

# AGENDA

December 20, 2021

Meetings of Standing Committees  
Council Conference Room  
6:45PM

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL  
COUNCIL CHAMBERS/CITY HALL  
7:00PM

WebEx Telephone Number: 408-418-9388  
Meeting Number (access code): 2336 278 6150  
Meeting Password: gnYKk3Pgv86

Livestream #1: <https://www.facebook.com/cityofmishawaka/>  
Livestream #2: @MichianaAccessTV on Facebook  
Livestream #3: Michiana Access TV  
(Comcast and AT&T U-Verse Channel 99)

To connect on-line join using Microsoft Lync or Microsoft Skype for Business

Dial: [23362786150@mishawaka.webex.com](https://23362786150@mishawaka.webex.com)

1. Call to Order

2. Pledge of Allegiance

3. Roll Call

4. Approval of the Minutes of the Regular Meeting of December 06, 2021

5. Petitions, Communications, Remonstrance and Memorial

A letter from the Board of Zoning Appeals regarding their recommendations from their December 14, 2021 meeting.

A letter from the City Plan Commission regarding their recommendations from their December 14, 2021 meeting.

6. Report of Special Committee

## 7. Ordinances on First Reading

|                  |                                                                                                                                                                              |
|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| P.O. No. 2021-45 | Collective Bargaining between the City and Mishawaka's Firefighters Association Local No. 360 01-01-2022 thru 12-31-2024<br>(Petitioner Requesting Second Reading)           |
| P.O. No. 2021-46 | Collective Bargaining between the City and Mishawaka's Central Service Dept.<br>Local No. 364<br>01-01-2022 thru 12-31-2024<br>(Petitioner Requesting Second Reading)        |
| P.O. No. 2021-47 | Collective Bargaining Between the City and Local 1392 IBEW 1-1-2022 thru 12-31-2025<br>(Petitioner Requesting Second Reading)                                                |
| P.O. No. 2021-48 | Collective Bargaining Between the City and Local 364 Sewer Dept.<br>1-1-2022 thru 12-31-2024<br>(Petitioner Requesting Second Reading)                                       |
| P.O. No. 2021-49 | Approving an agreement between the City of South Bend and the City of Mishawaka for the mutual operations of the Special Victims Unit (Petitioner Requesting Second Reading) |
| P.O. No. 2021-50 | PUD Amendment to allow continued Single Family Residential Use with new 3,072 SF/20' high Accessory Building - 230 Ireland Rd.                                               |
| P.O. No. 2021-51 | PUD Amendment to allow for Storage Facility - 512 W. Cleveland Rd.                                                                                                           |
| P.O. No. 2021-52 | PUD Amendment to add Two Single Family Homes - The Village at Harrison Creek                                                                                                 |



## 8. Resolutions

|          |                                                                                                                                              |
|----------|----------------------------------------------------------------------------------------------------------------------------------------------|
| R2021-30 | American Rescue Plan Act 2021                                                                                                                |
| R2021-31 | Use Variance to allow Microblading Services in existing salon - 420 W. Cleveland - The Tribe Salon                                           |
| R2021-32 | Use Variance to allow Outdoor Storage Containers screened by 7' high fencing in C-2 Commercial District - 2572 Miracle Lane - Dunhams Sports |

## 9. Ordinances on Second Reading

|                    |                                                                                                                                                                                     |                       |
|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| P.O. No. 2021-41   | Additional Funds:                                                                                                                                                                   |                       |
|                    | Local Road and Street                                                                                                                                                               | \$250,000.00          |
|                    | MVH Restricted                                                                                                                                                                      | \$750,000.00          |
|                    |                                                                                                                                                                                     | <u>\$1,000,000.00</u> |
|                    | (Assigned to the Budget and Finance Committee)                                                                                                                                      |                       |
| P.O. No. 2021-42   | Transfer from the General Fund, Public Safety LIT Fund, and the Cumulative Capital Development Fund in the amount of \$276,000.00<br>(Assigned to the Budget and Finance Committee) |                       |
| P.O. No. 2021-43AA | 2021 Salary Ordinance Amendment and Additional Appropriation from the ARP Fund in the amount of \$650,000.00<br>(Assigned to the Budget and Finance Committee)                      |                       |
| P.O. No. 2021-44AA | Amending Ord 5712 the 2021 Salary Ordinance<br>(Assigned to the Budget and Finance                                                                                                  |                       |

## 10. Privilege of the Floor - Non-Agenda Items

## 11. Unfinished Business

## 12. New Business

13. Adjournment -

This meeting will be aired via live stream:

An archived version of the livestream video can be viewed on the city of Mishawaka's Facebook page, <https://www.facebook.com/cityofmishawaka/> and also on the Michiana Access TV Facebook page, <https://www.facebook.com/MichianaAccessTV>

At this time, I know of no other business to come before the Council.

Deborah S. Block, IAMC, MMC, City Clerk

The City of Mishawaka acknowledges its responsibility to comply with the Americans with Disabilities Act of 1990. In order to assist individuals with disabilities who require special services (i.e. sign interpretative services, alternative audio/visual devices, and amanuenses) for participation in or access to City sponsored public programs, services and/or meetings, the City requests that individuals make requests for these services forty-eight (48) hours ahead of the scheduled program, service and/or meeting. To make arrangements contact Susan Kile, ADA Coordinator, at (574) 258-1615.

## **REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL**

**December 7, 2021**

Be it remembered that the Common Council of the City of Mishawaka, Indiana met in the Council Chambers of the Mishawaka City Hall and via telephone on Monday, December 7, 2021 at 7:00PM. The meeting was called to order by Council President Gregg Hixenbaugh. All were asked to stand for the Pledge of Allegiance.

### **Roll Call.**

**Present:** Mrs. DeMaegd (P), Mr. Banicki (P), Mr. Hazen (P), Mr. Mammolenti (P), Mr. Emmons (P), Mr. Bellovich (P), Mr. Compton (A), Mrs. Voelker (P), Mr. Hixenbaugh (P)  
**P: Present E: Electronically Participating A: Absent**

Others Present: Clerk Block

**Members attending virtually do so by WebEx. Public that attend can participate by WebEx or observe meetings by YouTube or Facebook live. The Council meetings are also streamed live on Michiana Access on Comcast/AT&T U-verse Channel 99.**

Minutes for the Regular Meeting of November 15, 2021 were approved as received from the Clerk's Office.

Clerk Block read the following appeals and petitions by title.

- |                             |                                                                                                                                                                      |
|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Appeal No. 2021-41</b>   | Use Variance to allow Microblading Services in existing salon – 420 W Cleveland – The Tribe Salon                                                                    |
| <b>Appeal No. 2021-42</b>   | Use Variance to allow Outdoor Storage Containers screened by 7' high fencing in C-2 Commercial District – 2572 Miracle Lane – Dunhams Sports                         |
| <b>Petition No. 2021-18</b> | PUD Amendment to allow continued Single Family Residential Use with new 3,072 SF/20' high Accessory building – 230 Ireland Rd.                                       |
| <b>Petition No. 2021-19</b> | PUD Amendment to allow for Storage Facility – 512 W. Cleveland Rd.                                                                                                   |
| <b>Petition No. 2021-20</b> | PUD Amendment to add Two Single Family Homes – The Village at Harrison Creek                                                                                         |
| <b>Petition No. 2021-21</b> | Rezone from R-1 SF Residential to R-3 Residential for Eight Residential Homes and Accessory Building – NE corner of E Jefferson Blvd & Mapplehurst Ave. (Troop Town) |

Clerk Block read the following proposed ordinances by title and assigned committee.

**PROPOSED ORDINANCE NO. 2021-41**

**AN ORDINANCE DECLARING AN EMERGENCY AND DETERMINING THE EXPENDITURE OF ADDITIONAL FUNDS FOR THE YEAR ENDING DECEMBER 31, 2021**

**Additional Funds: \$250,000.00 Local Road and Street \$750,000.00 MVH Restricted  
\$1,000,000.00**

**(Assigned to Budget & Finance Committee)**

**PROPOSED ORDINANCE NO. 2021-42**

**AN ORDINANCE DECLARING AN EMERGENCY AND TRANSFERRING AND REAPPROPRIATING FUNDS WITHIN BUDGET ADOPTED FOR THE CALENDAR YEAR ENDING DECEMBER 31, 2021**

**Transfer from the General Fund, Public Safety LIT Fund, and the Cumulative Capital Development Fund in the amount of \$276,000.00**

**(Assigned to Budget & Finance Committee)**

**PROPOSED ORDINANCE NO. 2021-43**

**AN ORDINANCE DECLARING AN EMERGENCY AND DETERMINING THE EXPENDITURE OF ADDITIONAL FUNDS FOR THE YEAR ENDING DECEMBER 31, 2021**

**2021 Salary Ordinance Amendment and Additional Appropriation from the ARP Fund in the amount of \$650,000.00**

The chair entertained a motion to delete **PROPOSED ORDINANCE NO. 2021-43** in its entirety and instead replace it with an amended ordinance as received by the council from the Clerk's Office. A motion was made and seconded to delete the proposed ordinance in its entirety and substitute it with an amended ordinance. The motion passed and **PROPOSED ORDINANCE NO. 2021-43AA** was assigned to the Budget & Finance committee.

**PROPOSED ORDINANCE NO. 2021-44**

**AN ORDINANCE AMENDING ORDINANCE 5712 FIXING THE SALARIES OF ALL EMPLOYEES OF THE CITY OF MISHAWAKA EXCEPT MISHAWAKA PARKS DEPARTMENT, ELECTED OFFICIALS AND MISHAWAKA UTILITIES FOR THE CITY OF MISHAWAKA, INDIANA FOR THE YEAR BEGINNING JANUARY 1, 2022  
(Amendment Requested)**

The chair entertained a motion to delete **PROPOSED ORDINANCE NO. 2021-44** in its entirety and instead replace it with an amended ordinance as received by the council from the Clerk's Office. A motion was made and seconded to delete the proposed ordinance in its entirety and substitute it with an amended ordinance. The motion passed and **PROPOSED ORDINANCE NO. 2021-44AA** was assigned to the Budget & Finance committee.

Clerk Block read the following resolution by title and opened the public hearing.

**RESOLUTION R2021-29**

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, ADDING PARCELS TO THE CITY'S PROPERTY ACQUISITION LIST ASSOCIATED WITH A PREVIOUSLY APPROVED COMMON COUNCIL RESOLUTION 2014-07 WHICH APPROVED AN ORDER OF THE CITY OF MISHAWAKA PLAN COMMISSION APPROVING A CERTAIN DECLARATORY RESOLUTION, AN AMENDMENT TO THE BOUNDARIES OF THE NORTHWEST AREA IMPROVEMENT PROJECT, CONSOLIDATION OF THE SOUTHSIDE ECONOMIC DEVELOPMENT AREA AND THE NORTHWEST IMPROVEMENT PROJECT INTO ONE CONSOLIDATED AREA IMPROVEMENT PROJECT, AND AN AMENDMENT TO THE ECONOMIC DEVELOPMENT PLAN FOR THE CONSOLIDATED AREA IMPROVEMENT PROJECT ADOPTED BY THE CITY OF MISHAWAKA REDEVELOPMENT COMMISSION**  
**Adding property to the City's Acquisition List**

Ken Prince, City Planner, spoke in favor of **RESOLUTION R2021-29**. Mr. Prince stated they were requesting two properties to be added to the Acquisition List and the first one was 17.03 acres immediately north of the Juday Creek water treatment facility under construction. Mr. Prince stated this was Veterans Parkway, the road rebuilt north of Douglas Road that currently ended just north of the creek. Mr. Prince stated the property itself was immediately north of that and when they purchased the property immediately, they purchased it to reconfigure three holes of the Juday Creek golf course. Mr. Prince stated because the bids for it came in high; they ended up purchasing the holes that they were originally planning to reconfigure with the property. Mr. Prince stated about four years ago; they responded to requested proposals from the Convention Visitors Bureau that identified the site as a potential location for a regional recreation facility. Mr. Prince stated the site was ultimately chosen and the developer chosen as part of the process, Card & Associates, worked with diligence to try to put together a proposal that worked financially and would have a large regional impact in terms of bringing money from outside of the area and in terms of bringing traveling sports leagues into the community. Mr. Prince stated the 17.03 acres essentially squared up the property with the extension of Veterans Parkway and it was the next logical step in the process to get the facility on the ground. Mr. Prince stated this was only one-step and as he noted in the email forwarded to the council, the next step would likely regard the financing. Mr. Prince stated the development was highly subsidized not only by the Hotel-Motel Tax, but they were looking for the property taxes that would be paid and be

reinvested in paying for the bonds for the facility. Mr. Prince stated right now, they were simply asking the property to be added to the Acquisition List so they could proceed in putting together the scope for the developer. Mr. Prince stated the next property they were looking to add was 1307 Liberty Drive. Mr. Prince stated this was immediately north of Jefferson across the street from the cemetery. Mr. Prince stated they had previously bought the old used car lot on the corner and had cleaned the property. Mr. Prince stated there were two houses located immediately north to that car lot with the one closest to the car lot being in reasonably good condition and the other in not too great of condition. Mr. Prince stated the property owner contacted them and asked if they had any interest with the purchase price being \$45,000 and at that price, they believed it was worthwhile for the city to acquire it with a long-term ambition. Mr. Prince stated if property in between them became for sale, it would create a nice three-development lot on the corner. Mr. Prince stated they had no contact with the property owner on the house in between and had no desire to contact them, but would look to have the discussion when they decide to sell. Mr. Prince stated they thought it was appropriate to add the Acquisition List at that time and he would answer any question on either project.

Mr. Mammolenti asked how soon they would take possession of the home if everything passed. Mr. Prince stated the people currently residing in the home were not the owners but were relatives of the owners and they wanted to wait until after the holidays before any closing. Mr. Mammolenti asked if it would be short-term. Mr. Prince stated it would likely be a month or two after the holidays, but they never knew in terms of the personal situations how long it could continue. Mr. Prince stated it was not an extended hold and they were looking to vacate in a reasonable fashion and then the city would take possession. Mr. Mammolenti asked if sometime in the near future they would then clear the lot. Mr. Prince stated with every home, he would love to say they could take it down immediately but with factors such as environmental, asbestos or other issues, they would have to be dealt with. Mr. Prince stated after that, they would allow Public Safety to train in them and then take it down.

Mrs. Voelker asked about the 17 acres and specifically asked if the sports complex did not happen; what would the city do with the property. Mr. Prince stated the current property owner was selling it to a reduced price and the 17.03 acres were significantly below the appraised value of the property, with the total being a little over \$350,000. Mr. Prince stated what they asked for was the ability to buy the property back at what they paid for it. Mr. Prince stated they did not have any long-term plans to be a developer and it was solely for the recreational facility.

Mr. Hixenbaugh thanked Mr. Prince for his work on this resolution and asked if all went according to the proposed schedule, if the sports complex would be developed in winter of 2022 onto 2023. Mr. Prince stated that was correct and he could go into more detail if needed. Mr. Hixenbaugh followed up on Mrs. Voelker's question and asked if Veterans Parkway would be constructed prior to that and if he could help further flush out what the communal good was to the construction of Veterans Parkway if the sports complex was not done. Mr. Prince began talking about timeframe and stated the city had entered into a contract with Lawson Fisher and Associates for designing the next phase of Veterans Parkway, which would extend it to a blue

area in the exhibit provided to the council including a roundabout and the roundabout would serve the sports complex. Mr. Prince stated the benefit of the public project even if the athletic facility did not go; it opened up close to 200 acres for economic development for the city. Mr. Prince stated this was very similar to what they did at Edison Lakes in terms of building the roads and infrastructure that allowed for the future development. Mr. Prince stated they had very limited room, they did not have any ability to grow to the north and it was already completely developed toward Granger. Mr. Prince stated the south was limited and their real growth area was northeast and it was just a natural extension of that. Mr. Prince stated when looking at Beacon Parkway and to the north, it was probably their immediate growth area. Mr. Prince stated they consumed roughly 25 new acres a year when looking at the long-term projection of how they consumed growth and grew. Mr. Prince stated they would have annexations of 100 acres at a time, but when looking at the property being developed it was only about 25 acres a year that they actually grew and developed. Mr. Prince stated the rest of it was infill development and this area would provide for the growth of the city long-term. Mr. Prince stated Veterans Parkway was not a residential street, but a collector road intended to handle a lot of traffic. Mr. Hixenbaugh summarized Mr. Prince's comments stating this investment and acquisition of property coupled with the investment in the roadway and related infrastructure would set the stage for further development in that area, in terms of the athletic complex and anything else that may be suitable for the area. Mr. Prince stated that was correct and they had essentially roughly 50 acres outlined for it which would also include an outdoor component. Mr. Prince stated that would leave 150 acres for long-term future growth of the city. Mr. Hixenbaugh stated with regard to the athletic complex, that had been a work in progress for many years and it had a fair amount of complexity associated with it. Mr. Hixenbaugh stated it should not cause them any concern that they had not seen a shovel go in the ground for the athletic complex. Mr. Prince stated no, not at all and they had progressively worked on it. Mr. Prince stated at the end of last year, even despite COVID, the developer was opening a facility in Pendleton and they visited the facility. Mr. Prince stated at that time, that was when the discussion of hockey came up and an ice facility was discussed. Mr. Prince stated at that point in time, there was an additional feasibility study for ice that they were still working on to that day. Mr. Prince stated the ice community in their region was a small community and after talking to individuals at the icebox and talking to Notre Dame, you had to reserve not just two sheets of this facility but the four other sheets of ice between Compton and the icebox had to be incorporated as well when talking about tournaments. Mr. Prince stated in addition to that, they walked through a bit of the fiscal aspect and the developer looked at the numbers they could generate from the facility, what the taxes would be on a taxable facility and the funding coming from Hotel-Motel. Mr. Prince stated the latter was a bit of a crapshoot, only because of the COVID year and they had to make an estimation. Mr. Prince stated Baker Tilly put together the numbers and they knew, at a minimum, the facility that could be built there was well over \$30 million. Mr. Prince stated the issue was when they would put the sheets of ice there, the number would get closer to \$40 million and if they did outside components there, it could get closer to \$50 million in terms of the cost of the construction of the facility. Mr. Prince stated part of their due diligence over the past year included applying for a grant as part of the process and were hopeful if the region were awarded funds, then some of the funds would enable them to add scope into the facility. Mr. Prince stated Mayor Wood was very adamant in making

clear that they had one shot at making the largest facility they could reasonably afford, because they would not have another shot in terms of generating a facility that would draw people into the community. Mr. Prince stated they were hopeful the region would receive those funds and then they would be able to apply and receive them. Mr. Prince stated they would not get an answer until June, which was why they identified the end of next year as when the facility could potentially start construction and would be completed a year after that. Mr. Hixenbaugh stated TIF was the funding source for both the acquisition and the improvements with regard to the acquisitions of both of the pieces of property and the infrastructure improvements. Mr. Hixenbaugh asked if that was correct. Mr. Prince stated it was. Mr. Hixenbaugh asked if it was not coming out of the general fund and coming out of the fund dedicated to these type of economic development incentive projects. Mr. Prince stated that was correct.

