
5. All lubrication equipment, hydraulic hoists, and pits shall be enclosed entirely within a building and all repair, servicing or other related activities shall take place within the building.
6. Out door parking and storage areas for disabled, wrecked, or partially dismantled vehicles awaiting repair shall be paved with asphalt or poured concrete, and parking of such vehicles shall not exceed a maximum two (2) vehicles per bay. This area shall be screened from the view of any abutting property. The Board of Zoning Appeals shall approve the method of screening.
7. A landscaped, planted open space of a minimum of ten (10) feet in depth shall be provided along the full frontage of the site abutting the road right-of-way line.
8. All outside storage areas for trash, used tires, auto parts and similar items shall be enclosed by a six (6) foot sight obscuring wall or fence, in accordance with the requirements of Section 8.06. No outside storage area shall exceed an area of two hundred (200) square feet.
9. The rental of trucks, trailers, and any other vehicles on the premises shall not occupy required setbacks or parking areas.
10. Where the site abuts a Residential District, a minimum forty (40) foot buffer strip shall be provided along that property line.
11. Where applicable, vehicle queuing space shall be provided in front of each service bay for at least two (2) vehicles.
12. Hours of operation shall not have an adverse effect on adjoining areas and may be limited as a condition of special use approval. In addition to the requirements of this Ordinance, all other applicable noise and nuisance ordinances shall be adhered to.

13. The use shall be supported by certain infrastructure features, including paved roads, natural gas, public water supply, and public sanitary sewer.
14. The applicant shall submit a plan to prevent groundwater contamination caused by accidental fuel, lubricant, and coolant spills or leakage, using techniques such as: special check valves, drain catch basins, and automatic shut off valves. Plans for such devices shall be referred to the Town engineer for review and recommendation to the Board of Zoning Appeals and/or Town Council.
15. Gasoline or other flammable mixtures shall not be used to wash down the premises. The method of storage for all flammable materials, chemicals, and potential contaminants shall be reviewed and subject to approval by the Town Fire Chief and Town Engineer.
16. In the event that a vehicle repair facility has been abandoned or not used as a vehicle repair facility for a period of more than one (1) year, any application to operate the premises as such shall be considered as an application for a new vehicle repair facility.

**Q. Vehicle Sales**

1. The facility shall meet all pertinent licensing requirements of the State of Indiana.
2. All buildings, structures, and equipment shall be located at least fifty (50) feet from any right-of-way line, and not less than thirty (30) feet from any side or rear lot line.
3. All parking lots and vehicle display areas shall be set back a minimum of thirty (30) feet from the front lot line and at least ten (10) feet from any side or rear lot line.
4. A landscaped, planted open space of a minimum of ten (10) feet in depth shall be provided along the full frontage of the site.
5. No part of any drive or curb opening shall be located nearer than two hundred (200) feet to any intersection or less than one hundred (100) feet from any adjacent residential district property line.
6. Drive spacing shall meet the standards of Section 6.04, regardless of whether the property is in the Access Management Overlay District.
7. The minimum lot width shall be two-hundred fifty (250) feet and the minimum lot area one (1) acre.
8. A six (6) foot, solid wall or solid fence may be required along a side and/or rear lot line abutting a Residential District, in conformance with the provisions of Section 8.05.

**R. Vehicle Service Station**

1. The lot shall be a minimum of thirty thousand (30,000) square feet, with a minimum frontage of two hundred (200) feet.
2. The lot shall have direct access to an arterial street or highway and drive spacing shall meet the standards of Section 6.04, regardless of whether the property is in the Access Management Overlay District.
3. Vehicle service stations and their accessory uses (except parking areas) and buildings shall be located not less than seventy-five (75) feet from any right-of-way line or from any side or rear lot line abutting a residential district.
4. A six (6) foot, solid wall or solid fence may be required along a side or rear lot line abutting a Residential District, in conformance with the provisions of Section 9.05.

