

AGENDA

Monday, February 17, 2014

**Meetings of Standing Committees
Council Conference Room
6:45 P.M.**

**REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
COUNCIL CHAMBERS/CITY HALL
7:00 P.M.**

- 1. Call to Order**
- 2. Pledge of Allegiance**
- 3. Roll Call**
- 4. Approval of the Minutes of the Previous Regular Meeting**

February 03, 2014

- 5. Petitions, Communications, Remonstrance and Memorials**
- 6. Report of Special Committee**
- 7. Ordinances on First Reading**

P.O. NO. 2014-03 Establishing Boundaries for Mishawaka Utilities Water and Sewer Service up to 4 miles Outside Mishawaka City Limits (Petitioner Requesting Second Reading)

8. Resolutions

R2014-06 Opposing Legislation Concerning Business Personal Property Taxes in the State of Indiana

- 9. Ordinances on Second Reading**
- 10. Privilege of the Floor - Non-Agenda Items**
- 11. Unfinished Business**
- 12. New Business**

Mayor Wood's State of the City

13. Adjournment

At this time I know of no other business to come before the Council.
Deborah S. Block, IAMC, MMC, City Clerk

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

February 3, 2014

Be it remembered that the Common Council of the City of Mishawaka, Indiana met in the Council Chambers of the Mishawaka City Hall on Monday, February 3, 2014 at 7:00 p.m. The meeting was called to order by President Matt Mammolenti all were asked to stand for the Pledge of Allegiance.

Clerk Block's roll call vote  **Roll Call. Present:** Mr. Reisdorf, Mr. Banicki, Mrs. Voelker, Mr. Compton, Mr. Emmons, Mr. Mammolenti, Mr. Bellovich, Mr. Bilancio, Mr. Roggeman.

Others present; Mary Ellen Hazen Chief Deputy I, Linda Dotson Chief Deputy II absent, and Council Attorney Mike Trippel

The minutes from the January 20, 2014 meeting were approved as received from the City Clerk's Office.

Clerk Block read **PROPOSED ORDINANCE NO. 2014-02** opening for public hearing.

PROPOSED ORDINANCE NO. 2014-02

AN ORDINANCE AMENDING CHAPTER 137 OF THE MUNICIPAL CODE OF THE CITY OF MISHAWAKA, INDIANA, AS FROM TIME TO TIME AMENDED, COMMONLY KNOWN AS "THE ZONING ORINDANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA

(Amend PUD to allow an Assisted health Care Facility and (8) Villa Units – Northeast East Fulmer Road and Falling Oak Drive)

Mr. Banicki reported the Land Use Planning Committee recommended this proposed ordinance should be adopted and moved for acceptance of same upon a second by Mr. Reisdorf motion carried.

Mike Danch from Danch Harner and Associates, Inc. 1643 Commerce Drive, South Bend, said he was representing the petitioner Target Leasing Corporation in their request to amend the PUD to allow for an Assisted Health Care Facility and 8 Villa Units. He said they have completed 28 projects with 2 under construction in 15 states. He said this project would include 9 acres of land, 40 assisted living apartments, 36 independent living apartments, parking garages and 8 single family villas. Mr. Danch stated there would be 75 parking spaces for the Care Facility and 15 parking spaces for the Villas.

Mr. Emmons asked for there to have Evergreen Trees as screening from the residential Blair Hills to the East, several acres are classified forest please do not disturb that.

Mr. Danch said there would be 35 employees with the total payroll being One Million dollars and full benefits. He said they plan to start building in the spring and hope to complete in one year. Mr. Danch said there was a meeting at the Mishawaka Public Library on January 13, 2014 regarding this project.

PRIVILEGE OF THE FLOOR

Cindy Nichols, Property Manager for Creekside Apartments' explained with the new utility rate increase their bills have gone up 100%, the hallways in her building use to cost \$1,900.00 to heat and the bill for the past month was \$3,800.00. She said she talked with Mr. Schrader General Manager of Mishawaka Utilities and Mr. Reisdorf 2nd District Councilman and. Ms. Nichols stated the resident's here are elderly on fixed income, single parents with children, she asked the Council what they could do to help them.