Question was called for at 7:22PM for **RESOLUTION R2021-29** **Vote: Motion carried by unanimous roll call vote (summary: Yes = 8).**

**Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mrs. Voelker, Mr. Hixenbaugh.** The proposed resolution passed 8-0.

## **NEW BUSINESS**

The Chair entertained a motion to amend the agenda by adding an action item under **New Business** to reflect the council's appointment to the School City of Mishawaka Board of School Trustees for a term commencing on January 1, 2022. The motion was made and seconded, thus a voice vote was held. The chair then entertained a motion with regard to the appointment of an individual to serve a term on the School Board commencing on January 1, 2022. Mr. Emmons made a motion to nominate Amanda Roberts to the School City of Mishawaka School Board of Trustees for a term of 4 years beginning January 1, 2022. The motion was seconded to appoint Amanda Roberts to another term as their representative on the School City of Mishawaka Board of Trustees commencing January 1, 2022.

Mr. Hixenbaugh added the council's thanks to Mrs. Roberts for her service to the community and to the School Board. Mr. Hixenbaugh then called for the question at 7:25PM and Clerk Block polled the council.

**Vote: Motion carried by unanimous roll call vote (summary: Yes = 8).**

**Yes: Mrs. DeMaegd, Mr. Banicki, Mr. Hazen, Mr. Mammolenti, Mr. Emmons, Mr. Bellovich, Mrs. Voelker, Mr. Hixenbaugh.** The appointment passed 8-0.

Mr. Mammolenti gave Mrs. Roberts extreme thanks for all of the hard work and efforts she had done over the last four years. Mr. Mammolenti stated he knew it had been extremely trying and exhausting with some items thrown her way that nobody could have expected with COVID along with all of the efforts herself and her colleagues on the School Board had done. Mr. Mammolenti once again thanked her and appreciated the efforts for the next four years as well.

Mrs. DeMaegd mentioned that the West End neighborhood watch would be holding its monthly meeting Tuesday, December 14<sup>th</sup> at 7PM at St. Bavos. Mrs. DeMaegd stated they would have Julie Toby, training manager from the St. Joseph County 911 Center discussing how the county



dispatch worked with the Mishawaka Police Department and to meet the needs of all Mishawaka citizens. Mrs. DeMaegd stated parking was directly behind the church and all were welcome.

Mr. Mammolenti made a reminder that the Twin Branch neighborhood watch would be off the month of December and they would start back up in January for a meeting. Mr. Mammolenti stated they would also go remote as well for the 911 Dispatch Center tour at 7PM on January 19<sup>th</sup>. Mr. Mammolenti stated they would meet in the lobby and start the tour shortly after 7PM. Mr. Mammolenti also gave a special thanks to Judge Chicowicz for his outstanding accommodations and efforts he held for their meeting the past month at the JJC. Mr. Mammolenti stated he and his staff did an amazing job and they were very impressed with the facility and operation they held.

Mr. Emmons noted their neighborhood meeting at St. Bavos would begin again in January and the next meeting would on January 20<sup>th</sup> at 7PM. Mr. Emmons stated the speaker would be announced later on for that meeting and West End would be served there. Mr. Emmons wished everyone a very Merry Christmas and a Happy New Year and they would see them on the 20<sup>th</sup>.

Mr. Hixenbaugh stated although they had another council meeting in December; they would want to adjust their calendar for January. Mr. Hixenbaugh stated pursuant to their regular council rules, their first meeting in January would not take place on Monday January 3<sup>rd</sup>, but would take place Tuesday January 4<sup>th</sup> with City Hall being closed on January 3<sup>rd</sup> for the holidays. Mr. Hixenbaugh stated they looked forward to seeing them then.

ADJOURNMENT 7:29PM

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

Gregg A. Hixenbaugh /s/  
Gregg A. Hixenbaugh, President



# City of Mishawaka

DAVID A. WOOD, MAYOR

DEPARTMENT OF CITY PLANNING

December 15, 2021

Deborah S. Block, IAMC, MMC

DEC 15 2021

City Clerk  
Mishawaka, IN

Honorable Members of the Common Council  
City of Mishawaka, Indiana

RE: Board of Zoning Appeals Recommendation  
December 14, 2021, Public Hearing

Honorable Members:

A regular meeting of the Mishawaka Board of Zoning Appeals was held on the above referenced date at which time the following Use Variances were considered:

**APPEAL #21-41** An appeal submitted by Baugo Creek Realty requesting a Use Variance for **420 West Cleveland Road, Granger**, to permit tattoo/microblading services in C-1 General Commercial Zoning.

The Board, with a vote of 5-0, recommended approval.

**APPEAL #21-42** An appeal submitted by McKinley Town and Country LP requesting a Use Variance for Dunham's Discount Sports, **2572 Miracle Lane**, to permit an outdoor storage container screened by a 7' solid fence in C-2 Shopping Center Commercial District.

The Board, with a vote of 5-0, recommended approval.

Respectfully,

A handwritten signature in blue ink that reads "Kari Myers".

Kari Myers, Administrative Planner  
Secretary, Board of Zoning Appeals

cc: Beth Clark  
Ed Fisher

**STAFF REPORT**

Location: 420 W. Cleveland Rd., Granger

Date: Dec. 14, 2021

Appeal: 21 41

Prepared By: KM

**GENERAL INFORMATION**

Applicant: Baugo Creek Realty/Tribe Salon  
Status: Property Owner/Tenant  
Request: Use Variance to allow microblading services  
Zoning Classification: C-1 General Commercial District  
Lot Size: 100' X 287'  
Applicable Regulations: 137.42 Board of Zoning Appeals (4) Variance of Use

**SPECIAL INFORMATION**

Area Development Pattern: North: S-2 Planned Unit Development  
South: C-1 General Commercial  
East: C-5 Neighborhood Commercial and C-1 General Commercial  
West: S-2 Planned Unit Development

Thoroughfare: Cleveland Road west of Grape Road  
School District: South Bend Community School District  
Public Utilities: All utilities are available  
Comprehensive Plan: General Commercial

**ANALYSIS**

The Appellants are requesting a Use Variance to allow for microblading services within Tribe Salon. Microblading is a form of semi-permanent makeup that provides a means to partially or fully camouflage missing eyebrow hair with the appearance of simulated hair using fine deposits of cosmetic tattoo pigments.

In the past year, we have received several requests for microblading. The latest request was located inside an existing salon at Centennial Place east on Cleveland Road.

It should be noted that while microblading is a service that can be found in a spa or beauty salon, it is a form of tattoo and not specifically permitted within the zoning district. The need for a Use Variance arises from the fact that a tattoo establishment is not an approved use within the C-1 zoning district.

All pertinent City departments have reviewed and approved of the request.



## RECOMMENDATION (S)

Staff recommends in **favor** of Appeal #21-41 to allow microblading services at Tribe Salon, 420 W. Cleveland Road, Granger. This recommendation is based upon the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the existing business provides similar personal services/salon uses;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because it is included in a commercial development;
3. The need for the variance arises from some condition peculiar to the property involved in that the C-1 zoning does not permit a tattoo establishment, but does allow the salon where the process is taking place, thus requiring the Use Variance for the proposed use;
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the nature of the business is similar to that of a salon and should not generate more traffic than any of the existing businesses within the development; and
5. The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the plan identifies this area for general commercial and is in close proximity to one of the largest consolidated retail areas in the State of Indiana.

## ATTACHMENTS

Photographs, Appeal, Aerial, Location Map







**STAFF REPORT**

General Location: 2572 Miracle Lane

Date: December 14,  
2021

Appeal: 21-42

Prepared By: CH

**GENERAL INFORMATION**

Applicants: McKinley Town and Country, LP/Dunham's Discount Sports

Status: Property Owner/Tenant

Request: Use Variance for outside storage

Zoning Classification: C-2 Shopping Center Commercial

Lot Size: 37.44 Acres

Applicable Regulations: Section 137-326 C-2 Uses  
Section 137-42 (4) Board of Zoning Appeals**SPECIAL INFORMATION**

|                              |        |                                                                                                              |
|------------------------------|--------|--------------------------------------------------------------------------------------------------------------|
| Area Development<br>Pattern: | North: | C-2 Shopping Center Commercial (Town & Country)                                                              |
|                              | South: | C-4 Automobile Oriented Commercial (Firestone) and C-7<br>Automobile Oriented Restaurant Commercial (Arby's) |
|                              | East:  | C-4 Automobile Oriented Commercial (Gates Chevy World)                                                       |
|                              | West:  | C-2 Shopping Center Commercial (Town & Country)                                                              |

Thoroughfare: McKinley Avenue and Hickory Road

School District: School City of Mishawaka

Public Utilities: All public utilities are available and existing.

Comprehensive Plan: The Mishawaka 2000 Comprehensive Plan identifies the north east corner of this intersection as General Commercial.

**ANALYSIS**

Town and Country Shopping Center occupies the northeast corner of McKinley Avenue and Hickory Road. Dunham's Discount Sports is located at the southern and eastern end.

Storage in accessory buildings is not allowed in commercial districts per Section 137-302 (5) c. Outside storage is only permitted as a conditional use in I-2 Heavy Industrial.

In October of 2017 a similar variance was approved for three storage containers behind Big Lots, which was located, at that time, at the western end, near Hickory. The Planning Department noticed an increase in the number of businesses using temporary storage containers as a permanent solution, and worked with businesses like Big Lots and Dick's Sporting Goods on a solution where they could keep their existing storage containers.

The Appellant is requesting to move the storage container in order to provide closer access for the Dunham's store. This storage container had previously been located in a fenced in area at the northeast corner of the shopping center behind the Comfort Sleep warehouse. In an attempt to lessen the impact on neighboring properties, the Appellant has agreed to install a 7' opaque fence to block the view from McKinley Highway.

If the variance is approved, an Improvement Location Permit will need to be issued before the installation of the fence.

All pertinent City departments have reviewed and approved the request.

### **RECOMMENDATION**

The Staff recommends in favor of Appeal 21-42, a Use Variance to allow outside storage in three existing containers for property located at 2572 Miracle Ln, subject to installing a 7' opaque fence on the south side of the container.

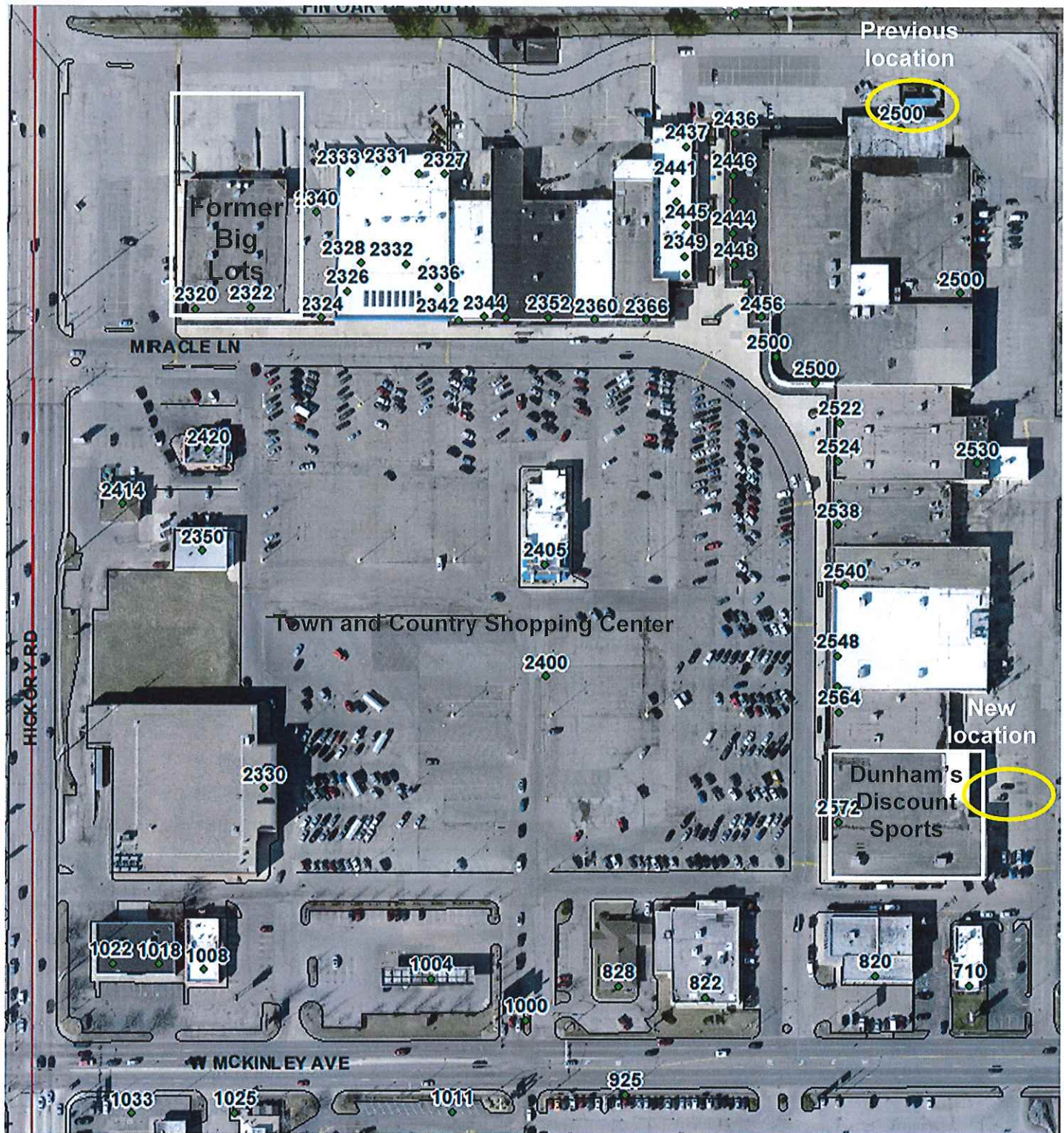
This recommendation is based on the following reasons:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the proposed use will have little to no additional impact on the adjacent commercial or residential uses.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because a fence is being added to help screen the view of the containers. The storage container is over 200' from McKinley Ave.
3. The need for a variance arises from the large scale size of the merchandise sold at this location, specifically furniture, and the lack of storage space indoors.
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because although the use is allowed in the I-2 Heavy Industrial District, rezoning the property would not be the highest and best use for the shopping center by allowing the more intense uses of that district.
5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies this intersection as General Commercial. The approval is consistent with the goals and objectives of the Comprehensive Plan.

### **ATTACHMENTS**

Aerial Photograph, Photographs of Site, Petition, Location Map









Close up from the east



Close up from the south





From Arby's Drive thru



From McKinley entrance drive between Arby's and Gates



# City of Mishawaka

DAVID A. WOOD, MAYOR

DEPARTMENT OF CITY PLANNING

December 15, 2021

Deborah S. Block, IAMC, MMC

DEC 15 2021

City Clerk  
Mishawaka, IN

Honorable Members of the Common Council  
City of Mishawaka, Indiana

RE: Plan Commission Recommendation  
December 14, 2021, Public Hearing  
Certification of Proposed Ordinances

Honorable Members:

A regular meeting of the Mishawaka Plan Commission was held on the above referenced date at which time the following proposed ordinances were considered:

**PETITION #21-18** A petition submitted by William Sinkovics seeking to amend the Bremen Highway North Planned Unit Development, **230 Ireland Road**, to allow for continued single family residential use with a new 3,072 sqft, 20' tall, accessory structure.

The Commission, with a vote of 8-0, recommended approval.

**PETITION #21-19** A petition submitted by Sorce USA Realty, Inc., and King's Buffet of Granger, Inc., seeking to amend the University Marketplace Planned Unit Development, **512 West Cleveland Road**, to allow for a storage facility.