5. Accessory vehicle related facilities located on the premises such as wash facilities, and minor vehicle repair are allowed; however, if required by this Ordinance, the uses must obtain separate Special Use approval, as provided for in this Title.
6. The site shall be limited to no more than one (1) driveway for each street on which it fronts.
7. All storage of material, merchandise and equipment shall be within the building.
8. Gasoline or other flammable mixtures shall not be used to wash down the premises. The method of storage for all flammable materials, chemicals, and potential contaminants shall be reviewed and subject to approval by the Town Fire Chief and Town Engineer.
9. In the event that a vehicle service station has been abandoned or not used as a vehicle service station for a period of more than one (1) year, any application to operate the premises as a vehicle service station shall be considered as an application for a new vehicle service station.
10. The applicant shall submit a plan describing measures to prevent groundwater contamination caused by accidental gasoline spills or leakage, such as: special check valves, drain catch basins, and automatic shut off valves. Plans for such devices shall be referred to the Town engineer for review and recommendation to the Board of Zoning Appeals and/or Town Council.

S. **Vehicle Wash Facility.**

1. The minimum lot are shall be one-half (1/2) acre with a minimum frontage of two hundred (200) feet.
2. The lot shall have immediate access to an arterial street or highway.
3. Additional vehicle related facilities located on the premises such as motor vehicle service facilities are allowed; however, if required by this Ordinance, the uses must obtain separate Special Use approvals, as provided for in this Title.
4. All washing activities must be within a building.
5. Drive spacing shall meet the standards of Section 6.04, regardless of whether the property is located in the Access Management Overlay District.
6. Wastewater shall be filtered or otherwise cleansed so as to minimize discharge of soap, wax and solid matter into the public sewer, in accordance with procedures established by the Indiana Department of Environmental Management.
7. The site shall be limited to no more than one (1) driveway for each street on which it fronts.
8. Each wash bay shall be provided ample space for required stacking spaces that is not located within the public or private right-of-way and that does not conflict with vehicle maneuvering areas and does not conflict with other activities on the site such as gasoline pumps or vacuums.
9. A by-pass lane around the building is required for automated drive-through wash facilities.
10. No permitted activity shall emit noise that is readily discernible to the average person in any adjacent residential district. Vacuum and air handling equipment and noise

reduction baffles shall be maintained in proper working condition to comply with this provision.

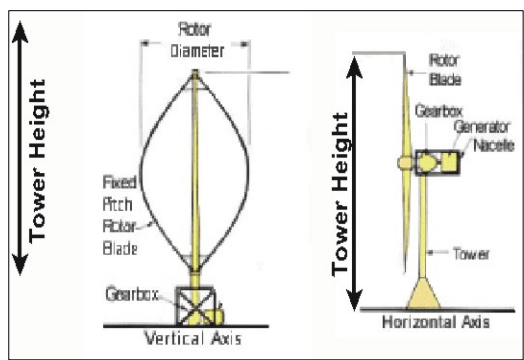
11. The minimum front yard setback for the structure shall be fifty (50) feet; minimum side yard setback shall be twenty-five (25) feet; minimum rear yard setback shall be fifty (50) feet.
12. The entrances and exits of the facility shall not be from an adjoining residential street or alley. A street or alley shall not be used as a maneuvering, stacking or parking area for vehicles using the facility.
13. The entire site, other than the portion occupied by the building and landscaping, shall be surfaced with concrete or bituminous surfacing to control dust and provide adequate drainage.
14. There shall be no above-ground outdoor storage/dispensing tanks on the site.
15. When adjoining a residential district, a six (6) foot high wall or fence shall be erected and maintained along the connecting interior lot line or other landscaping providing a six (6) foot high barrier.
16. All lighting shall be shielded from adjacent residential districts or uses.
17. The outdoor storage of trash or rubbish shall be screened in compliance with Section 8.06.
18. All washing activities shall be conducted within a completely, or partially enclosed structure.
19. Vacuuming activities shall be at least twenty-five (25) feet from any lot line except where the property abuts a residential district in which case a fifty (50) foot separation shall be maintained.
20. All wash water drains shall be connected to a public sanitary sewer system. Storm drainage from pavement areas shall be routed to oil, grease, and grit separator before discharge to the storm sewer network.
21. Vehicle wash facilities, including vacuuming equipment, shall not be operated between the hours of 10:00 p.m. and 6:00 a.m.