Mike Brandenburg, Creekside Apartments said his December electric Bill was up over 100% and the utility department was only authorized to go up 14%. He said in talking with the Electric Department they were talked down to, it was his feeling all of this needs to be looked into.

President Mammolenti apologized to Mr. Brandenburg for being talked down to and treated poorly by the Electric Department. He went on to say that he has talked with Mr. Schrader, General Manager of Mishawaka Utilities and Mr. Julian, from Umbaugh and Associates and they would hold a meeting with Creekside residents.

Kay Hoover, Creekside Apartments said she has lived here for 18 years and the highest her bill ever got was \$89.00 and this bill was \$160, and that was before the terrible cold front came in.

Deanna Hoffman said her bill was usually \$80.00 and this time \$206.00 and this was before the bad weather came. She said she was told by the utilities that it was because their building was total electric that the bills were so high.

NEW BUSINESS

Mike Compton made a motion to re-appoint Mariah Covey to the Animal Control Board for the term of January 1, 2014 to December 31, 2017 with a second from Mr. Banicki the motion carried.

Mr. Emmons announced his Neighborhood Watch Meeting February 20, 2014 at St. Bavo School at 7:00 p.m., Dr. Barker Superintendent of Mishawaka School System would be the speaker.

There being no further business to come before the Council, President Mammolenti adjourned the meeting at 7:23 p.m.

Deborah S. Block
Deborah S. Block, IAMC, MMC, City Clerk

□□ Matt Mammolenti
Matt Mammolenti, Presiding Officer

FEB 13 2014

CITY CLERK
MISHAWAKA, IN

1st Reading 2-17-14
2nd Reading
Passed
Failed
Continued To

PROPOSED ORDINANCE NO. 2014-03

ORDINANCE NO. _____

**AN ORDINANCE AUTHORIZING AND ESTABLISHING BOUNDARIES FOR
MISHAWAKA UTILITIES TO FURNISH WATER AND SEWER SERVICE TO THE
PUBLIC UP TO FOUR MILES OUTSIDE MISHAWAKA CITY LIMITS**

WHEREAS, the City of Mishawaka is a second class city as defined by Indiana Code 36-4-1-1(a); and

WHEREAS, the City of Mishawaka, through Mishawaka Utilities, furnishes water to the public under Indiana Code 36-9-2-14; and

WHEREAS, the City of Mishawaka, thorough Mishawaka Utilities, furnishes sewer service to the public under Indiana Code 36-9-2-16; and

WHEREAS, Indiana Code 36-9-2-18 provides: "A municipality may exercise powers granted by sections 2, 3, 14, 16, and 17 [IC 36-9-2-2, 36-9-2-3, 36-9-2-14, 36-9-2-16, and 36-9-2-17] of this chapter in areas within four (4) miles outside its corporate boundaries;" and

WHEREAS, it is in the best interests of the City of Mishawaka and members of the public that Mishawaka Utilities regulate and furnish water and sewer service areas within an area up to four miles outside the City's corporate limits.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, THAT:

Section 1. The City of Mishawaka shall establish a Regulated Territory to regulate and furnish water and sewer services, through Mishawaka Utilities, within an area up to four miles outside the City of Mishawaka's corporate limits, excluding areas within the corporate limits of the City of South Bend and excluding customers now connected to and receiving services from other existing water or sewer utilities as of the date this ordinance is adopted.

Section 2. The Regulated Territory to be serviced by Mishawaka Utilities pursuant to this ordinance is identified and depicted in the Map attached hereto and incorporated herein, a copy of which shall be available for public inspection in the offices of Mishawaka Utilities and the Mishawaka City Clerk.

Section 3. Upon adoption of this Ordinance, Mishawaka Utilities shall hold an exclusive license to furnish water service under Indiana Code 36-9-2-14 within the Regulated Territory, and all other utilities are expressly prohibited from furnishing water services within the Regulated Territory, except for those customers located in the Regulated Territory that are connected to another water utility as of the date this Ordinance is adopted.