The Commission, with a vote of 8-0, recommended approval subject to the attached conditions.

**PETITION #21-20** A petition submitted by Barak Group, LLC, seeking to amend the Village at Harrison Creek Planned Unit Development to add two single family homes at the southeast corner of Harrison Road and Beacon Drive.

The Commission, with a vote of 7-1, recommended approval.

Pursuant to I.C. 36-7-4-605 the Mishawaka Plan Commission hereby certifies to the Mishawaka Common Council the attached proposed ordinances regarding the above matters.

Respectfully,

Kari Myers, Administrative Planner  
Secretary, Mishawaka Plan Commission

cc: William Sinkovics  
Brody Glenn  
Terry Lang



**PETITION #21-19  
UNIVERSITY MARKETPLACE PUD AMEND  
CONDITIONS OF APPROVAL**

**Uses:**

1. Permitted uses on Parcel A shall include a three-story self-storage facility.
2. Permitted uses on Parcel B shall include a restaurant with drive-thru facilities and all C-1 General Commercial permitted uses.
3. Freestanding off-premise signs (i.e. billboards) shall not be permitted.

**Frontage:**

1. Parcel A shall have 0' of frontage on a public right-of-way.

**Building Setbacks:**

1. Parcel A shall conform to the setbacks per the attached site plan with a 15' side setback to the west, a 25' side setback to the east, a 25' rear setback to the north, and a 25' front setback to the south.
2. Parcel B shall conform to the setbacks per the attached site plan with 25' setbacks from all property lines.

**Dumpster Enclosure:**

1. Minimum 5' setback from any property line.
2. Enclosure must be located behind the building for Parcel A.
3. Enclosure for Parcel B shall be located to the side of the building and screened from Cleveland Road.
4. A 25' sight triangle shall be provided at internal drive and road/ingress-easement intersections.

**Parking:**

1. Parcel A shall have a minimum of 15 parking spaces.
2. Parcel B shall have a minimum of 10 parking spaces per 1,000 sq. ft. of gross floor area.

**Parking / Pavement Setbacks:**

1. Parcel A shall have minimum parking/pavement setbacks of 6' from the ingress/egress easement or edge of pavement to the west and north, 5' to the east, and 0' to the south along the common access drive between Parcel A and B.
2. Parcel B shall have minimum parking/pavement setbacks of 6' from the ingress/egress easement or edge of pavement to the west, 5' to the east, 10' to the south from the additional right-of-way to be dedicated along Cleveland Road, and 0' to the north.

**Landscaping and Screening:**

1. Landscaping shall be provided as required per the C-1 General Commercial District for Parcel A and per the C-7 Auto-Oriented Restaurant Commercial District for Parcel B.
2. Landscaping may be eliminated along the common lot line between Parcel A and B to accommodate a shared access drive within an ingress/egress easement.

**Utilities:**

1. The developer shall connect to the City of Mishawaka sanitary sewer and water, as directed by applicable codes, the City Director of Engineering, and the Manager of the Water Division. The costs associated with the extension/connection shall be the responsibility of the applicant/developer.
2. The extension of all other utilities to and throughout all parcels shall be applicant/developer's cost and expense.

**Stormwater Management Infrastructure:**

1. The type of stormwater facilities proposed for each parcel and/or phase of the development shall be designed in accordance with applicable codes and as directed by the City Director of Engineering.

**Grease Interceptor:**

1. A grease interceptor shall not be required for the proposed self-storage facility on Parcel A.
2. A grease interceptor shall be required for the proposed restaurant with drive-thru facilities on Parcel B.

**Lighting:**

1. All site lighting shall be limited to 25' in height. 90 degree cut-off fixtures shall be required for both pole and wall mounted fixtures.
2. A photometric lighting plan shall be submitted as part of the final site plan for each parcel.

**Signage:**

1. One multi-tenant sign shall be permitted on Parcel B to accommodate signage for both Parcels A & B.

**Right-of-Way Dedication:**

1. Additional right-of-way shall be required along Cleveland Road as determined by review of the City Director of Engineering and City Planner. The right-of-way shall be dedicated as a part of the subdivision plat.



**Architectural Requirements:**

1. Building materials and colors shall comply with the C-1 General Commercial District for Parcel A and with the C-7 Auto-Oriented Commercial District for Parcel B. Fiber cement board siding and trim shall be considered an appropriate material for both Parcels A & B.

**Other:**

1. Parcel A shall conform to all other C-1 General Commercial District height, area, and development regulations unless otherwise noted above.
2. Parcel B shall conform to all other C-7 Auto-Oriented Restaurant Commercial District height, area, and development regulations unless otherwise noted above.

**STAFF REPORT**

Location: 230 Ireland Road

Date: December 14, 2021

Petition: 21- 18

Prepared By: KM

**GENERAL INFORMATION**

Applicant: William Sinkovics

Status: Property Owner

Request: Amend the Bremen Highway North Planned Unit Development (PUD) to allow continuation of residential use and oversize accessory structure

Zoning Classification: S-2 Planned Unit Development (Permitted Uses include C-1 General Commercial uses)

Lot Size: 1.63 acres

Applicable Regulations: Section 137-671 to 137-679 / S-2 Planned Unit Development District & Section 137-41 / Amendment to Zoning Ordinance & Zoning Map

**SPECIAL INFORMATION**

Area Development Pattern: North: S-2 Planned Unit Development  
South: Unincorporated St. Joseph County  
East: S-2 Planned Unit Development (Tractor Supply Company)  
West: Unincorporated St. Joseph County

Thoroughfare: Ireland Road west of Bremen Highway

School District: Penn-Harris-Madison

Township: Penn

Public Utilities: All utilities are available and currently serve the site

Comprehensive Plan: Low Density Residential

**ANALYSIS**

The Petitioner is requesting to amend the Bremen Highway North Planned Unit Development, approved in 2008 (Ordinance 5185), to allow the continued use of single-family residential along with the construction of an oversized (3,072 sqft) accessory structure.

The parcel is part of the PUD established in 2008 and is located immediately west of the Tractor Supply Company on Ireland Road. When established, this parcel called for C-1 general uses but this site, built as a single-family home, has been continuously used as such. The Petitioner recently purchased the property and intends to continue its residential use. Without the PUD Amendment, the petitioner would not be allowed to expand or make improvements to his property as the use was identified as commercial in the original PUD Ordinance.

Also part of the amendment, Petitioner is requesting to construct a 3,072 sqft (48' X 64'), 20' tall accessory structure to store his personal items. The Zoning Ordinance restricts the size of accessory structures to 720 sqft, 15' in height. Given the large size of the property, the petitioner could build several 720 sqft accessory structures, but it is more practical to build one large structure to accommodate his items. It should also be noted that the property directly to the west (county property) is currently constructing an oversized accessory structure.

All pertinent City Departments have reviewed and approved the PUD amendment request.

### RECOMMENDATION

Staff recommends **approval** of Petition #21-18 to amend the Bremen Highway North Planned Unit Development (PUD), approved in 2008, to allow the continued residential use of the property and construct an oversized accessory structure. The recommendation is based on the following findings of fact:

1. Existing Conditions – The property is currently a residential structure and will continue to be used as such.
2. Character of Buildings in Area – There are other residential properties in the immediate area south and west of the subject property.
3. The Most Desirable/Highest and Best Use – Due to the property's location near other residential properties its continued use as a single-family residence will be compatible with the existing adjacent land uses.
4. Conservation of Property Values – The proposed amendment will not be injurious to property values in the surrounding area because the use remains the same and the construction of the accessory structure represents an improvement in the area.
5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, identified this area for low density residential as currently exists to the south and west.

### ATTACHMENTS

Photographs, Petition, Site Plan, Aerial, Location Map





230 Ireland Road



Adjacent property accessory structure construction





View of property from Tractor Supply Company

**STAFF REPORT**

Location: 512 W. Cleveland Road – Northeast Corner of  
W. Cleveland Road and State Road 23

Date: December 14, 2021

Petition: 21- 19

Prepared By: DJS

**GENERAL INFORMATION**

Applicant: Sorce USA Realty Inc. / Centennial American Properties

Status: Property Owner / Contingent Owner & Developer

Request: Amend part of the University Marketplace Planned Unit Development (PUD) to allow a three-story self-storage facility and restaurant with drive-thru

Zoning Classification: S-2 Planned Unit Development (Permitted Uses on the portion of the PUD to be amended include all C-2 Shopping Center Commercial uses)

Lot Size: Approximately 2.25 acres excluding the existing right-of-way

Applicable Regulations: Section 137-671 to 137-679 / S-2 Planned Unit Development District & Section 137-41 / Amendment to Zoning Ordinance & Zoning Map

**SPECIAL INFORMATION**

Area Development Pattern: North: S-2 Planned Unit Development (Part of University Marketplace PUD / Vacant Retail Building formerly J.C. Penney Home Store & Anchor Construction)

South: C-1 General Commercial (Bank / KeyBank & Medical Clinic / Physicians Urgent Care)

East: C-1 General Commercial (Multi-Tenant Commercial / Vacant Bar & Restaurant formerly The Pub, Fyzical Therapy, and The Tribe Salon) & C-7 Auto-Oriented Restaurant Commercial / C-1 General Commercial (Bank / Northwest Bank)

West: S-2 Planned Unit Development (Part of University Marketplace PUD / Common Access Drive) & Unincorporated St. Joseph County – R Residential (Residential)

Thoroughfare: W. Cleveland Road (S.R. 23)

School District: South Bend Community School Corporation

Township: Clay

Public Utilities: All utilities are available and currently serve the site

Comprehensive Plan: General Commercial (Retail Sales & Shopping Centers)

**ANALYSIS**

The petitioner, Centennial American Properties, is requesting to amend part of the University Marketplace Planned Unit Development (PUD) to allow a three-story self-storage facility within the northern part of the

property and restaurant with drive thru facilities within the southern part of the property fronting Cleveland Road.

Prior to filing the amendment, Planning Staff instructed that the petitioner review all required C-1 General Commercial District height, area, and development regulations which will be applicable for the self-storage facility on the future north lot (Parcel A), and all required C-7 Auto-Oriented Restaurant Commercial District height, area, and development regulations which will be applicable for the restaurant with drive-thru facility on the future south lot (Parcel B). The petition was only to include deviations from these regulations. The petition and conceptual site plan, as provided, includes several proposed developmental regulations for each of the future individual lots. After reviewing the petition, it appears that a thorough review of the required development regulations was not completed. A majority of proposed regulations, as requested, are included in the staff recommendation with modifications, deletions, and additions as deemed necessary.

The portion of the PUD to be amended is an approximate 2.25 acre parcel located just northeast of the Cleveland Road and State Road 23 intersection. The property is currently occupied by a vacant restaurant, most recently being Tequilas Jalisco, and is bound by a vacant retail building and design-build contractor to the north, a common access drive serving the multiple parcels to the west, a bank and walk-in medical clinic to the south, and a multi-tenant commercial building and bank to the east. The vacant restaurant and all existing improvements will be razed with the proposed redevelopment.

The current PUD regulations applicable to the property, which were approved in 2015 (Petition 15-13/Ord. 5484), permitted all C-2 Shopping Center District uses. The property was proposed for redevelopment with a two building multi-tenant commercial strip center. The redevelopment plans never materialized.

Per the conceptual site plan, a 105,753 sq. ft. three-story self-storage facility is proposed on the approximate 1.45 acre northern lot (Parcel A). The first floor will cover 35,251 sq. ft. The future lot will have no frontage on a public right-of-way. An approximate 2,500 sq. ft. restaurant with drive thru facilities is proposed on the approximate 1.08 acre southern lot (Parcel B) fronting Cleveland Road.

Access to the site will be maintained as is with primary access provided via an existing common drive to the west at the Cleveland Road and State Road 23 intersection. Additional access will be from the north of Parcel A off of an existing access drive and parking area associated with the former J.C. Penney Home Store property. Cross access (ingress/egress) easements to include the adjacent drives shall be dedicated on the future subdivision plat or a reciprocal easement agreement recorded if not currently in place. No new access points are proposed onto the public right-of-way.

Based on 4 parking spaces per 1,000 sq. ft. of gross floor area, which is the applicable ratio for the self-storage facility, a total of 423 parking spaces are required for the 105,753 sq. ft. building on Parcel A. Due to the minimal parking demand for this use, a total of 15 parking spaces are proposed. Based on 15 parking spaces per 1,000 sq. ft. of gross floor area, which is the applicable ratio for the restaurant with drive-thru, a total 38 parking spaces are required to the approximate 2,500 sq. ft. building on Parcel B. A total of 27 parking spaces are proposed due to the limited size of the property and anticipated future use. Staff will support a minimum parking ratio of 10 spaces per 1,000 sq. ft. of gross floor area for this lot.

The C-1 and C-7 development regulations require a 10' minimum parking setback from the public right-of-way, private access easement, or internal vehicular collector drives, and 5' minimum parking setback from any adjacent property line. A minimum 10' parking/pavement setback will be required for Parcel B from the additional right-of-way to be dedicated along Cleveland Road. A minimum 5' or 6' parking/pavement setback will be required from all other lot lines excluding a 0' setback along the common lot line between the future lots (Parcels A & B).

For the landscaping and screening, no landscaping will be required along the common lot line between Parcels A & B due to the shared common access drive. Landscaping compliant with the commercial landscaping regulations will be required along all other property lines and interior to the parking areas.

The architectural materials and colors of the building shall comply with the commercial design regulations with the exception of allowing fiber cement board siding and trim on all buildings.



All development regulations and conditions, as established per this PUD amendment, will be applicable when final site plans are submitted for each lot. Planning Staff recommended that a survey be prepared prior to filing the PUD amendment petition to establish more accurate development regulations especially those relating to setbacks. The conceptual site plan appears to have been designed without the benefit of a survey. If a future survey reveals that the site design will have to be altered which would not comply with the established regulations, an additional PUD amendment or developmental variances may be required.

Similar to when the prior Planned Unit Development amendment was approved, the petitioner is only proposing to establish, or in this case, amend the permitted uses and basic development requirements of the planned unit development. If approved, a detailed final site plan must be submitted for each future lot to address all the applicable zoning (height, area, and development regulations), utility (sanitary sewer, water, storm drainage, electric, gas, etc.), landscaping/screening, grading, erosion control, and any other required improvements. A subdivision plat will be required to establish legal lots of record for proposed Parcels A & B.

All pertinent City Departments have reviewed and approved the PUD amendment request.

The Engineering Department provided the following comments that shall be addressed with the final site plan:

1. Additional right-of-way shall be dedicated along the Cleveland Road frontage to encompass a new dedicated right-turn lane into the site.
2. Right turn lane into the site shall be designed per Engineering Department standards.
3. Extend the sidewalk at the northwest corner of the Cleveland Road and State Road 23 intersection and add crosswalk with ADA accessible ramps across existing access drive to the site.
4. Coordinate all construction activities on Cleveland Road (S.R. 23) with the INDOT Traffic Division since it is a state maintained road.
5. All utility connections are off the rear of the existing building and shall be located as such for the new proposed buildings.

The Electric Department commented that the property is not within the city's electric service territory.

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| <b>RECOMMENDATION</b> |
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Staff recommends **approval** of Petition 21-19 to amend part of the University Marketplace Planned Unit Development (PUD) to allow a three-story self-storage facility and restaurant with drive-thru subject to the following conditions:

**Uses:**

1. Permitted uses on Parcel A shall include a three-story self-storage facility.
2. Permitted uses on Parcel B shall include a restaurant with drive-thru facilities and all C-1 General Commercial permitted uses.
3. Freestanding off-premise signs (i.e. billboards) shall not be permitted.

**Frontage:**

1. Parcel A shall have 0' of frontage on a public right-of-way.

**Building Setbacks:**

1. Parcel A shall conform to the setbacks per the attached site plan with a 15' side setback to the west, a 25' side setback to the east, a 25' rear setback to the north, and a 25' front setback to the south.
2. Parcel B shall conform to the setbacks per the attached site plan with 25' setbacks from all property lines.

**Dumpster Enclosure:**

1. Minimum 5' setback from any property line.
2. Enclosure must be located behind the building for Parcel A.
3. Enclosure for Parcel B shall be located to the side of the building and screened from Cleveland Road.
4. A 25' sight triangle shall be provided at internal drive and road/ingress-easement intersections.

**Parking:**

1. Parcel A shall have a minimum of 15 parking spaces.
2. Parcel B shall have a minimum of 10 parking spaces per 1,000 sq. ft. of gross floor area.

**Parking / Pavement Setbacks:**

1. Parcel A shall have minimum parking/pavement setbacks of 6' from the ingress/egress easement or edge of pavement to the west and north, 5' to the east, and 0' to the south along the common access drive between Parcel A and B.
2. Parcel B shall have minimum parking/pavement setbacks of 6' from the ingress/egress easement or edge of pavement to the west, 5' to the east, 10' to the south from the additional right-of-way to be dedicated along Cleveland Road, and 0' to the north.

**Landscaping and Screening:**

1. Landscaping shall be provided as required per the C-1 General Commercial District for Parcel A and per the C-7 Auto-Oriented Restaurant Commercial District for Parcel B.
2. Landscaping may be eliminated along the common lot line between Parcel A and B to accommodate a shared access drive within an ingress/egress easement.