T. **Wind Energy Conversion Systems (WECS)**

1. Purpose: This subsection establishes standards and procedures by which the installation and operation of a WECS shall be governed as a special land use.
2. Definitions:
  - a. Wind Energy Conversion System (WECS): Shall mean a combination of:
    - i. A surface area (typically a blade, rotor, or similar device), either variable or fixed, for utilizing the wind for electrical powers; and
    - ii. A shaft, gearing, belt, or coupling utilized to convert the rotation of the surface area into a form suitable for driving a generator, alternator, or other electricity-producing device; and

- iii. The generator, alternator, or other device to convert the mechanical energy of the surface area into electrical energy, housed in a nacelle; and
  - iv. The tower, pylon, or other structure upon which any, all, or some combination of the above are mounted.
  - v. Other components not listed above but associated with the normal construction, operation, and maintenance of a WECS.
- b. WECS Height: The distance between the ground (at normal grade) and the highest point of the WECS, as measured from the ground (at normal grade), plus the length by which the rotor blade on a horizontal mounted WECS exceeds the structure which supports the rotor and blades (normally, the tower). Or put another way, the distance between the ground (at normal grade) and the highest point of the WECS (being the tip of the blade, when the blade is in the full vertical position).
  - c. Tower: The structure, above grade, that supports the nacelle, rotor assembly, and other components.
  - d. Wind Farm: Two (2) or more WECS placed upon a lot or parcel with the intent to sell or provide electricity to a site or location other than the premises upon which the WECS are located. The WECS may or may not be owned by the owner of the property upon which the WECS is placed.
  - e. Single WECS for Commercial Purposes: A single WECS placed upon a lot or parcel with the intent to sell or provide electricity to a site or location other than the premises upon which the structure is located. The WECS may or may not be owned by the owner of the property upon which the WECS is placed.

f. Single WECS for On-site Service Only: A single WECS placed upon a lot or parcel with the intent to service the energy needs of only the property where the structure is located. The WECS must be owned by the owner of the property upon which the WECS is placed.



g. WECS Testing Facility or Testing Facility: A structure and equipment used to determine the potential for the placement of a WECS.

3. Applicability:

a. WECS, Wind Farms, Single WECS for Commercial Purposes, and WECS Testing Facilities: Wind energy conversion systems such as a WECS, wind farm, single WECS for commercial purposes, and WECS Testing Facilities associated with the commercial application of a WECS may be allowed as a Special Use

within the A Agriculture District, subject to the regulations and requirements of this section and the review procedures and standards/criteria for special uses.

- b. Single WECS for On-site Service Only: A single WECS application of a wind energy conversion system to service the energy needs of only the property where the structure is located is allowed in the A Agriculture District, provided the property upon which the system is to be located is at least five (5) acres in size and subject to the regulations and requirements of this section and the review procedures and standards/criteria for special uses, as well as all of the following:
  - i. The tower shall not be higher than eighty (80) feet.
  - ii. The blade diameter (tip to tip) shall not exceed one hundred (100) feet.
  - iii. The height of the overall WECS (with the blade in the vertical position) shall not exceed one hundred and thirty (130) feet above ground level (at normal grade).
  - iv. The distance of the tower from all property lines shall be at least two (2) times the WECS height.

4. Application Requirements: All applications for a WECS or WECS Testing Facility Special Use approval shall be accompanied by the following information, including a detailed development plan drawn to an appropriate scale to show sufficient detail, and dimensioned, displaying all of the following information in addition to that required by Section 7.04:

- a. Proof of ownership or control of the land, including any leases, on which the WECS or WECS Testing Facility is proposed.
- b. Location and height of all purposed buildings, structures, electrical lines, towers, guy wires, guy wire anchors, security fencing, and other above ground structures associated with the WECS.
- c. Locations and height of all adjacent buildings, structures, and above ground utilities located within three hundred (300) feet of the exterior boundaries of the lot or parcel where the proposed WECS and/or Testing Facility will be located. Specific distances to other on-site buildings, structures, and utilities shall also be provided.
- d. The location of all existing and proposed overhead and underground electrical transmission or distribution lines shall be shown, whether to be utilized or not with the WECS or Testing Facility, located on the lot or parcel involved, as well as within one-thousand (1,000) feet of the boundaries of the parcel or lot.
- e. Existing and proposed setbacks for the WECS from all structures located on the property where the WECS will be located.