Section 4. Upon adoption of this Ordinance, Mishawaka Utilities shall hold an exclusive license to furnish sewer service under Indiana Code 36-9-2-16 within the Regulated Territory,

and all other utilities are expressly prohibited from furnishing sewer service within the Regulated Territory, except for those customers located in the Regulated Territory that are connected to another sewer utility as of the date this Ordinance is adopted.

Section 5. This Ordinance shall not be construed as to prohibit an individual property owner within the Regulated Territory depicted on the attached Map from providing water service to such property owner's lot through the drilling of a well on such property if otherwise permissible under State and all applicable local law; provided, however, that water from such well shall not be used to provide water service to owners or lessees of other properties.

Section 6. Chapter 62 of the Municipal Code of the City of Mishawaka, governing utilities, shall apply to the Regulated Territory and shall be fully enforceable by the City of Mishawaka with the Regulated Territory.

Section 7. All prior ordinances or parts thereof inconsistent with any term or provision of this Ordinance are hereby repealed. If any one or more of the terms, provisions or portions of this Ordinance for Regulated Territory shall be deemed by a court of competent jurisdiction to be contrary to law, then such term or provision shall be deemed severable from the remaining terms and shall in no way affect the validity of the other provisions of this Ordinance.

Section 8. This Ordinance shall be in full force and effect from and after its passage, signing and attestation.

PASSED by the Common Council of the City of Mishawaka, Indiana, this ____ day of February, 2014, at _____ o'clock ____M.

Matt Mammolenti
Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

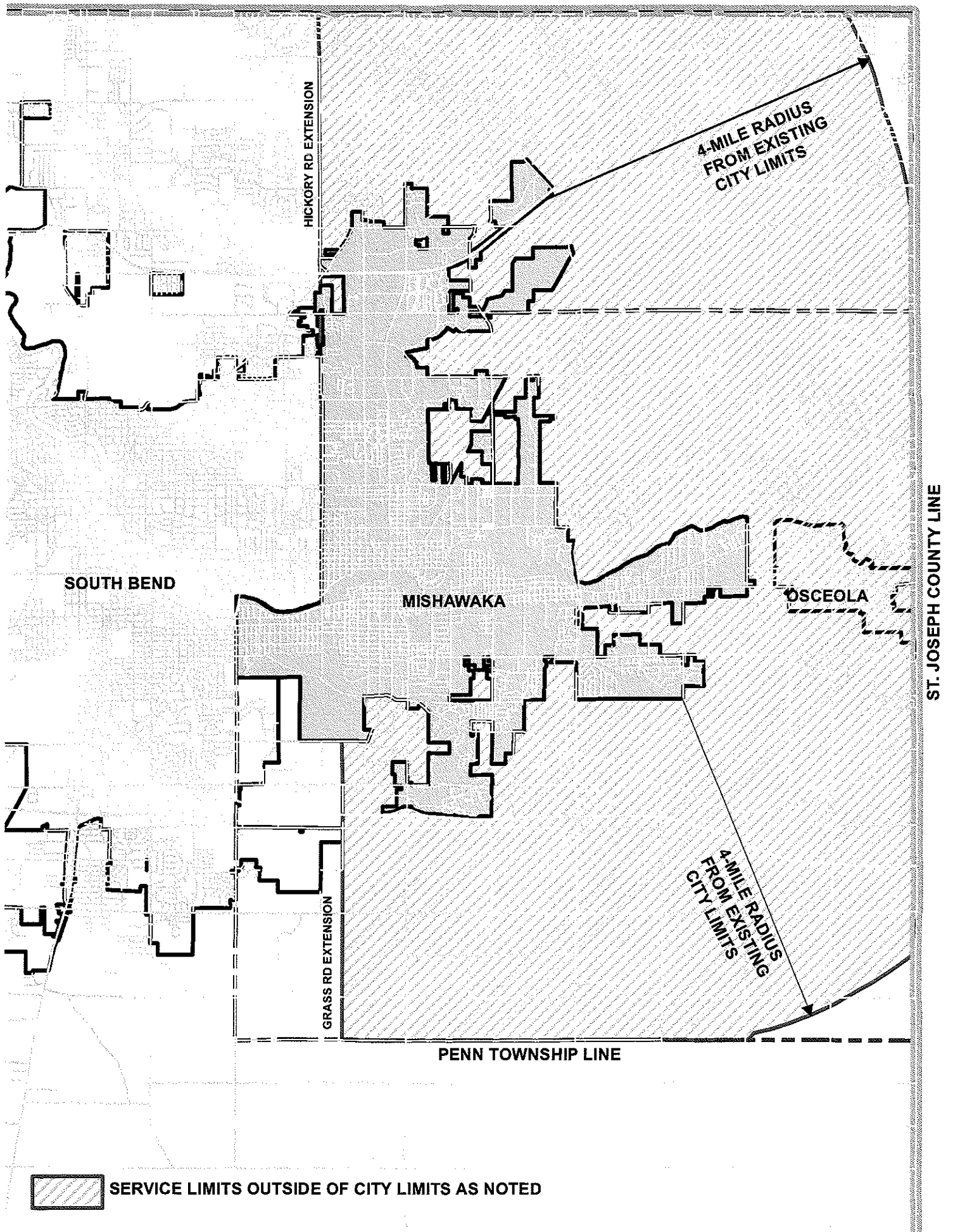
PRESENTED by me to the Mayor this _____ day of _____, 2014, at _____ o'clock ____M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2014, at _____ o'clock ____M.