**Utilities:**

1. The developer shall connect to the City of Mishawaka sanitary sewer and water, as directed by applicable codes, the City Director of Engineering, and the Manager of the Water Division. The costs associated with the extension/connection shall be the responsibility of the applicant/developer.
2. The extension of all other utilities to and throughout all parcels shall be applicant/developer's cost and expense.

**Stormwater Management Infrastructure:**

1. The type of stormwater facilities proposed for each parcel and/or phase of the development shall be designed in accordance with applicable codes and as directed by the City Director of Engineering.

**Grease Interceptor:**

1. A grease interceptor shall not be required for the proposed self-storage facility on Parcel A.
2. A grease interceptor shall be required for the proposed restaurant with drive-thru facilities on Parcel B.

**Lighting:**

1. All site lighting shall be limited to 25' in height. 90 degree cut-off fixtures shall be required for both pole and wall mounted fixtures.
2. A photometric lighting plan shall be submitted as part of the final site plan for each parcel.

**Signage:**

1. One multi-tenant sign shall be permitted on Parcel B to accommodate signage for both Parcels A & B.

**Right-of-Way Dedication:**

1. Additional right-of-way shall be required along Cleveland Road as determined by review of the City Director of Engineering and City Planner. The right-of-way shall be dedicated as a part of the subdivision plat.

**Architectural Requirements:**

1. Building materials and colors shall comply with the C-1 General Commercial District for Parcel A and with the C-7 Auto-Oriented Commercial District for Parcel B. Fiber cement board siding and trim shall be considered an appropriate material for both Parcels A & B.

**Other:**

1. Parcel A shall conform to all other C-1 General Commercial District height, area, and development regulations unless otherwise noted above.
2. Parcel B shall conform to all other C-7 Auto-Oriented Restaurant Commercial District height, area, and development regulations unless otherwise noted above.

The recommendation is based on the following findings of fact:

1. Existing Conditions – The property is currently developed with a vacant restaurant, parking areas, and adjacent common access drives to W. Cleveland Road and Grape Road. Adjacent uses include a vacant retail building and design-build contractor to north, a common access drive serving the multiple parcels to the west, a bank and walk-in medical clinic to the south, and a multi-tenant commercial building and bank to the east. The property is located at the northern edge of the Grape Road commercial corridor.
2. Character of Buildings in Area – The buildings along the Grape Road and W. Cleveland Road corridors are primarily single and multi-tenant commercial/retail buildings including University Park Mall, a large regional shopping center. Low density single-family residential properties are located to the west.
3. The Most Desirable/Highest and Best Use – Due to the property's location at the northern edge of a highly travelled commercial corridor, the most desirable use of the property is for continued commercial use. The proposed uses are similar to the prior existing use of the property and those currently permitted which include all C-2 Shopping Center Commercial District uses.
4. Conservation of Property Values – The proposed zoning should not be injurious to property values in the surrounding area. Currently, commercial land uses, including similarly intensive uses than those proposed, are permitted within the portion of the PUD being amended.
5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, identified this area for general commercial development (retail sales and shopping centers).

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| <b>ATTACHMENTS</b> |
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Photographs, Petition, Conceptual Site Plan, Location Map



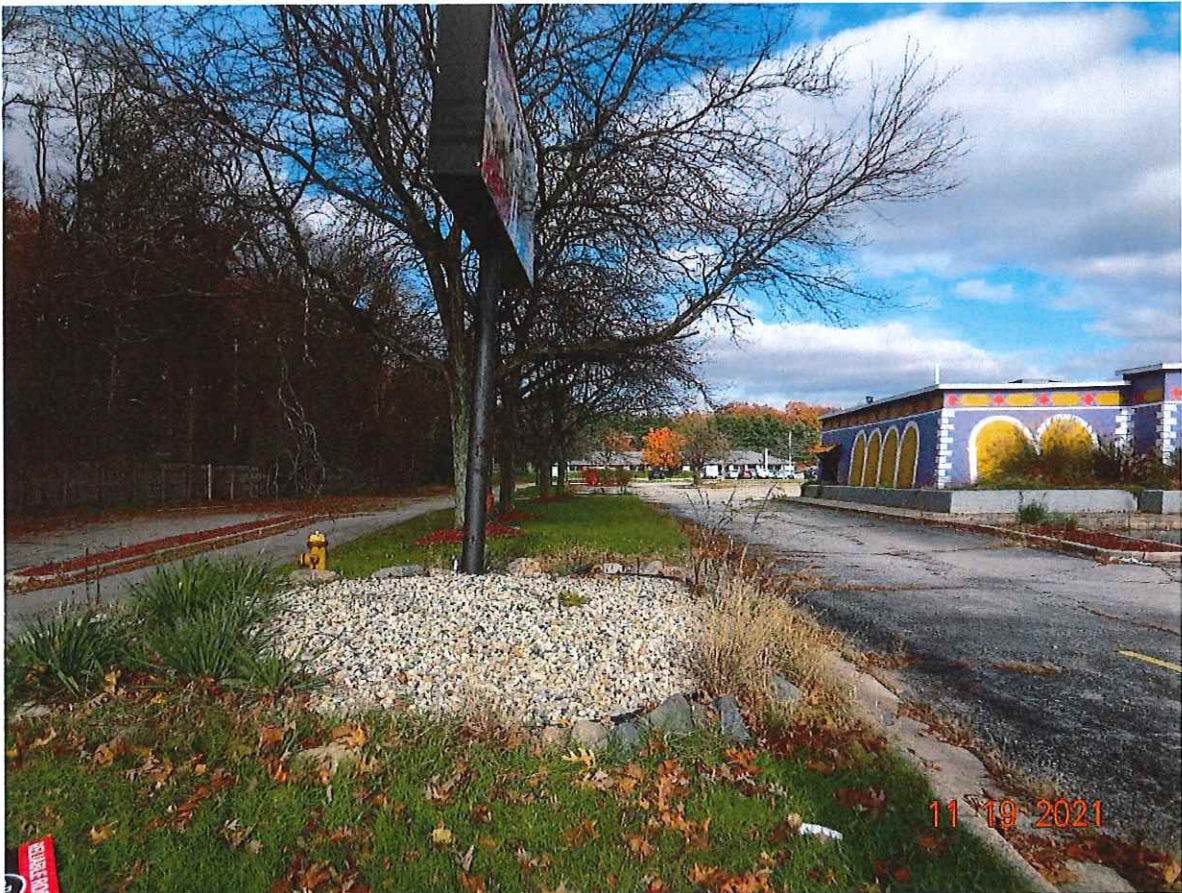


Aerial Photograph  
Existing Vacant Restaurant – 512 W. Cleveland Road  
Part of the University Marketplace PUD



P1. Looking northeasterly toward the existing restaurant from the Cleveland Rd. (S.R. 23) access.





P2. Looking northerly along the existing common access drive to the west.



P3. Looking southeasterly toward the property from the adjacent access drives.





P4. Looking easterly along the north property line of Parcel B and adjacent access drive.



P5. Looking southwesterly toward the property from the adjacent access drive to the north.





P6. Looking northwesterly toward of the existing building from the east.



P7. Looking northerly toward the property and existing building from south of S.R. 23.



**STAFF REPORT**

Location: The Village at Harrison Creek  
Southeast corner of Harrison Rd & Beacon Drive

Date: December 14, 2021

Petition: 21- 20

Prepared By: CH

**GENERAL INFORMATION**

Applicant: Barak Group LLC/Lang, Feeney & Associates, Inc.

Status: Property Owner / Surveyor

Request: Amend the Village at Harrison Creek Planned Unit Development to allow two additional single family homes with R-1 standards in an area previously reserved for water retention.

Zoning Classification: S-2 Planned Unit Development (Permitted Uses include 54 single family homes)

Lot Size: 0.59 acres

Applicable Regulations: Section 137-671 to 137-679 / S-2 Planned Unit Development District & Section 137-41 / Amendment to Zoning Ordinance & Zoning Map

**SPECIAL INFORMATION**

Area Development Pattern: North: R-3 Multi-Family Residential (Epic Church)  
South: S-2 Planned Unit Development (Village at Harrison Creek)  
East: S-2 Planned Unit Development (Villas at Reverewood)  
West: S-2 Planned Unit Development (Village at Harrison Creek)

Thoroughfare: Harrison Road

School District: School City of Mishawaka

Township: Penn

Public Utilities: All utilities are available to serve the site

Comprehensive Plan: Medium Density Residential (apartment complexes and nursing facilities)

**ANALYSIS**

The petitioner, Barak Group LLC is requesting to amend the Village at Harrison Creek Planned Unit Development (PUD), approved in 2000, to add two additional single family homes with R-1 standards in an area previously reserved for water retention. The original PUD was approved for 54 homes, and all 54 homes have been developed. Staff has been in discussion with the owner and the owner's surveyor for over two years to bring about a functional PUD amendment. The proposed use is permitted in the R-1 Single-Family Residential District, thus the height, area, and developmental regulations for this district will be applicable to the property unless otherwise noted. The frontage on Lot 2 will be reduced to 50'. The R-1 standards require 60' of frontage.

The area being affected by this PUD amendment is the southeast corner of Harrison Road and Beacon Dr, which was previously reserved for water retention. This PUD is bounded by The Cove at Harrison Creek on the west; Epic Church to the north; the Villas at Reverewood on the east; and Reverewood subdivision to the south.

The current PUD regulations applicable to the property, which were approved in 2000 (Petition 00-24/Ord. 4516), permit 54 single family houses. The property was subsequently subdivided into 54 lots in 2000 as Village at Harrison Creek (Recording No. 0108192).

A preliminary site plan shows two lots with building envelopes for two single family homes, but maintains the retention easement where the existing retention basin is. Access to both lots will be from Beacon Drive. Access cannot be from Cedarwood Ln because there is a landscape easement the current developer does not own between this parcel and the road. A subdivision will be required to officially divide the lots and establish any easements.

All pertinent City Departments have reviewed and approved the PUD amendment request.

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| <b>RECOMMENDATION</b> |
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Staff recommends **approval** of Petition 21-20 to amend the Village at Harrison Creek Planned Unit Development, to allow two additional single family homes with the lot frontage reduced to 50' for Lot 2.

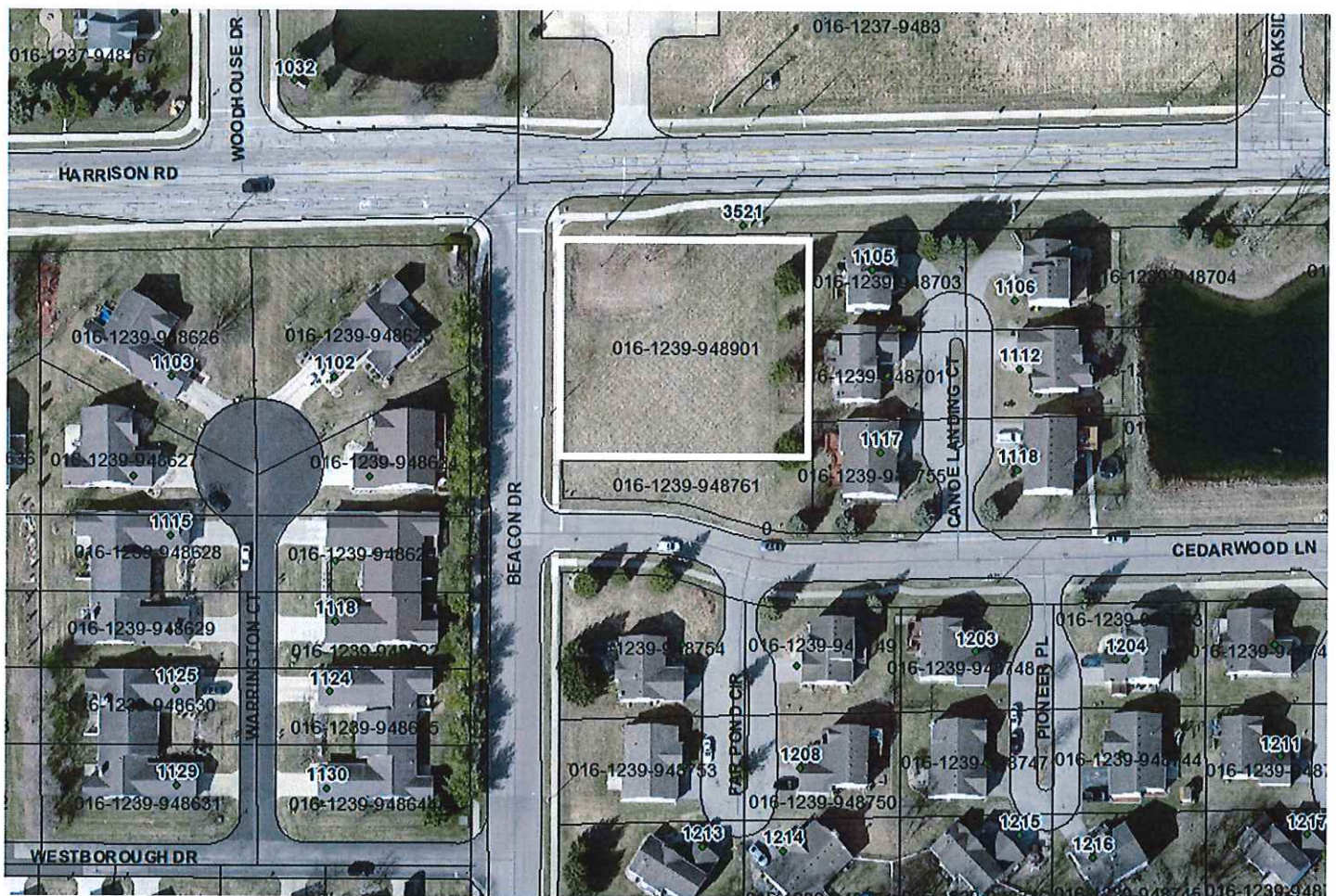
The recommendation is based on the following findings of fact:

1. Existing Conditions – The property is currently adjacent to other single family developments in the area.
2. Character of Buildings in Area – The development south of Harrison Road is exclusively residential. Some of the neighboring developments have smaller lots and villa style homes.
3. The Most Desirable/Highest and Best Use – Due to the property's location in a single family area, the addition of two more homes would be compatible with the existing adjacent land uses.
4. Conservation of Property Values – The proposed zoning should not be injurious to property values in the surrounding area because the use is very similar.
5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, identified this area for multi-family residential (apartment complexes and nursing facilities) which, even though these are single family homes, is reflected by the density of the smaller homes and lots.

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| <b>ATTACHMENTS</b> |
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Aerial, Photographs, Petition, Location Map





A view from the intersection of Harrison Road and Beacon Dr





A view northeast from the intersection of Beacon Dr and Cedarwood Ln



A view north from Cedarwood Ln from the eastern edge of the affected area

**PROPOSED ORDINANCE NO. 2021-45**

DEC 09 2021

**ORDINANCE NO. \_\_\_\_\_**

City Clerk  
Mishawaka, IN

**AN ORDINANCE APPROVING AN AGREEMENT BETWEEN  
THE CITY OF MISHAWAKA AND THE MISHAWAKA FIREFIGHTERS  
ASSOCIATION LOCAL NO. 360 OF THE INTERNATIONAL ASSOCIATION  
OF FIREFIGHTERS, AFL - CIO**

WHEREAS, the contract negotiating committees for the City of Mishawaka, Indiana and the Mishawaka Firefighters Association Local No. 360 of the International Association of Firefighters have mutually reached an agreement on amendments to the Collective Bargaining Agreement expiring the 31<sup>st</sup> day of December 2021; and

WHEREAS, the members of the Mishawaka Firefighters Association Local No. 360 of the International Association of Firefighters have ratified the new Collective Bargaining Agreement and the governing body of said Association has executed the new Agreement on their behalf; and

WHEREAS, on the 7<sup>th</sup> day of December, 2021, the City of Mishawaka, Indiana, acting by and through its Board of Public Works & Safety, approved the new Collective Bargaining Agreement with Mishawaka Firefighters Association Local No. 360 of the International Association of Firefighters, a copy of which is attached hereto; and

WHEREAS, Ordinance No. 1666 requires all Collective Bargaining Agreements to be approved by the Common Council of the City of Mishawaka.

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

Section 1. The Collective Bargaining Agreement executed the 7<sup>th</sup> day of December, 2021, effective January 1, 2022, between the Board of Public Works & Safety of the City of Mishawaka, Indiana and the Mishawaka Firefighters Association Local No. 360 of the International Association of Firefighters is hereby approved.

Section 2. 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 \_\_\_\_\_, 2021, at \_\_\_\_\_ o'clock \_\_\_\_ M.

Common Council  
City of Mishawaka, Indiana



\_\_\_\_\_  
Gregg Hixenbaugh, President

ATTEST:

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

Presented by me, the undersigned City Clerk of the City of Mishawaka, Indiana, to the Mayor of the City of Mishawaka, Indiana, for approval on the \_\_\_\_ day of \_\_\_\_\_, 2021 at \_\_\_\_\_ o'clock \_\_\_\_\_.m.

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

Having examined the foregoing Ordinance, I do as the Mayor of the City of Mishawaka, Indiana, approve said Ordinance and return the same to the City Clerk of the City of Mishawaka, Indiana, this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
David A. Wood, Mayor  
City of Mishawaka, Indiana



# CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF LAW

December 8, 2021

Deborah S. Block, IAMC, MMC

DEC 08 2021

Mishawaka Common Council  
600 East Third Street  
Mishawaka, Indiana 46544

City Clerk  
Mishawaka, IN

Re: City of Mishawaka and Mishawaka Firefighters Association Local No. 360 of the  
International Association of Firefighters Collective Bargaining Agreement

President and Honorable Council Members:

The City of Mishawaka and the Mishawaka Firefighters Association, Local No. 360 agreed to a Collective Bargaining Agreement for the period of January 1, 2022 to December 31, 2024. ("CBA")

On December 7, 2021, the City of Mishawaka, acting by and through its Board of Public Works & Safety, approved the CBA.