- f. Elevation of the premises accurately depicting the proposed WECS and its location and relationship to the elevation of all existing and proposed structures within three hundred (300) feet of the proposed WECS.
  - g. Access driveway to the WECS and/or the Testing Facility together with a detailed narrative regarding dimensions, composition, and maintenance of the proposed driveway.
  - h. Planned security measures to prevent unauthorized trespass and access.
  - i. The development plan submittal shall contain a written description of the maintenance program to be used to maintain the WECS and/or Testing Facility, including removal when determined to be obsolete or abandoned. The description shall include maintenance schedules, the types of maintenance to be performed, and removal procedures and schedules should the WECS or Testing Facility become obsolete or abandoned.
  - j. Additional detail(s) and information as required by the Special Use requirements of this Ordinance, or as requested by the Town Council.
  - k. At the Town Council's request, the applicant shall fund an environmental assessment or impact study and/or other relevant report(s) or studies (including, but not limited to, assessing the potential impact on endangered species regarding the area or surrounding areas where the WECS will be placed.
  - l. A copy of the manufacturer's installation instructions and blueprints shall be provided in conjunction with the Development Plan.
    - i. Included as part of, or as an attachment to the installation instructions, shall be standard drawings of the structural components of the WECS and support structures; including base and footings provided along with engineering data, and calculations to demonstrate compliance with the structural design provisions of the Building Code, as adopted by the Town of Cedar Lake.
    - ii. Drawings and engineering calculations shall be certified by a registered engineer licensed in the State of Indiana.
    - iii. WECS and Testing Facility electrical equipment and connections shall be designed and installed in full compliance with the Electrical Code as adopted by the Town of Cedar Lake.
  - m. A baseline noise emission study of the proposed site and impact upon all areas within one (1) mile of the proposed WECS location.
5. Design Standards:
- a. Height: The permitted maximum total height of a WECS shall be four hundred (400) feet (with the blade in the vertical position).
    - i. State and federal regulations may require a lesser height.

- ii. As a condition of approval, the Town Council may require a lesser height for a WECS if reasonably necessary to comply with the special use standards.
  - iii. A WECS shall be constructed with a tubular tower, not a lattice tower.
- b. Height of Testing Tower Facility: Unless a different height is approved by the Town Council, the WECS Testing Facility height shall be no greater than two hundred (200) feet and shall comply with design standards of this Section.
- c. A WECS Testing Facility which is not in use for six (6) months or more shall comply with the abandonment requirements of paragraph 9, of this subsection.
- d. Setbacks:
  - i. No part of a WECS or WECS Testing Facility (including guy wire anchors) shall be located within or above any required front, side or rear yard setback.
  - ii. The setback for placement of a WECS or a WECS Testing Facility shall be at least five hundred (500) feet from each property line of the property where the structure is located and at least one thousand (1,000) from any public road right-of-way.
- e. Rotor or Blade Clearance: Blade arcs created by a WECS shall have a minimum of seventy-five (75) feet of clearance over and from any structure, adjoining property, or tree. The minimum blade or rotor clearance above ground level shall be at least twenty (20) feet.
- f. Rotor or Blade Safety: Each WECS shall be equipped with both a manual and automatic braking device capable of stopping the WECS operation in high winds within eighty percent (80%) of design limits of the rotor.
- g. Tower Access: To prevent unauthorized climbing, WECS and Testing Facilities must comply with at least one (1) of the following provisions:
  - i. Tower climbing apparatus shall not be located within twelve (12) feet of the ground.
  - ii. A locked anti-climb device shall be installed and maintained.
  - iii. A tower capable of being climbed shall be enclosed by a locked, protective fence at least ten (10) feet high with barbed wire fence.
- h. Signs: Each WECS and Testing Facility shall have one (1) sign, not to exceed two (2) square feet in area, posted at the base of the tower. The sign shall contain at least the following:
  - i. Warning high voltage.
  - ii. Manufacturer's name.