David A. Wood, Mayor

ST. JOSEPH COUNTY LINE - MICHIGAN/INDIANA STATE LINE





CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

OFFICE OF THE MAYOR

February 13, 2014

Mishawaka Common Council
600 East Third Street
Mishawaka, Indiana 46544

Mr. President and Honorable Members of the Council:

I respectfully request your approval of the attached proposed ordinance, establishing boundaries for a regulated territory within which Mishawaka Utilities could have exclusive jurisdiction to provide water and sewer service.

The South Bend Department of Public Works and the Administration of the City of South Bend submitted an ordinance at the most recent meeting of the South Bend Common Council on Monday, February 10, that if passed, would have direct consequences and place barriers that could harm and restrict growth for the City of Mishawaka. The boundaries identified in the South Bend ordinance would encompass parts of territory previously identified by the City of Mishawaka as potential areas for growth and development including but not limited to Capital Ave. corridor. Unfortunately, no one in the South Bend administration reached out to Mishawaka at any level in advance of the filing of the South Bend ordinance even though it has a direct impact on Mishawaka.

Prior to South Bend's proposal, my administration operated under the decades old "gentleman's agreement" between the two cities that guided growth, development and utility service. My administration harbored no intention of violating that agreement nor drafting an ordinance to establish such a territory; however, considering the recent decision of the Indiana Court of Appeals in *Town of Newburgh v. Town of Chandler*, and the South Bend proposed ordinance that has been assigned to their Public Works Committee, we deem this ordinance necessary to protect vital Mishawaka interests including millions of dollars previously spent in infrastructure projects to service future Mishawaka growth.

The *Newburgh* case held that the Town of Newburgh's ordinance superseded the Town of Chandler's ordinance where the respective territories overlapped because Newburgh's ordinance was enacted earlier in time. As such, time is of the essence, and we are respectfully requesting both first and second reading at your meeting on Monday, February 17. While passage of this ordinance will allow us exclusive jurisdiction over

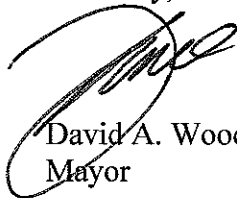
the proposed area, unlike the South Bend ordinance, it honors the "gentleman's agreement" that guides orderly growth between the two cities' common border. Several mayors from both cities have honored that commitment and have enjoyed good relations on this and other matters over time and it is my firm intention that the City of Mishawaka will continue to honor that informal agreement.