Approval of the CBA by the Mishawaka Common Council is also required. Attached is a proposed ordinance. (A copy of the Board of Public Works & Safety Resolution No. 2021-05 and the CBA are attached to the proposed ordinance.)

To assist in your review, you will find attached a summary of the CBA changes prepared by Chief Bryon Woodward.

Finally, as part of the CBA negotiations, the City and the Union agreed to a mutual release and dismissal of the lawsuit entitled *City of Mishawaka v. Mishawaka Firefighters Association, Local No. 360*, Cause No. 71C01-2002-PL-000056. A copy of the settlement offer that was accepted is attached.

Sincerely

*Patrick J. Hinkle*  
Patrick J. Hinkle

Patrick J. Hinkle  
Corporation Counsel  
600 E. Third Street  
Mishawaka, IN 46544  
(574) 258-1702  
fax: (574) 254-0197

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David V. Bent  
Assistant City Attorney  
320 W. Fourth Street  
Mishawaka, IN 46544  
(574) 255-3680  
fax: (574) 255-3969



**RESOLUTION NO. 2021-05**

**MISHAWAKA BOARD OF PUBLIC WORKS AND SAFETY**

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF MISHAWAKA AND THE MISHAWAKA FIREFIGHTERS ASSOCIATION, LOCAL NO. 360 OF THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO

**WHEREAS**, the City of Mishawaka and the Mishawaka Firefighters Association, Local No. 360 have agreed to a Collective Bargaining Agreement for the period of January 1, 2022 to December 31, 2024; and

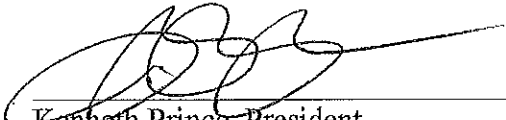
**WHEREAS**, such Agreement requires the approval of the Mishawaka Board of Public Works and Safety and the Mishawaka Common Council;

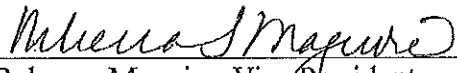
**NOW, THEREFORE, BE IT RESOLVED** by the Board of Public Works and Safety of the City of Mishawaka that:

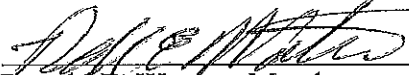
Section 1. The attached Collective Bargaining Agreement between the City of Mishawaka and the Mishawaka Firefighters, Local No. 360 is hereby approved, and

Section 2. This Resolution shall be forwarded to the Mishawaka Common Council for its review and final action.

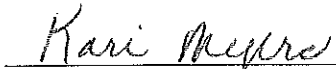
ADOPTED by the Board of Public Works of the City of Mishawaka, on this 7th day of December, 2021.

  
Kenneth Prince, President

  
Rebecca Maguire, Vice President

  
Ronald E. Watson, Member

ATTEST:

  
Kari Myers, Clerk of the Board

# COLLECTIVE BARGAINING AGREEMENT

between

CITY OF MISHAWAKA, INDIANA

and

MISHAWAKA FIREFIGHTERS ASSOCIATION

LOCAL NO. 360

OF THE

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL - CIO

DATED: 1-01-2022 thru 12-31-2024

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## **COLLECTIVE BARGAINING AGREEMENT**

THIS AGREEMENT entered into on the \_\_\_\_th day of December, 2021 effective on the 1st day of January, 2022 between the CITY OF MISHAWAKA, INDIANA, hereinafter called "City," and MISHAWAKA FIREFIGHTERS ASSOCIATION, LOCAL NO. 360, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO, hereinafter called "Union," WITNESSETH THAT:

The parties hereto, in consideration of the mutual covenants and agreements herein contained, do hereby agree as follows:

## ARTICLE II

### Coverage

This agreement shall be applicable as to all firefighters of the City of Mishawaka, Indiana Fire Department except the Fire Chief and Assistant Fire Chiefs.

**ARTICLE IV**  
**Rights of Management**

**Section 1 - General**

Except as otherwise provided in this Agreement, or applicable federal or state law, the City in the exercise of its functions of management shall have the right to decide the policies, methods, safety rules, direction of employees, assignment of work, contracting of work, equipment to be used in the operation of the Fire Department, and to determine the hours of work, the right to hire, discharge, suspend, discipline, promote, demote, and transfer firefighters; it is agreed that the enumeration of the above management prerogatives shall not be deemed to exclude other prerogatives not enumerated. Nothing in this Article shall limit or prevent firefighters' rights to the grievance procedure provided for in this Agreement.

**Section 2 - Late to Work Clause**

In any twelve (12) month period, a firefighter who has been late five (5) times will be given a warning letter advising the firefighter that the sixth (6th) time late will result in a fine equal in amount to loss of one-half (1/2) day's pay, the seventh (7th) time late will result in a fine equal in amount to loss of one (1) day's pay and the eighth (8th) time late will result in the firefighter's referral to the Board of Public Works and Safety for disciplinary action.



## ARTICLE VI

### Union Activities

#### Section 1 - General

Employees and their Union representatives shall have the right to join the Union, to engage in lawful concerted activities for the purpose of collective negotiation or bargaining or other mutual aid and protection, to express or communicate any views, grievance, complaint, or opinion related to the conditions or compensation of public employment or their betterment, all free from any and all restraint, interference, coercion, discrimination, or reprisal, except as limited by the laws of the City of Mishawaka, State of Indiana, or the United States of America.

#### Section 2 - Released Time

Officers and other representatives of the Union shall be afforded reasonable time during working hours without loss of pay to fulfill their Union responsibilities, including negotiations with the City, processing grievances, and administering and enforcing this Agreement; provided, however, if such activities cause the Department strength to fall below the minimum required under this Agreement notwithstanding any provisions herein to the contrary, any firefighter called in to maintain the minimum department strength shall be compensated by receiving two (2) hours off duty without loss of regular pay for each hour actually worked and the call-in guarantee of four (4) hours work for four (4) hours pay shall not apply; provided further, that regardless of the number of such hours actually worked.

Notwithstanding any provisions herein to the contrary, any firefighter with less than or equal to two hundred (200) hours in his compensatory time bank called in to maintain the minimum Department strength shall be compensated by receiving two (2) hours off duty without loss of regular pay for each hour actually worked and any firefighter with more than two hundred (200) hours in his compensatory time bank called in to maintain the minimum Department strength shall be compensated by receiving overtime pay. The Union shall be responsible for maintaining the call-in list and furnishing substitute manpower for firefighters released from duty under this Article.

## ARTICLE VII

### Wages

#### Section 1 – General

The salary schedule attached hereto as Exhibit "A" shall be effective January 1, 2022 and shall be amended from time to time by action of the Common Council of the City of Mishawaka, Indiana.

#### Section 2 - Overtime Pay

- (a) Overtime pay shall be paid to all 56-hour employees of the firefighting division for all work in excess of their regularly scheduled work day (24 consecutive hours) or work week (56 hours in a 6 calendar-day cycle). Such overtime shall be paid at the rate of time and one-half of the employee's prevailing hourly rate, provided, however, that all overtime worked on Sundays and holidays shall be paid at the rate of twice the employee's prevailing hourly rate. Double-time is calculated for any overtime worked between 0700 hrs. on Sundays or a holiday until 0700 hrs. the following day as per Article VIII section 1 (a).
- (b) Overtime pay shall be paid to all 40-hour employees for all work in excess of 40 hours per week. Such overtime shall be paid at the rate of time and one-half of the employee's prevailing hourly rate, provided, however, that all overtime worked on Sundays and holidays shall be paid at the rate of twice the employee's prevailing hourly rate.
- (c) An employee's prevailing hourly rate shall be determined by dividing their annual salary by 2,912. This calculation shall include the Pension Equalization Plan Payments to the civilian firefighter/paramedics.
- (d) Call in Pay. When a firefighter is called in to work partial and/or emergency duty, the firefighter will be guaranteed a minimum of four (4) hours work or four (4) hours pay at overtime rate and any additional fraction of an hour over fifteen (15) minutes shall constitute one (1) hour. When a firefighter is called for a twenty-four (24) hour overtime, the firefighter will be guaranteed twenty-four (24) hours pay at the overtime rate for that day. When a firefighter

#### Section 4 - Pension Equalization Pay for Non-77 Pension plan Members

For those civilian firefighter/paramedics who do not qualify or do not elect to become members of the 1977 pension fund, the pension equalization pay (PEP) will be offered to the employees as additional wages. The PEP shall be payable in twenty-six (26) equal biweekly pay periods with the regular payroll. The annual PEP will be a combination of a base of three thousand three hundred dollars (\$3,300) and an additional one hundred dollars (\$100) for every full year of continuous service completed by January 1<sup>st</sup> of each year.

#### Section 5 -- Renegotiation of Wages

It is understood and agreed by the parties hereto that any wage provision contained in this Agreement may be modified at any time by renegotiation with the members of the Common Council of the City of Mishawaka, Indiana. The Common Council and the Union must agree to such renegotiation, and the refusal of either to reopen negotiations for wages shall not be considered a breach of this Agreement or a breach of any other duty or obligation of either.



accepting firefighter fails to report for duty on the tour of duty specified. The responsibility falls on the accepting firefighter to find coverage for the day.

If the day is available the accepting firefighter is allowed to take the day off as long as it does not drop the day below the minimum work force or create overtime at the time of their request.

The City shall incur no costs as a result of trade time between firefighters.

# ARTICLE X

## Vacations and Leave

### Section 1 – Vacation Eligibility

(a) All firefighters, except Fire Marshals, will accrue vacation and random time according to the following chart:

### VACATION

|     | 3<br>Day(s)<br>(1st<br>Week) | 6<br>(2nd<br>Week) | 9<br>(3rd<br>Week) | 12<br>(4th<br>Week) | 15<br>(5th<br>Week) | 18<br>(6th<br>Week) | Random<br>Days |  | TOTAL      |
|-----|------------------------------|--------------------|--------------------|---------------------|---------------------|---------------------|----------------|--|------------|
| < 1 |                              |                    |                    |                     |                     |                     | Prorated       |  | <u>≤ 4</u> |
| 1   | x                            |                    |                    |                     |                     |                     | 4              |  | 7          |
| 2   | x                            | x                  |                    |                     |                     |                     | 4              |  | 10         |
| 3   | x                            | x                  |                    |                     |                     |                     | 4              |  | 10         |
| 4   | x                            | x                  |                    |                     |                     |                     | 4              |  | 10         |
| 5   | x                            | x                  | x                  |                     |                     |                     | 4              |  | 13         |
| 6   | x                            | x                  | x                  |                     |                     |                     | 4              |  | 13         |
| 7   | x                            | x                  | x                  |                     |                     |                     | 4              |  | 13         |
| 8   | x                            | x                  | x                  |                     |                     |                     | 4              |  | 13         |
| 9   | x                            | x                  | x                  |                     |                     |                     | 4              |  | 13         |
| 10  | x                            | x                  | x                  | x                   |                     |                     | 4              |  | 16         |
| 11  | x                            | x                  | x                  | x                   |                     |                     | 4              |  | 16         |
| 12  | x                            | x                  | x                  | x                   |                     |                     | 4              |  | 16         |
| 13  | x                            | x                  | x                  | x                   | x                   |                     | 4              |  | 19         |
| 14  | x                            | x                  | x                  | x                   | x                   |                     | 4              |  | 19         |
| 15  | x                            | x                  | x                  | x                   | x                   |                     | 5              |  | 20         |
| 16  | x                            | x                  | x                  | x                   | x                   |                     | 5              |  | 20         |
| 17  | x                            | x                  | x                  | x                   | x                   |                     | 5              |  | 20         |
| 18  | x                            | x                  | x                  | x                   | x                   |                     | 5              |  | 20         |
| 19  | x                            | x                  | x                  | x                   | x                   |                     | 5              |  | 20         |
| 20+ | x                            | x                  | x                  | x                   | x                   | x                   | 3              |  | 21         |

YEARS OF SERVICE

- (b) Up to four (4) firefighters per shift shall be eligible on the basis of seniority to select simultaneous two-week vacations without regard to any conflict caused by conditions in scheduling. If a member with less than five (5) years chooses to select three (3) consecutive days, those days must be of the same cycle. Furthermore, another member with less than five (5) years may choose to take the remaining, available, three (3) day cycle and it will count as one (1) complete two-week vacation selection.
- (c) Vacation schedules shall be posted by the Fire Department Management by December 1<sup>st</sup> of each year. Vacation selection shall commence one full cycle after January 1<sup>st</sup>, and be completed by the end of the 3<sup>rd</sup> day of that cycle. Each firefighter must be prepared to select their vacation on any day of that cycle, between 0700 and 1700 hours, unless other written arrangements that do not conflict with the seniority process are made ahead of time with copies going to the Chief or representative and the Union Executive Board. Vacation picks maybe selected after 1700 hours if the officer in charge of vacation selections chooses and the next member in line to select agree. If the next member in line is not ready to select their vacation and it is after 1700 hours, then vacation selections will cease until their shift's next regular work day.
- (d) A firefighter who fails to select their vacation during this time will be passed and shall go to the bottom of the vacation selection list. Available days for vacation or random leave are any days beginning between January 2 and January 1 of the following year that the firefighting workforce does not drop below the minimum manpower requirements in Article XIX.
- (e) During each round of selections after the first round, firefighters may only select up to three workdays per round. Each subsequent selection round will start on or by the start of the shift's next regularly scheduled work day. After the final vacation-selection round, there will be another round during which firefighters will select one Random-leave day based on seniority.



receive four (4) work days of vacation.

- (b) Fire Marshals having completed two (2) years of service, but less than five (5) years, shall receive eight (8) days of vacation.
- (c) Fire Marshals having completed five (5) years of service, but less than twelve (12) years, shall receive fifteen (15) work days of vacation.
- (d) Fire Marshals having completed twelve (12) years of service, but less than seventeen (17) years of service, shall receive twenty (20) work days of vacation.
- (e) Fire Marshals having completed seventeen (17) years of service, but less than twenty-five (25) years, shall receive twenty-six (26) work days of vacation.
- (f) All employees assigned as Fire Marshals shall receive 2 random days in addition to their vacation days.
- (g) All employees assigned as Fire Marshals will have their vacation selections approved by the Fire Chief.

#### Section 4 – Deferred Compensation Sell Back

Firefighters may elect, at their discretion, to have the straight-time hourly value (see Article VII, Section 2, Article C) of up to two (2) Open Vacation or Random Days invested into their Deferred Compensation. Usage of the conversion benefit is in lieu of the usage of those two (2) days. In order for firefighters to participate in this benefit, the firefighter must elect this option before picking their Open Vacation or Random Days.

## ARTICLE XII

### Sick Leave

#### Section 1 – Firefighter

During illness, a firefighter's pay shall continue subject to the right of the Board of Public Works and Safety to require a physician's statement confirming the firefighter's illness and their inability to perform their duties. Medical disabilities shall be determined by the firefighter's pension board. Medical disability for a Civilian Firefighter/Paramedic shall be determined by the City's designated physician.

#### Section 2 -- Work-Related Injury -- Civilian Firefighter/Paramedic

The City will provide a disability and income program for civilian firefighter/paramedics. This insurance benefit shall continue in effect until such time as a similar disability insurance program for municipal civilian firefighter/paramedics shall be established and funded by the Federal government, the State of Indiana, or some other governmental agency.

## ARTICLE XIV

### Insurance

#### Section 1 - Life and Accident

The City shall maintain in effect for each firefighter a life insurance policy of Fifteen Thousand (\$15,000.00) Dollars double indemnity.

The City shall also provide a \$50,000.00 life insurance policy for each civilian firefighter/paramedic in the event they are killed in the line of duty; provided, however, if federal or state legislation is passed providing such coverage, as in the instance of the police and firemen, then the City need not provide such coverage. Such a policy must include coverage for death by disease contracted in-the-line-of-duty.

#### Section 2 - Medical and Hospital

The City shall offer medical and hospital care coverage to all firefighters, including those off work due to injury and/or illness, throughout the life of the Agreement complying with the terms included in the Insurance Memorandum attached to this agreement.



## ARTICLE XVI

### Duties of Firefighters

- (a) Firefighters duties shall consist of the following:
  - (1) All work directly connected with firefighting services, emergency medical services, fire prevention, and public education.
  - (2) Specialty work including water and aerial rescue services, hazardous material emergency response services, water rescue and recovery, fire protection services in the area of code enforcement and fire and arson investigation.
  - (3) Keeping all staffed stations and fire department vehicles clean, including performing general-maintenance tasks for the presentable upkeep of station grounds and quarters.
- (b) Firefighters shall not be required to perform heavy maintenance work or work which requires special skills, including plumbing, electrical work, and painting; however, a firefighter may voluntarily perform these tasks if qualified.
- (c) After all of the duties required under paragraph (a) are performed to the satisfaction of the Fire Chief or representative, firefighters may engage in personal activities which do not interfere with the duties of other members of the fire department.
- (d) Firefighters shall not be required to engage in training, schooling or station maintenance on Sundays or on the Holidays listed in this Agreement. Management may provide training on two (2) Saturdays per year, per shift. Any further Saturday training sessions require advance approval by the Union's Executive Board. Management shall provide a minimum of seven (7) days' notice prior to each occurrence of Saturday training.