- iii. Emergency numbers (listing more than one [1] number).
  - iv. Emergency shutdown procedures.
  - v. FAA regulated sign with precise description with latitude and longitude and the owner's current telephone number.
  - vi. If fenced, signs shall be placed on the fence.
- i. **Lighting:** A lighting plan for each WECS and Testing Facilities shall be approved by the Planning Commission. The lighting plan must describe all lighting that will be utilized, including any lighting that may be required by the FAA. The plan shall include, but is not limited to, the planned number and location of lights, light color and whether any lights will be flashing. Strobe lights are discouraged and must be shielded from the ground, if allowed by the Town Council. All efforts shall be made not to affect any resident with any strobe effect.
  - j. **Electromagnetic Interference:** Each WECS and Testing Facilities shall be designed, constructed and operated so as not to cause radio and television interference. In the event that electromagnetic interference is experienced, the applicant must provide alternate service to each individual resident or property owner affected.
  - k. **Noise Emissions:** Noise emissions from the operation of a WECS and Testing Facilities shall not exceed forty-five (45) decibels on the dBA scale, as measured at the nearest property line or road.
  - l. **Utility Company Interconnection (Interconnected WECS):** All distribution lines from the WECS to the electrical grid connection shall be located and maintained underground.
  - m. **Color:** A WECS shall be painted a non-obtrusive (light environmental color such as beige or gray) color that is non-reflective. The wind turbine base and blades shall be of a color consistent with all other turbines in the area. No striping of color or advertisement shall be visible on the blades or tower.
  - n. The applicant shall show proof of a minimum wind rating of three (3) from the proposed WECS when applying for special use approval.
6. **Approval Standards:** In addition to the other requirements and standards contained in this Title, the Town Council shall not approve any WECS or Testing Facilities unless it finds that the WECS or Testing Facility will not pose a safety hazard or unreasonable risk of harm to the occupants of any adjoining properties or area wildlife. Under no circumstances shall a WECS or Testing Facility produce vibrations or wind currents humanly perceptible beyond the property boundaries of the lot or parcel on which the WECS or Testing Facility is located.
7. **Inspection:** The Town shall have the right upon approving any WECS and Testing Facility to inspect the premises on which it is located at all reasonable times. The Town may hire a consultant to assist with any such inspection of a WECS or Testing Facility at the applicant's cost.

8. Each WECS and Testing Facility must be kept and maintained in good repair and condition at all times. If a WECS is not maintained in operational and reasonable condition or poses a potential safety hazard, the applicant shall take expeditious action to correct the situation. The applicant shall keep a maintenance log on each WECS which the Township can review on a monthly basis.
9. Abandonment: Any WECS or Testing Facility which is not used for six (6) successive months or longer shall be deemed to be abandoned and shall be promptly dismantled and removed from the property. All above and below ground materials must be removed. The ground must be restored to its original condition within sixty (60) days of abandonment.
10. Leased land: Should a lease for any property containing a WECS or Testing Facilities be terminated, the Town shall be notified within two (2) days by the lessee indicating whether the WECS or Testing Facilities will be abandoned or of an intent to renegotiate the terminated or expired contract. If at the end of sixty (60) days a renegotiated lease has not been submitted to the Town or if the subject land has not been acquired by the WECS or Testing Facilities owner any WECS or Testing Facilities located on that property shall be deemed abandoned. All above and below ground materials must be removed and the ground must be restored to its original condition within (60) days of abandonment.
11. Security: If a special use is approved pursuant to this Title, the Town Council shall require a performance guarantee in accordance with the provisions of Section 7.09 of this Ordinance, which will be furnished by the applicant to the Town Administrator in order to ensure full compliance with this subsection and any conditions of approval.
  - a. When determining the amount the required guarantee, the Town may also require an annual escalator or increase based on the Federal Consumer Price Index (or the equivalent or its successor).
  - b. The performance guarantee shall be deposited or filed with the Clerk-Treasurer after the special use has been approved, but before approval of a building permit for construction of the WECS or WECS Testing Facility.
  - c. At a minimum, the performance guarantee shall be in an amount determined by the Town to be sufficient to have the WECS or Testing Facility fully removed (and all components properly disposed of and the land returned to its original state) should the structure or structures become abandoned, dangerous or obsolete, or not in compliance with this ordinance or the special use approval. The performance guarantee shall be kept in full force and effect during the entire time while a WECS or WECS Testing Facility exists or is in place.
  - d. The performance guarantee shall be irrevocable and non-cancelable (except by the written consent of both the Town of Cedar Lake and the then-owner of the WECS or WECS Testing Facility) for at least thirty (30) years from the date of the special use approval. Failure to keep the performance guarantee in full force and effect at all times while a WECS or WECS Testing Facility exists or is in place shall constitute a material and significant violation of a special use approval and this Ordinance, and will subject the applicant to all available remedies, including possible enforcement action and revocation of the special use approval.