Meanwhile, we support Indiana House Bill 1187, a proposal currently in the Indiana state legislature which if passed, would render void any such ordinances with respect to sewer service passed after January 1, 2014. We also support amending the proposed State bill to include water service.

We remain committed to working with the City of South Bend and its administration should any future modifications be required if HB 1187 should fail to pass the Indiana General Assembly.

I will be available to answer any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Wood", is written over a circular stamp or seal.

David A. Wood
Mayor

FEB 14 2014

RESOLUTION NO. R2014-06

CITY CLERK
MISHAWAKA, IN

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA

INDIANA OPPOSING LEGISLATION REDUCING OR ELIMINATING BUSINESS

PERSONAL PROPERTY TAXES IN THE STATE OF INDIANA

WHEREAS, Governor Mike Pence has proposed eliminating the Business Personal Property Tax as the top priority of his 2014 legislative agenda; and

WHEREAS, the Indiana House and Senate have both passed bills that we foresee as first steps towards complete elimination of Indiana's Business Personal Property Tax; and

WHEREAS, one option currently being debated is to allow county income tax councils (COIT Councils) to eliminate the Business Personal Property Tax, which will leave many local entities without a voice and pit counties against one another, eroding the regional approach to economic development that has been championed in Indiana in recent years; and

WHEREAS, another option currently under consideration is to eliminate the Business Personal Property Tax for businesses whose personal property assessed value is \$25,000 or below, which could impede the growth of small businesses who want to remain below the cap; and

WHEREAS, eliminating Business Personal Property from the assessed valuation will cause a shift to real property tax for any properties below the circuit breakers and could lead to increased personal income taxes on Mishawaka property owners.

WHEREAS, Indiana consistently ranks in the top ten of states with an attractive business tax climate, yet a community's quality of life is an increasingly greater influencer of business relocation and growth decisions; and

WHEREAS, the Indiana Fiscal Policy Institute released a study on February 6, 2014 that showed the elimination of the Business Personal Property Tax would cost local governments \$687 million and shift \$376 million to other property tax payers, while having little effect on business relocation from outside the state but would most likely pit one Indiana county against another; and

WHEREAS, Business personal Property Tax collections statewide for 2012 and 2013 totaled \$1.04 billion including \$39.4 million in St. Joseph County and which represents about 16.5% of St. Joseph County's property tax revenue; and

WHEREAS, the cities and towns in St. Joseph County would lose an estimated \$11.7 million in tax revenues and schools in St. Joseph County would lose an estimated \$2.5 million in tax revenues in 2015 pay 2016;

WHEREAS, the City of Mishawaka has Business Personal Property assessed at about \$205 million and a property tax rate of 1.9086 per \$100 of assessed value resulting in the potential loss of over \$2.7 million in revenue to the City of Mishawaka; and

WHEREAS, none of the proposals being considered by Indiana General Assembly contemplate and replacement revenues for those revenues they are eliminating via the full or partial elimination of the Business Personal Property Tax; and

WHEREAS, due to the approximate \$800 million in annual losses to local government units associated with constitutional property tax caps, not even the smallest amount of revenue loss to cities, towns, counties, schools or other local units can be supported without corresponding replacement revenues;

NOW THEREFORE BE IT RESOLVED, by the Common Council of the City of Mishawaka, Indiana as follows:

That we opposed any proposal to eliminate all or any portion of the Business Personal Property Tax without a corresponding replacement revenue stream implemented by the State of Indiana.

1. This resolution shall become effective upon the date of passage.

PASSED by the Common Council of the City of Mishawaka, Indiana this ____ day of _____, 2014

Dale "Woody" Emmons

Ron Banicki

Mike Bellovich

Dan Bilancio

John Reisdorf

S Michael Compton

Kate Voelker

John Roggeman

Matt Mammolenti, President

Deborah S. Block, IAMC, MMC, City Clerk

David A. Wood, Mayor