## ARTICLE XVIII

### Joint Safety Committee

#### Section 1 - Adoption of Safety Program

A joint safety program shall be adopted and enforced by a joint safety committee comprised of an equal number of representatives from the Union and the City.

#### Section 2 - Special Items of Safety Equipment

The Cascade system or any replacement system shall be tested not less than annually and maintained in good working order.

#### Section 3 - Fresh Air Tanks

Fresh air tanks shall be tested hydrostatically at least every five (5) years, per code No. DOT49 CFR.

#### Section 4 - Testing of Other Items

All aerial ladders and platform trucks shall be tested, at least once every three (3) years for defects and all defects shall be promptly repaired by the City.

while manned by less than three (3) firefighters, then the firefighters next in line on the recall list shall be entitled to overtime pay of not less than four (4) hours.

- (g) Whenever a reserve pump truck is put in service to take the place of a piece of equipment that is manned normally by two (2) firefighters and enough manpower is available, it shall be manned with three (3) firefighters.
- (h) All disabled firefighting motor vehicle equipment, excepting automobiles, shall be repaired and placed back in service as soon as reasonably possible.

### Section 3 - Vacancies

- (a) The City will make a diligent effort to fill all vacancies in the Fire Department within sixty (60) calendar days after such vacancies occur. In the event a vacancy is not filled within sixty calendar days, the City shall furnish immediately thereafter a written explanation to the Union outlining the reason the vacancy has not been filled.
- (b) All vacancies in rank as a result of promotion shall be filled within (30) days.
- (c) All vacancies in ranks as a result of a resignation, retirement, or termination will be filled within thirty (30) days, or when the vacating firefighter ceases to receive compensation by the City for hours worked or other time owed, whichever is later. Vacancies will be posted within seven (7) days of action by the Board of Public Works and Safety creating the vacancy.

### Section 4 -- Driver Operator and First Class Firefighter Positions

- (a) There shall be not less than thirty (30) firefighters holding the rank of Driver Operator (DO).
- (b) All firefighters shall be automatically promoted to the rank of First Class Firefighter on or before the third anniversary of their hire date.



**ARTICLE XX**  
**Grievance Procedure and Arbitration**

- (a) A "grievance" is defined to mean any difference that may arise between the parties or between the City and a firefighter employee covered by this Agreement as to any matter involving interpretation, meaning, application or violation of any of the provisions of this Agreement. A "grievant" is defined as any firefighter employee covered by this Agreement, group of firefighter employees or the Union.
1. It shall first be the responsibility of the grievant to reduce the grievance into writing within thirty (30) days after it arises and present it to the Chief.
  2. If the grievance is not resolved after a period of thirty (30) days after being presented to the Chief or acting Chief, the written grievance shall be presented to the City's Board of Public Works and Safety within ninety (90) days for determination and settlement.
  3. If the grievance is not settled by the Board of Public Works and Safety within fourteen (14) days to the satisfaction of the grievant, then the matter may be submitted to arbitration in accordance with the terms and conditions set forth below.
- (b) The establishment of this method of arbitration shall not in any way whatsoever be deemed to be a recognition by the City of compulsory arbitration as a superior method of settling labor disputes, but rather shall be deemed to be a recognition solely of the necessity to provide an alternative method or mode of settling labor disputes where employees must, as a matter of public policy, be denied the usual right to strike.
- Therefore, in the event that the grievant and the City are unable to satisfactorily resolve a grievance before the Board of Public Works and Safety, either party may send written notice of a demand for arbitration to the other party and the dispute shall be submitted to arbitration before an impartial arbitrator selected as provided below.

## ARTICLE XXI

### Savings Clause

If any provision of this agreement, or application thereto to any person or circumstances, is held unconstitutional or otherwise invalid, the remaining provisions of this Agreement and the application of such provisions to other persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

#### Section 4 - Firefighter's Responsibilities

(a) As a condition precedent to the right of indemnification under this Article, any firefighter desiring indemnification shall:

- (1) Tender in writing to the City's attorney a notice of its right to appear and defend any litigation as may result in a judgment covered by this Article and grant to the City the right to make such investigation, negotiation and settlement of any claim as the City deems appropriate.
- (2) Give written notice containing the particulars sufficient to identify the firefighter involved and information as to the time, place and circumstances thereof to the City's attorney as soon as reasonably practical following a covered occurrence.
- (3) Forward immediately any or all suit papers, demands, notices, summons, complaint or other process received by such firefighter or their representative to the City's attorney.
- (4) Cooperate with the City in the conduct, defense or settlement of any legal proceeding and additionally grant the City the right to free access and use of all hospital, medical and doctor's records and reports as to any firefighter's physical or mental condition in the conduct, defense or settlement of any legal proceedings.

apparatus.

4. **"Mechanics"** means those firefighters assigned to the maintenance and repair of fire suppression vehicles and all other Fire Department mechanical equipment.
5. **"Information Technology" (IT)** means a firefighter who maintains the computer systems within the Fire Department including but not limited to Firehouse software, Mobile Data Terminals, and GPS data

- C. The City agrees to offer to train at least the following number of firefighters for each of the following specialties:

| <u>Specialty</u>                              | <u>Number of Firefighters</u> |
|-----------------------------------------------|-------------------------------|
| Water Rescue/Recovery Team                    | 12                            |
| Water Rescue/Recovery Team Leaders            | 3                             |
| Water Rescue/Recovery Apprentices             | 6                             |
| Self-Contained Breathing Apparatus Technician | 3                             |
| Mechanics                                     | 3                             |
| IT                                            | 2                             |

- D. The City shall train such additional firefighters as may be necessary, from time to time, to maintain the specialty programs listed in this paragraph, provided, however, there are firefighters available who desire to be so trained.
- E. If less than the specified number of firefighters enroll to be trained for a particular specialty, then the City shall be obligated to train only those firefighters who have enrolled in a specialty program.
- F. If a firefighter withdraws from certain specialty training after the training commences or fails to successfully complete such training for any other reason, the firefighter shall still be counted toward the City's obligation to train a specific number of firefighters for that specialty.



## ARTICLE XXIV

### EMS Certification and Pay

A. This article applies to firefighters employed as Advanced Emergency Medical Technicians (AEMT), and Paramedics.

B. Definitions.

1. **“Advanced Emergency Medical Technician (AEMT)”** means a firefighter who is certified by the Indiana Emergency Medical Services Commission as an AEMT and is qualified by the local Medical Control Board to provide advanced life support care.
2. **“Lead Paramedic”** means a paramedic who has obtained lead paramedic status from the St. Joseph County EMS Committee.
3. **“Firefighter/Paramedic”** means a firefighter who is dually certified as both a firefighter and a paramedic and is assigned to an ambulance.
4. **“Civilian Firefighter/Paramedic”** means a firefighter paramedic assigned to an ambulance and receives the PEP compensation.
5. **“Paramedic”** means a firefighter who is licensed by the Indiana Emergency Medical Services Commission as a Paramedic and is qualified by the local Medical Control Board to provide paramedic level care. The term includes Firefighter/Paramedics and Civilian Firefighter Paramedics.

C. The City agrees to send qualified firefighter(s) to Advanced/Paramedic school on an as needed basis or as stipulated in their terms of employment at time of hiring.

paramedic licensure or leaves employment of the City of Mishawaka's Fire and EMS Department, the firefighter agrees to reimburse the City for costs associated with paramedic training on a pro rata basis. After completing seven (7) years assigned to an ambulance, an individual may request in writing to the Chief to be assigned to a fire-suppression vehicle. The firefighter making the request will have first priority for the next available fire-suppression-vehicle opening. Management will accommodate requests for transfer from full-time ambulance duty prior to seven (7) years, subject to manpower restrictions.

F. All requests to drop a certification, licensure or Lead Paramedic status must be made prior to the end of business on October 15 in order to be effective November 1. Any firefighter not making such request prior to the October 15 deadline shall maintain certification, licensure or Lead Paramedic status until at least November 1 the following year. Dropping such certification, licensure, or Lead Paramedic status after the October 15 deadline shall result in forfeiture of all associated annual Tier 1 payments for that annual period.

G. Certification, licensure, and Paramedic status requirements are defined in City of Mishawaka Board of Public Works and Safety Resolutions 2011-05, 2011-06, 2011-07, and 2011-08.

If a firefighter is required to attend off-duty training or certification classes in order to achieve certification, the firefighter shall be reimbursed for each hour of necessary off-duty training at the applicable overtime rate.

## ARTICLE XXVI

### Pay Days

#### Section 1 - Pay Period

Firefighters shall be paid bi-weekly, (every other Friday).

#### Section 2 - Additional Pay Periods

All other pay shall be dispersed by the City as follows:

- (a) Uniform allowance pay will consist of four (4) equal and separate checks payable quarterly on or before the first (1st). New hires will receive a lump sum payment at the time of their first scheduled pay period.
- (b) If a regular pay day falls during a firefighter's vacation, the firefighter shall receive their pay check in advance prior to going on vacation, providing they make a written request for their check two (2) weeks in advance to the person responsible for Department payroll.
- (c) Payment of Specialty Pay. All specialty pay shall be paid in a lump sum as part of the last pay in November of each year.

## ARTICLE XXVIII

### Emergency Leave

Firefighters shall have the privilege of leaving the fire station for immediate family emergencies. In such cases, the following guidelines must be followed as closely as possible;

- (a) Firefighter must notify the officer in charge of the emergency.
- (b) Firefighter must call officer in charge within the first two (2) hours and give their status as to if they will be returning to work in the next two (2) hours.
- (c) Once the emergency is taken care of and the firefighter's presence is no longer needed, they shall return to work.
- (d) The officer in charge will call in overtime if below the minimum manpower and it is determined that the firefighter on emergency leave will not be returning to work within the four (4) hour time frame set forth above.
- (e) Any added days needed, the firefighter is required to make their own arrangements, such as, to trade days, take vacation days, or arrangements made through the Chief.



partial overtime is any overtime that originates as less than twenty-four (24) hours and will be filled from the partial overtime list.

- (e) If a member is working a partial overtime slot and another concurrent partial overtime slot becomes available during that day, the member working the partial overtime will have the option to extend their partial overtime to fill the new partial overtime slot that is needed. If there is more than one member working a partial overtime that precedes another concurrent partial overtime, members will be offered the concurrent overtime in order of acceptance of the previous partial overtime in the order of first accepted to last. If that member(s) declines to work the new partial overtime slot, a new call out for partial overtime will begin.
- (f) Members will have the option to accept the 24-hour overtime slots as noted: 24 hours, first 12 hours, second 12 hours, decline. Overtime that originates as a twenty-four (24) hour overtime, in the event it completes and is unfilled, will continue to be filled from the partial overtime list. (i.e., if a member accepts twelve (12) hours of a twenty-four (24) overtime slot, the remaining twelve hours will continue to be filled from the partial overtime list.
- (g) Members will maintain their place on the overtime list if they turn down an offer to work overtime. When a member accepts an overtime assignment they will be placed at the bottom of the overtime list.
- (h) Each member will have the option of being contacted via mobile application, phone call, text message, or email.
- (i) For any overtime occurring the same day of the overtime needed the automated system shall wait one (1) minute between calls. For any prescheduled overtime the automated system will wait two (2) minutes between contacting members to allow for that member to

- (n) If there is a need for "Emergency Overtime" during a multi alarm incident, the Officer in Charge will send out an "Emergency Overtime" request via the automated system to all members of the Fire Department. Members can accept this "Emergency Overtime" on a first come first serve basis. Members who accept this "Emergency Overtime" will not be moved on the voluntary overtime list.
- (o) Fire Marshals are to be included on all overtime master lists, with the exception of the "ordered to work list."
- (p) In the event a Fire Marshal is on overtime during their "On Call" period and is needed to investigate an incident, they will be allowed to be removed from their apparatus position, while still counting towards minimum staffing, to perform their Fire Marshal responsibilities until they are completed. Upon completion they will return to their previously assigned riding position.

(iv) Whenever a delay in conducting the interview will not jeopardize the successful accomplishment of the investigation or when criminal culpability is not an issue, advance notice shall be given the firefighter not less than twenty-four (24) hours before the initial interview commences or written reports are required from the firefighters.

(b) Interview Safeguards - Any interview of a firefighter shall be when the firefighter is on duty unless the seriousness of the complaint dictates otherwise.

(i) Interviews shall take place at the firehouse facility, or elsewhere if mutually agreed, unless the emergency of the situation necessitates otherwise.

(ii) The firefighter may have a Union representative and/or attorney present to witness the interview. However, the interview may not be unduly delayed awaiting an unavailable Union representative when other Union representatives are available.

(iii) An attorney or representative chosen by the firefighter must be, depending upon the seriousness of the investigation and the need for immediate action, available within a reasonable period of time and under no circumstances will any interrogation session be delayed more than twenty-four (24) hours because of the unavailability of the attorney or representative chosen by the firefighter. However, no matter how extreme an emergency exists, no interrogation shall take place until the firefighter shall be given a minimum of three (3) hours to obtain the services of a representative and/or attorney.

(iv) During the interrogation of the firefighter, the attorney or representative shall not make any statements or objections of any kind to the investigator nor will they in

requests inclusion of the complete record.

- (ii) No dismissal, demotion, or other punitive measures shall be taken against the firefighter unless they are notified of the action and a reason for such action prior to the effective date of such action.

3. Personal Privileges

- (a) No firefighter shall be required for purposes of assignment or other personnel action to disclose any item of their property, income, assets, source of income or personal or domestic expenditures including those of any member of their family, unless such information is obtained pursuant to proper legal process or tends to indicate a conflict of interest with respect to the performances of their official duties.
- (b) No firefighter shall have their residence, private place of business, if any, private vehicle or locker space assigned to them by the Fire Department searched unless a valid search warrant is obtained or they voluntarily agree to such search.
- (c) No member of the immediate family of the firefighter shall be required to give a statement to the investigator and prior to requesting any member of the immediate family of the firefighter to give a statement, the firefighter shall be given notice of such intended request and the firefighter shall be given an opportunity to confer with that family member before that family member shall be asked to give a statement.

- 4. Political Activities - No firefighter shall be prohibited from engaging in political activities except when on duty.
- 5. Polygraph Examinations - A firefighter under investigation shall not be required to take a polygraph examination unless their accuser or accusers agree to take such a polygraph examination, and have taken such examination prior to the firefighter being asked to take



the end of which time they shall be destroyed, in the presence of the firefighter who is the subject thereof, if they so desire, provided, however, the personnel file shall nevertheless contain a summary record of discipline setting forth the appropriate dates, charges, findings and penalty imposed.

- (b) A firefighter shall have the opportunity, at a reasonable time during office hours, to review their active file and any closed investigative file in which they were the accused. In the event there is any comment adverse to their interests in their personnel file, the officer shall have the right to file a written response thereto, which written response shall be attached to said adverse comments; and, additionally, they shall have the right to file a grievance in regard to any such matter which is of such gravity that it could affect their promotional opportunities, which grievance shall then be processed in accordance with grievance procedures.
- (c) Any firefighter who is reprimanded in any way, either orally, in writing, by suspension, deprivation of overtime or any other benefits, or disciplinary action in any way, shall have the right of appeal as provided by law.

## **ARTICLE XXXII**

### **Specialty Teams**

All specialty teams shall be operated strictly in accordance with each program's the Standard Operating Procedure (S.O.P.), in effect as of the date of this Agreement. An S.O.P. relating to a specialty team shall not be changed except by mutual agreement between the Union and the City.

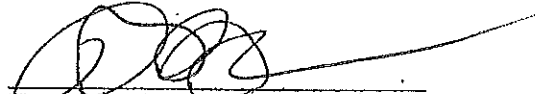
## **ARTICLE XXXIV**

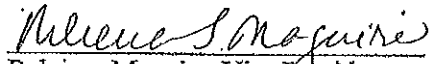
### **Retiree Health Insurance**

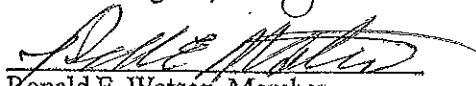
Each retired firefighter of the City of Mishawaka Fire Department shall be eligible for health coverage or credit according to the parameters set forth by ordinance of the City.

IN WITNESS WHEREOF, the parties have executed this Agreement by their authorized representatives in Mishawaka, Indiana, this \_\_\_\_th day of December, 2021.

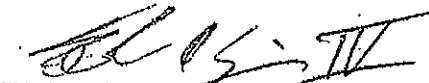
**CITY OF MISHAWAKA, INDIANA  
BOARD OF PUBLIC WORKS AND SAFETY**

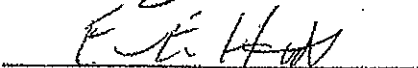
  
Kenneth B. Prince, President

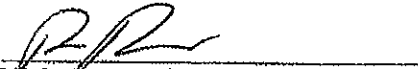
  
Rebecca Maguire, Vice President.