12. Road repair: Any damages to a public road located within the Town resulting from the construction, maintenance, or operation of a WECS or Testing Facility shall be repaired at the applicant's expense.
13. Liability: The applicant shall insure each WECS at all times for at least \$2,000,000 for liability to cover the applicant, Town, and land owner.
14. The applicant shall be responsible for compensation to persons damaged due to any stray voltage caused by a WECS.
15. At the Town's request, the applicant shall fund a financial impact study for review by the Town Council of the area affected by the WECS. The study or report shall be provided prior to the Town Council's decision regarding the special use request.
16. Escrow Account:
  - a. An escrow account shall be set up when the applicant applies for a special use approval for a WECS or WECS Testing Facility.
  - b. The monetary amount filed by the applicant with the Town shall be in an amount estimated by the Town Administrator to cover all costs and expenses associated with the special use review process.
  - c. These costs can include, but are limited to, fees of the Town Attorney, Town Planner and Town Engineer, special consultants retained by the Town for purposes of evaluating the proposed WECS, as well as any reports or studies which the Town anticipates it may have done related to the zoning review process for the particular application.
  - d. The escrow amount shall be in addition to regularly established fees.
  - e. At any point during the zoning review process, the Town may require that the applicant place additional monies into escrow should the existing escrow amount filed by the applicant prove insufficient. If the escrow account needs replenishing and the applicant refuses to do so promptly, the zoning review and approval process shall cease until and unless the applicant makes the required escrow deposit.
17. Each WECS and WECS Testing Facility shall also comply with all applicable federal, State of Indiana, and county requirements, in addition to Town of Cedar Lake ordinances.

**U. Wireless Communication Towers**

1. The applicant shall provide evidence that there is no reasonable or suitable alternative for collocation of antennas on an existing communication tower or building within the service area of the proposed tower.
2. The applicant shall provide an inventory of its existing towers, antennas, or sites approved for towers or antennas that are either within the Town or within one (1) mile of the border thereof, including specific information about the location, height and design of each tower. The Town of Cedar Lake may share this information with other applicants applying for approval under this ordinance or other organizations seeking to locate antennas within the Town; provided, however that the Town of Cedar Lake is not, by

sharing such information, in any way representing or warranting that such sites are available or suitable.

3. All towers and antennas shall be located so that they do not interfere with reception in nearby residential areas. In the event a communication tower causes interference, the communication company shall take all steps necessary to correct and eliminate such interference.
4. No communication tower and antenna shall be greater than two hundred (200) feet in height, except if, in the opinion of the Town Council, the applicant has sufficiently demonstrated that a proposed communication tower in excess of two hundred (200) feet will reduce the total number of potential communication towers in the area.
5. The applicant shall provide verification with a certified sealed print that the antenna and the communication tower have been reviewed and approved by a professional engineer and that the proposed installation is in compliance with all the applicable codes.
6. The applicant shall provide the legal description of the parent parcel and any leased portion thereof.
7. A security fence at least six (6) feet in height, but not more than ten (10) feet, shall be constructed around the tower and any other related apparatuses (i.e. ground antennas, satellite dishes, accessory structures).
8. All communication towers shall be equipped with an anti climbing device to prevent unauthorized access.
9. No signs shall be permitted on-site, except for warning, or other cautionary signs, which shall not exceed two (2) square feet in area.
10. All new communication towers and antennas shall either maintain a galvanized steel finish or, subject to any applicable standards of the Federal Aviation Administration, be painted a neutral color so as to reduce visual obtrusiveness.
11. The collocation of an antenna shall not require an additional Special Use permit and may be approved by staff review.
12. The applicant shall submit details of communication tower lighting approved by the Federal Aviation Administration. All lights shall be restricted to the extent that is required for compliance with Federal Aviation Administration regulations and on-site security.
13. All communication tower permits issued by the Town shall be contingent upon any necessary approval of the Federal Aviation Administration, Federal Communication Commission and State Bureau of Aeronautics.
14. The applicant shall submit a report or letter from the Federal Aviation Administration that the proposed tower complies with all airport safety requirements for all public and private airports in or within four (4) miles of the Town.
15. Communication towers and antennas shall be regulated and permitted pursuant to this Section and shall not be regulated or permitted as essential services, public utilities, or private utilities.
16. Any communication tower that is abandoned or its use discontinued for a period of twelve (12) months shall be required to be removed immediately by the owner and/or lessee. Abandonment or discontinuance shall be determined when any of the following

conditions are evident: disconnection of electricity; property, buildings, or grounds that have fallen into disrepair or the removal of all antennas or support structures.

17. The application shall include a performance guarantee to be posted at the time of receiving a building permit for the communication tower to ensure removal of the communication tower when it has been abandoned or is no longer needed, in an amount equal to the cost of removing and disposing of the facility.