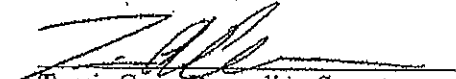
  
Ronald E. Watson, Member

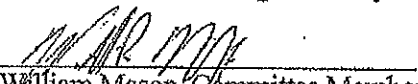
**MISHAWAKA FIREFIGHTERS ASSOCIATION LOCAL NO. 360 OF THE  
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS AFL-CIO**

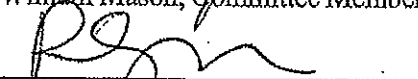
  
Frank Zappia IV, President

  
Eric Hiatt, Vice President

  
Nicholas Ponsler, Treasurer

  
Travis Corn, Recording Secretary

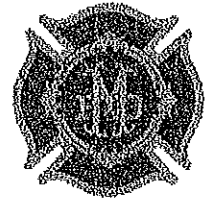
  
William Mason, Committee Member

  
Randi Sotelo, Committee Member





# CITY OF MISHAWAKA



IAFF Local 360 Executive Board

MISHAWAKA FIRE DEPARTMENT  
Bryon Woodward  
Chief of Department

## Agreed Upon Contract Changes 2021

### ARTICLE VII - Wages

(d) Call in Pay - When a firefighter is mistakenly offered a overtime, management reserves the right to retract said offer and that member will be guaranteed four (4) hours overtime pay and regain their original place on the appropriate overtime list.

\* This is clean up language adding partial overtime to match 24-hour overtime language.

### Article VIII - Hours of Employment

#### Section 1 – Work Schedule

(b) For Fire Marshals, the regular work week shall be thirty-six (36) hours consisting of four (4) days **weekdays** at nine hours per day. ~~Each Fire Marshal shall be entitled to either Monday or Friday off.~~ **Work week schedules shall be approved by the Fire Chief of their designee.** Each Fire Marshal shall be entitled to either Monday or Friday off. There shall be no **less** than three (3) Fire Marshals.

#### Section 2 - Trading Days

Subject to the approval of the Assistant Chief or the Assistant Chief's designee, and the department being able to meet and maintain minimum manpower requirements, firefighters shall be permitted to voluntarily trade scheduled work and unpicked random days. Random days traded will be used like any other random day would be, with one exception, it does not carry any seniority when a three (3) week posting is necessary. Firefighters will not be allowed to "borrow" time from the City.

The firefighter that accepts the trade request and agrees to work the tour of duty that is specified by the trade request, is the firefighter that is responsible for working that specified tour of duty. Failure to report for duty on the agreed upon day, shall constitute an unauthorized absence, and the firefighter agreeing to work the specified tour of duty shall be considered absent without leave, (AWOL) and may be subject to discipline. Once the trade time has been approved, the firefighter requesting the trade time is no longer responsible for working the tour of duty specified by the trade request, and shall not be subject to discipline or

reduction in pay if the accepting firefighter fails to report for duty on the tour of duty specified. The responsibility falls on the accepting firefighter to find coverage for the day.

If the day is available the accepting firefighter is allowed to take the day off as long as it does not drop the day below the minimum work force or create overtime at the time of their request.

The City shall incur no costs as a result of trade time between firefighters.

\* The goal is to always have at least one Fire Marshal on duty during the week, which by contract if two are off on Friday as their normal day off, for example, and the only working one is taking his vacation the office would be essentially vacant for the day. With the work load and daily calls their division receives we need to have them more available. Section 2 cleans up trade time language

### **Article IX – Holiday Schedule**

~~Easter Sunday - Remove~~

**Patriot Day – Add**

~~Any firefighter wishing to observe a moment of silence on Patriot Day may do so, so long as the exercise of such does not interfere with the performance of duties or risk public safety. –~~

~~Remove~~

\* They choose Patriot Day in honor of the 343 firefighters who died on 9/11.

### **Article X – Vacations and Leave**

1. (3) During the first round of selections, firefighters with more than five years of service must select six consecutive work days of vacation (a "two-week vacation"). Firefighters who have completed less than five (5) years of service must select at least ~~four (4)~~ **three (3)** vacation days consecutively, but not more than six (6).

\* This is just clean up language from the move from 2-platoon to 3-platoon as the four days does not line up with our current schedule any longer.

4. **A member who is set to retire in the calendar year of their vacation selection, may opt to defer picking all days with the notion of being paid for said days upon retirement. Members using this option must state in writing to the Fire Chief or their designee no less than seven (7) calendar days prior to the start of the two (2) week selection process. If a member then decides to cancel their retirement, they may select their vacation days after all of their respective shifts vacation rounds and Random-leave day selections have been completed and they will be awarded on a first-come-first-serve basis.**

\* This is new language created and is a mutual benefit, this way they do not pick anytime, get paid out the same at no additional expense to the city.

- (b) Up to four (4) firefighters per shift shall be eligible on the basis of seniority to select simultaneous two-week vacations without regard to any conflict caused by conditions in scheduling. **If a member with less than five (5) years chooses to select three (3) consecutive days, those days must be of the same cycle. Furthermore, another member**

with less than five (5) years may choose to take the remaining, available, three (3) day cycle and it will count as one (1) complete two-week vacation selection.

\* This is clean up language from 2 to 3 platoon again. It only benefits members with less than 5 years on, in the event they want to split their 2-week vacation. It has no cost impact and is easier for BC's to schedule and manage around.

- (c) Vacation schedules shall be posted by the Fire Department Management by December 1st of each year. Vacation selection shall commence one full cycle after January 1st, and be completed by the end of the 3rd day of that cycle. Each firefighter must be prepared to select their vacation on any day of that cycle, between 0700 and 2000 **1700** hours, unless other written arrangements that do not conflict with the seniority process are made ahead of time with copies going to the Chief or representative and the Union Executive Board. **Vacation picks maybe selected after 1700 hours if the officer in charge of vacation selections chooses to and the next member in line to select agree. If the next member in line is not ready to select their vacation and it is after 1700 hours, then vacation selections will cease until their shift's next regular work day.**
- (e) ~~After all firefighters have selected vacations during the first round, the Fire Department Management shall post all days available for firefighters entitled to three or more weeks of vacation or more. During each round of selections after the first round, firefighters may only select up to three workdays per round. Each subsequent selection round will start on the fifth calendar day after the previous round ended (so there will be four calendar days between rounds) or by the start of the shift's next regularly scheduled work day. After the final vacation-selection round, there will be another round during which firefighters will select one random-leave day based on seniority. All other random-leave days are available on a first-come-first-serve basis.~~
- (f) Any firefighter who splits their two-week vacation in the first round will pick their remaining days from their split two-week vacation as if they were random-leave **Open Vacation Days** (i.e. on a first-come-first-served basis.) So, if a firefighter chooses to let their vacation become random **Open Vacation Days**, they give up seniority selection rights.
- (g) ~~Management shall post a master list in all stations, of all days selected by each firefighter after the normal selection process is completed.~~

#### **Section 4 – Deferred Compensation Sell Back**

Firefighters may elect, at their discretion, to have the straight-time hourly value (see Article VII, Section 2, Article C) of up to two (2) Open Vacation or Random Days invested into their Deferred Compensation. Usage of the conversion benefit is in lieu of the usage of those two (2) days. In order for firefighters to participate in this benefit, the firefighter must elect this option before picking their Open Vacation or Random Days.

\*Language change; c, e, f, & g is language they agreed to that we presented to reflect the way we operate today with the technology we have in place for scheduling. Again, another instance where we felt the contract should actually reflect the way we are doing business. The sell back in new language.

#### **Article XV – Uniform Allowance**

1. \$625.00 one-time payment included in first (1st) year of service.

## **Article XVIII – Joint Safety Committee**

### **Section 2 - Special Items of Safety Equipment**

The Cascade system or any replacement system shall be tested not less than annually and maintained in good working order. ~~and not less than twenty-five (25) self-contained breathing apparatus in good working order shall be provided by the City so that all members of the Fire Department will have at their disposal protection from dangerous gas and smoke.~~

\* Unnecessary and outdated language, nobody employed here was here when it was originally put in the contract.

## **Article XIX – Department Strength**

### **Section 2 - Department Strength**

- (e) The City will man and run a minimum of three (3) paramedic ambulances. The City may run a fourth (4<sup>th</sup>) ambulance ~~only after at least four (4) pumper trucks or aerial/pumper combination trucks are manned by at least four (4) firefighters each. This requirement may be suspended for requested occasions only with the approval of the Union's Executive Board for each occasion~~ **as staffing allows.**

\* This is a monster benefit for our department and city for this language to be removed. Before we were limited to when we could actually place it in service on a temporary basis and usually by the time all the steps were taken it wasn't needed anymore. Also, equally important is when the time comes and we are able to add manpower to put a 4<sup>th</sup> ambo up every day, this language would need to be removed or hiring just 6 people would not make this possible. I give credit to their team for understanding this and being able to understand that this is about our community and providing a higher level of service, without wanting to potentially turn it into a big negotiation tactic or fight. They didn't have to agree to this and it wasn't easy to get them to, but they are willing to stand up for this change and understand it is needed.

## **Article XXIII – Specialty Positions**

### **B. Definitions.**

1. **"Water Rescue/Recovery Apprentice Diver" means those firefighters assigned to Water Rescue and Recovery Team in a reserve status. Apprentice divers will have the same responsibilities as frontline Dive Team members and will be moved into an "Active Status" on days when three (3) or less Dive Team members are on duty.**

- C. The City agrees to offer to train at least the following number of firefighters for each of the following specialties:

| <u>Specialty</u>                              | <u>Number of Firefighters</u> |
|-----------------------------------------------|-------------------------------|
| Water Rescue/Recovery Team                    | 12                            |
| Water Rescue/Recovery Team Leaders            | 3                             |
| <b>Water Rescue/Recovery Apprentices</b>      | <b>6</b>                      |
| Self-Contained Breathing Apparatus Technician | 3                             |
| Mechanics                                     | 3                             |



- I. Specialty pay shall be prorated to the date of acquiring the specialty. The following specialty pays are established:

| <u>Specialty</u>                              |                  |
|-----------------------------------------------|------------------|
| Water Rescue/Recovery Team                    | \$ 950.00        |
| Water Rescue/Recovery Team Leaders (3)        | \$ 1050.00       |
| <b>Water Rescue/Recovery Apprentice Team</b>  | <b>\$ 500.00</b> |
| Self-Contained Breathing Apparatus Technician | \$ 1,000.00      |
| Mechanics                                     | \$ 2,500.00      |
| IT                                            | \$ 1,500.00      |

\* This is another mutual benefit, it provides them safety and competent divers, which we are obligated to provide to them. This is the only item that creates new money at this time (\$3000 in total) and was included in process budget for 2022.

### Article XXVII – Training New Firefighters

Upon commencement of employment, a firefighter shall not be considered part of the firefighting work force until ~~having received at least one hundred eighty-nine (189) hours of on-the-job training~~ **they have completed a designed competency-based training program.** Training will be performed Monday through Friday, except for firefighters to attend Recruit Fire Academy events scheduled on Saturdays.

\* Allows us to make sure new recruits are competent before allowing them to go on shift, again old and antiquated language. Most programs in the country are based on a 220-hour curriculum, this takes the need for hours to go away and puts it ownness quality of instruction. The benefit to the city is also if we hire a lateral transfer or an experienced person from a smaller department, we can get them into the workforce in less than a third of the time it would normally take. It's is similar to PD's modified FTO program for new hires.

### Article XXIX Overtime Call in Procedure

#### Section 2 – Call in Procedure

(e) If a member is working a partial overtime slot and another **concurrent** partial overtime slot becomes available during that day, the member working the partial overtime will have the option to extend their partial overtime to fill the new partial overtime slot that is needed. **If there is more than one member working a partial overtime that precedes another concurrent partial overtime, members will be offered the concurrent overtime in order of acceptance of the previous partial overtime in the order of first accepted to last.** If that member(s) declines to work the new partial overtime slot, a new call out for partial overtime will begin.

(f) Members will have the option to accept the 24-hour overtime slots as noted: 24 hours, first 12 hours, second 12 hours, decline. Overtime that originates as a twenty-four (24) hour overtime, in

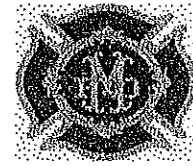
the event it completes and is unfilled, will continue to be filled from the partial overtime list. (i.e., if a member accepts twelve (12) hours of a twenty-four (24) overtime slot, the remaining twelve hours will continue to be filled from the partial overtime list.

- (i) For **any** overtime occurring the same day of the overtime needed the automated system shall wait two ~~(2) minutes~~ **one (1) minute** between calls. For any prescheduled overtime the automated system will wait five ~~(5)~~ **two (2)** minutes between contacting members ~~the automated~~ to allow for that member to respond before moving on to the next member on the list. After the initial contact, the overtime may be accepted until secured.
- (m) If after the master overtime request, the overtime slot is still not secured, the overtime slot shall be offered to the Fire Chief and Assistant Chiefs, offered first to the Fire Chief or Assistant Chief who has least recently worked overtime, then to the next least recently, and so on. If no Fire Chief or Assistant Chief accept the overtime slot, the Officer in Charge may "order" someone to work the vacancy. The Officer in Charge shall maintain an "ordered to work" record and shall rotate this duty equally among all Fire Department personnel. Ordered to work shall be offered by reverse seniority. Any firefighter that is ordered to work shall maintain their place on the voluntary overtime list and be moved to the bottom of the "ordered to work" list. Any employee that is "ordered to work" overtime shall only be mandated to work 12 hours maximum as a result of that "order to work". Members cannot be "ordered to work" if it coincides with a vacation day, random day, off duty on a twenty-four (24) hour trade day, SC day or already working greater than or equal to seventy-two (72) hours consecutively.
- (o) In the event a Fire Marshal is on overtime during their "On Call" period and is needed to investigate an incident, they will be allowed to be removed from their apparatus position, while still counting towards minimum staffing, to perform their Fire Marshal responsibilities until they are completed. Upon completion they will return to their previously assigned riding position.**

\*Reflects the way we utilize technology to be more efficient in calling OT. Plus, it adds Fire Marshals to their rotation, not during their normal business hours, to help with ordering in firefighters. There is also protection in that instance that we would not have to call a second OT in the event a Fire Marshal needs to fulfill his normal duties, a concession they made to us to add the Fire Marshals to the rotation. (m) allows the Chiefs to work



# CITY OF MISHAWAKA



DAVID A. WOOD, MAYOR

MISHAWAKA FIRE DEPARTMENT

Bryon Woodward  
Chief of Department

A. Pay schedule (in addition to base pay):

Tier 1 is awarded annually for certification or licensure (and maintenance of certification or license). Tier 2 is awarded annually upon completion of 50 scheduled days on an ambulance in a given calendar year (November 1 through October 31 of the following year).

| <u>Status</u>  | <u>Tier 1</u> | <u>Tier 2</u>                  |
|----------------|---------------|--------------------------------|
| AEMT           | \$1000.00     | \$3000.00                      |
| Paramedic      | \$2000.00     | <del>\$0.00</del><br>\$4000.00 |
| Lead Paramedic | \$4000.00     | <del>\$0.00</del><br>\$0.00    |

In addition to Tier 1 pay, Lead Paramedics shall be paid ~~\$50.00~~ **\$100.00** for each full day worked as scheduled Lead Paramedic on the ambulance. When not scheduled for a full day on the ambulance, Lead Paramedics shall be paid ~~\$25.00~~ **\$50.00** for each instance working twelve (12) consecutive hours as scheduled Lead Paramedic on the ambulance. If a 12-hour Lead Paramedic slot on the ambulance is split between two (2) firefighters, the firefighter working the greater portion of the twelve (12) hours shall be paid ~~\$25.00~~ **\$50.00**. The firefighter working the lesser portion of the twelve (12) hours shall receive no additional pay.

In addition to Tier 1 pay, A-EMT's and non-Lead Paramedics shall be paid ~~\$50.00~~ for each full day worked as scheduled non-Lead Paramedic on the ambulance. When not scheduled for a full day on the ambulance, non-Lead Paramedics shall be paid ~~\$25.00~~ for each instance working twelve (12) consecutive hours as scheduled non-Lead Paramedic on the

3000 Harrison Rd. • Mishawaka, IN • 46544 • (574) 257-0620  
Fax (574) 254-1698 [www.mishawaka.in.gov](http://www.mishawaka.in.gov)

ambulance. If a twelve (12) hour non-Lead Paramedic slot on the ambulance is split between two (2) firefighters, the firefighter working the greater portion of the twelve (12) hour shall be paid ~~\$25.00~~. The firefighter working the lesser portion of the twelve (12) hours shall receive no additional pay.

**Contract offer must include all items listed below to be agreed upon:**

1. The city will agree to include the ride pay amounts previously negotiated with the Council into the CBA.
2. All language will match for overtime, Tier 1 and Tier 2 levels.
3. The city will withdraw their lawsuit against Local 360.
4. Local 360 will agree to forgo back pay from years 2020 and 2021 that was previously negotiated with the Council.
5. The parties to the case entitled, City of Mishawaka v. Mishawaka Firefighters Association, Local No. 360, Cause No. 71C01-2002-PL-000056, will execute a mutual release of all claims, past, present and future, arising out of or associated with the subject matter of that declaratory judgement lawsuit, including but not limited to the EMS Pay Amendment; Reimbursement Amendment; and the Grievance referenced in the Complaint.

DEC 15 2021

City Clerk  
Mishawaka, IN

PROPOSED ORDINANCE NO. 2021-46

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE APPROVING AN AGREEMENT BETWEEN  
THE CITY OF MISHAWAKA AND THE EMPLOYEES OF THE CENTRAL  
SERVICES DEPARTMENT, REPRESENTED BY THE INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS LOCAL NO. 364**

WHEREAS, the contract negotiating committees for the City of Mishawaka, Indiana and the International Brotherhood of Teamsters Local No. 364 have mutually reached an agreement on amendments to the Collective Bargaining Agreement expiring the 31<sup>st</sup> day of December 2021; and

WHEREAS, the members of the International Brotherhood of Teamsters Local No. 364 have ratified the new Collective Bargaining Agreement and the governing body of said Association has executed the new Agreement on their behalf; and

WHEREAS, on the 30<sup>th</sup> day of November, 2021, the City of Mishawaka, Indiana, acting by and through its Board of Public Works & Safety, approved the new Collective Bargaining Agreement with the International Brotherhood of Teamsters Local No. 364, a copy of which is attached hereto; and

WHEREAS, Ordinance No. 1666 requires all Collective Bargaining Agreements to be approved by the Common Council of the City of Mishawaka.

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

Section 1. The Collective Bargaining Agreement executed the 30<sup>th</sup> day of November, 2021, effective January 1, 2022, between the Board of Public Works & Safety of the City of Mishawaka, Indiana and the International Brotherhood of Teamsters Local No. 364 is hereby approved.

Section 2. 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 \_\_\_\_\_, 2021, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Gregg Hixenbaugh  
Presiding Officer



ATTEST:

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

PRESENTED by me to the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2021, at  
\_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Deborah S. Block, CMC, City Clerk

APPROVED by me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_\_  
o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
David A. Wood, Mayor

**RESOLUTION NO. 2021-04**

**MISHAWAKA BOARD OF PUBLIC WORKS AND SAFETY**

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF MISHAWAKA AND THE EMPLOYEES OF THE CENTRAL SERVICES DEPARTMENT, REPRESENTED BY THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL NO. 364.

**WHEREAS**, the City of Mishawaka and the International Brotherhood of Teamsters Local 364, Local No. 360 have agreed to a Collective Bargaining Agreement for the period of January 1, 2022 to December 31, 2024; and

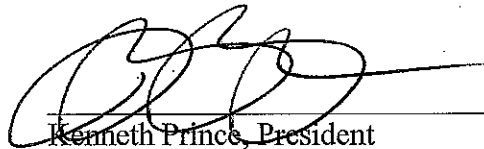
**WHEREAS**, such Agreement requires the approval of the Mishawaka Board of Public Works and Safety and the Mishawaka Common Council;

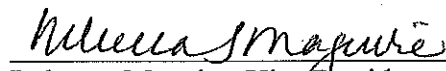
**NOW, THEREFORE, BE IT RESOLVED** by the Board of Public Works and Safety of the City of Mishawaka that:

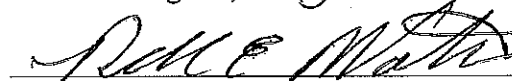
Section 1. The attached Collective Bargaining Agreement between the City of Mishawaka and the International Brotherhood of Teamsters Local 364 is hereby approved, and

Section 2. This Resolution shall be forwarded to the Mishawaka Common Council for its review and final action.

ADOPTED by the Board of Public Works of the City of Mishawaka, on this 7th day of December, 2021.

  
Kenneth Prince, President

  
Rebecca Maguire, Vice President

  
Ronald E. Watson, Member

ATTEST:

  
Kari Myers, Clerk of the Board



# CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF HR

December 16, 2021

Mishawaka Common Council  
600 East Third Street  
Mishawaka, Indiana 46544

Deborah S. Block, IAMC, MMC

DEC 15 2021

Mishawaka, IN

Mr. President and Honorable Members of the Council:

I respectfully request your approval of the attached proposed ordinance, approving the collective bargaining agreement between the City of Mishawaka and the International Brotherhood of Teamsters, Local No. 364 for certain employees of the City of Mishawaka Central Services Department.

I plan to attend the meeting to speak in favor of approval and to be available to answer questions at the pre-Council meeting that evening. Feel free to contact me prior to the meeting at 574-258-1615 or at [skile@mishawaka.in.gov](mailto:skile@mishawaka.in.gov).

Thank you in advance for your consideration.

Sincerely,

Susan W. Kile, PHR  
Human Resources Director

**ARTICLES OF AGREEMENT  
THE CITY OF MISHAWAKA CENTRAL SERVICES DEPARTMENT  
AND TEAMSTERS LOCAL UNION NO. 364  
01/01/2022 through 12-31-24**

THIS AGREEMENT is between the CITY OF MISHAWAKA (the Employer) Teamsters Local No. 364 (the Union).

The Employer and the Union desire to establish and maintain sound labor relations, to facilitate the peaceful adjustment of grievances which may arise between the Employer and its employees, to promote safe and efficient operation of the department, and to strive for a high standard of workmanship in the Department.

**ARTICLE 1  
RECOGNITION, UNION SHOP AND CHECK-OFF**

**Section 1.**

- A. No unit employee shall be required to become a member of the Union as a condition of employment or continued employment, and the parties agree that there shall be no discrimination by either the Employer or the Union against any unit employee because of membership or non-membership in the Union.
- B. It is recognized and agreed that unit employees may or may not join the Union in accordance with the desires of individual employee.
- C. It is further recognized that the Union, as the exclusive representative of all unit employees, regardless of whether the individual employees are Union members or not, owes the same duty of representation to all unit employees and agrees to provide such services to all unit employees; therefore, all unit employees shall, within ninety (90) days of the date of hire, pay a collective bargaining contract administration fee to the Union in an amount equal to the actual cost incurred by the Union for its representation of all unit employees, but such amount shall not exceed the monthly dues assessed Union members. The Union further agrees that no portion of the employee union dues or service fee assessments shall be used or expended for the support of political campaigns of individual, local, state, or national political candidates for public office, nor shall any union dues be used for this purpose.
- D. The Employer shall deduct from the pay due all employees in the bargaining unit covered by this Agreement one month's union dues or service fee each alternate pay period not exceeding an amount certified by the Union and shall forward such dues and service fees to the Financial Secretary of the Union not later than the tenth (10<sup>th</sup>) day of the following month; provided, however, the employee has signed a written wage assignment. Such wage assignment shall continue in effect for the duration of this contract or until receipt by the Employer of a written notice of revocation of such order by the employee.
- E. The Employer shall not be held liable for not collecting union dues or service fees for any month in which the employee receives (after deduction) pay less than the amount of such dues or service fees.
- F. In the event an employee is receiving advance pay, such employee's union dues or service fees shall be deducted from that pay.
- G. Union dues and service fees shall be authorized only during the existence of this Agreement.

**ARTICLE 2**  
**DEFINITIONS**

The following definitions are a part of this Agreement:

- A) **Advance Pay** -- Any compensation earned by an employee that is paid one (1) to three (3) days before that employee's vacation leave period begins.
- B) **Bargaining Unit** -- All employees of the Mishawaka Central Services and Sewer Departments who are represented by the Union for collective bargaining purposes.
- C) **City** -- Shall mean the Civil City of Mishawaka.
- D) **Classification** -- Means any grouping of employees with similar job duties and with the same rate of pay.
- E) **Compensatory Time** -- Means paid time off, which is accrued for overtime hours actually worked at the rate consistent with overtime pay.
- F) **Employee** -- All persons employed full-time by the City of Mishawaka Central Services Department, except department heads, supervisors, professional people, general foremen, part-time employees, temporary employees, office manager, and clerical personnel.
- G) **Full-time Employee** -- An employee who works at least forty (40) hours per week and for more than five (5) consecutive months in a calendar year.
- H) **Immediate Family** -- Means father, mother, sister, brother, spouse, child, grandparents, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, step-father, step-mother, step-children, or other person residing in the same household of the affected employee.
- I) **Project Coordinator** -- a bargaining unit employee who will help plan and arrange the work flow of a specific project assigned to them. Acceptance of the Project Coordinator assignment is voluntary.
- J) **Holiday Rate** -- Employee's regular pay plus double time.
- K) **Overtime** -- Any hours worked beyond the eight (8) hour workday or beyond the forty (40) hour workweek.
- L) **Part-time Employee** -- An employee that works less than forty (40) hours per week and for more than five (5) consecutive months in a calendar year.
- M) **Probationary Employee** -- A newly hired full-time employee who has worked for less than 91 calendar days. Such employee will be on probation for a period of 90 calendar days from the date of hiring unless the parties mutually agree to extend the probationary period and may be laid off or discharged during this period without recourse to this Agreement. After an employee's probationary period ends, the employee shall become a regular full-time employee and shall be subject to all the terms and conditions of this Agreement. Probationary employees shall not pay union dues or service fees until they become regular full-time employees.
- N) **Pyramid** -- Means compensating an employee twice for the same hours worked or compensating them at an amount equal to twice the permissible holiday or premium rates. Pyramiding does not include compensation for work performed on a holiday.
- O) **Reckless Misconduct** -- An employee engages in reckless misconduct when he intentionally does an act, or intentionally fails to do an act in violation of his duty that creates an unreasonable risk of danger to others.



- P) **Shift Differential** -- A certain hourly pay rate increase for employees who work the second or third shift.
- Q) **Supervisor** -- Any employee who is part of management and not a member of the bargaining unit.
- R) **Temporary Employee** -- An employee who works full-time or part-time but for less than five (5) consecutive months in a calendar year.
- S) **Minor Violations** -- those violations which are disciplinable with verbal or written warnings.
- T) **Major Violations** -- those violations which are disciplinable with time off.
- U) **Occurrence (attendance)** -- means a failure to punch in or out, a late arrival, an early leave, or an absence that is not paid or excused in accordance with the terms of the Collective Bargaining Agreement.
- V) **Occurrence (disciplinary)** -- means a verbal warning, written warning, suspension or discharge for a violation of the Department's policies, procedures, rules and regulations.

### **ARTICLE 3**

#### **RIGHTS OF MANAGEMENT**

1. Nothing in this Agreement shall permit or authorize the Union or any of its members to officiate in management or in a supervisory capacity. It is agreed that the Employer will not use this prerogative for the purpose of discrimination against the Union.
2. Except where specifically restricted in this Agreement, the parties agree that the Employer shall possess all the customary prerogatives of management including, but not limited to, those enumerated below:
  - A) To hire, promote, suspend, discharge or otherwise discipline employees for violation of rules it deems necessary to impose for the overall benefit of the residents of the City of Mishawaka, its employees and/or its plant operations, or for other proper and just causes.
  - B) Nothing in this Article shall abrogate the employee's rights to the grievance procedure.
3. It is not the intent of Management to perform work that is normally performed by the bargaining unit employees except:
  - in emergency situations
  - at the golf course
  - at the pools
  - at the ice rink
  - when Management cannot find adequate coverage for work

### **ARTICLE 4**

#### **HOURS OF WORK**

**Section 1.** Eight (8) consecutive working hours within a twenty-four (24) hour period will constitute a normal workday. Five (5) consecutive workdays, or forty (40) work hours shall constitute a normal workweek. An employee shall be paid time and one-half (1½) for all work done in excess of eight (8) consecutive hours per day and in excess of forty (40) work hours per workweek. Overtime, premium and

holiday rates shall not be pyramided. The employer shall pay double time to an employee for working on his seventh day if that day normally would have been the employee's second consecutive day off within a particular shift schedule and for all hours worked in excess of twelve (12) hours per shift.

Employees working a four-day, ten-hour schedule will have the following conditions:

- A) All paid time off will be tracked in hours, not days. (Example: An employee who works a five-day, eight-hour schedule will be charged eight hours for a day off. An employee who works a four-day, ten-hour schedule will be charged ten (10) hours for a day off.)
- B) Overtime will be paid after ten (10) hours of work.
- C) Overtime after twelve (12) hours in a working day will be paid at double time.
- D) The Employer shall pay double time to an employee after working on his seventh day if that day would have been the employee's third consecutive day off within a workweek.
- E) The conditions outlined in Section 4 will apply.
- F) Holidays will be paid according to the schedule the employee is working at the time of the holiday.
- G) An FTO half-day increment will be five (5) hours.
- H) Shift differential pay will be provided to employees working the qualifying hours under the four-day, ten-hour schedule.

**Section 2.** Unless stated otherwise by the employer, the work hours for the employees shall be 7:00 a.m. to 3:00 p.m. If the employer chooses to deviate from this schedule, the employer shall provide the employees with at least ten (10) calendar days' notice of any new schedule changes prior to their implementation. If the employer gives less than ten (10) calendar days' notice, the parties must mutually agree to the schedule change. The employees shall be entitled to one work break per day of one-half (1/2) hour which shall be taken at the city garage (if worksite is within one mile of the garage) or place designated by the employer with a given notice.

**Section 3. A)** For the computation of overtime, an excused absence or an official holiday will be computed as a day worked.

**B)** Employees can accrue up to twenty-four (24) hours of compensatory time. Employees will be given the option of pay or comp time for hours earned up to twenty-four (24) hours. Any hours earned over twenty-four (24) will be paid out in overtime pay. Employees must make a good faith effort to use comp time in a timely fashion. Comp time may be requested at any time, and may be granted at the complete discretion of management. Employees must realize, however, that a comp time request is more likely to be granted the earlier it is requested.

**Section 4. A)** If a job cannot be completed during the regular shift and management decides that the job must be completed on that particular day, the employee who has been working on that job during his regular shift shall be entitled to the overtime prior to senior employees being asked for overtime.

**B)** If an employee works on a scheduled day off, that employee will be guaranteed four (4) hours of work the employee completes the work for which he was scheduled in less than the guaranteed work period, then, at the employee's option, he may elect to be paid for the time actually worked, or he may perform other work assigned by management until the guaranteed work has expired.

C) If an employee is recalled to work after their regular shift, that employee will be guaranteed four (4) hours of work; however, if that employee completes the work for which he was recalled in less time than the guaranteed four (4) hours of work and chooses to punch out instead of performing other work assigned by management, he shall only be paid for the time he actually works.

D) If an employee is held over to complete certain work, that employee shall be paid the standard overtime rate for the actual hours worked.

E) Employees will receive a sixty cent (\$.60) per hour shift differential for all work performed on regularly assigned shift which commences between the hours of 3:00 p.m. and 11:00 p.m. and fifty-five cents (\$.55) per hour shift differential for all work performed on regularly assigned shift which commences between the hours of 11:00 p.m. and 7:00 a.m.

F) **Fleet Maintenance Technicians Shift Differential** - If regularly scheduled hours in a pay period include a minimum of two different shifts, the shift differential pay will be applied to all hours.

**Section 5.** If, under normal operating conditions, management determines that additional employees are needed for work, management shall select employees for overtime work from the voluntary overtime list taking first those employees with the least amount of total accumulated overtime hours. Employees shall be responsible for signing the voluntary overtime list. Management shall update the total accumulated overtime hours of each listed employee by Thursday of each week. Separate overtime lists will be maintained for Central Services and Fleet Maintenance Technicians.

A) If the number of employees needed for overtime work exceeds the number of employees on the overtime list, management shall have the right to call any employees it needs for work; provided, however, it has posted 24 hours' notice before the need arises. Management shall also have the right to cancel operations due to inclement weather conditions; provided, however, it has posted 12 hours' notice prior to the cancellation.

B) If emergency conditions exist, as declared by the Mayor or the Central Services Director, or his designee in his absence, management shall not be required to post any notice.

**Section 6.** During the winter shift schedule, the employer will attempt to accommodate, as much as possible, the employees' shift preferences; however, departmental seniority shall prevail when needed to provide efficient department operation. Also, during the winter shift schedule, seniority shall prevail in determining shift preferences for Fleet Maintenance Technicians.

**Section 7. Missed Overtime** - Only in the event of a blatant overtime missed assignment, where management has not corrected a reported error, will pay be rewarded. All other overtime missed assignments will be corrected by the subsequent assignment of overtime work.

## **ARTICLE 5** **TARDINESS/LEAVING EARLY**

**Section 1.** The following disciplinary schedule shall be followed:

| <b><u>Number of Tardiness/Leaving Early</u></b> |     | <b><u>Disciplinary Step</u></b> |
|-------------------------------------------------|-----|---------------------------------|
| One                                             | (1) | Verbal Warning                  |
| Two                                             | (2) | 1 <sup>st</sup> Written Warning |
| Three                                           | (3) | 2 <sup>nd</sup> Written Warning |
| Four                                            | (4) | 1 Day off Without Pay           |
| Five                                            | (5) | 3 to 5 Days off Without Pay     |

**Section 2.** The number of occurrences accrued during the previous calendar year will be dropped to zero (0) on January 1<sup>st</sup> of the following year.

## **ARTICLE 6** **HOLIDAYS**

**Section 1.** Employees shall be granted ten (10) paid holidays each year in accordance with the City's holiday schedule. The City's holiday schedule will be posted by December 1<sup>st</sup> of the previous calendar year.

In addition, the employees shall have two (2) random holidays each year.

**Section 2. Employee Pay On Regularly Scheduled Workday** - If employees are scheduled to work on a holiday, they shall be paid their regular hourly rate plus time and one-half for the hours actually worked; provided, however, they have worked the regularly scheduled day before and after the holiday unless officially excused by the Department Head or his assistants. The hours worked on a holiday, which is an employee's regularly scheduled workday, shall not be charged toward the total accumulated overtime hours worked.

**Section 3. Call-in** - Any employees called to work on a scheduled holiday shall be paid the holiday rate plus a minimum of four (4) hours work at the double time rate. However, if that employee completes the work for which he was recalled in less time than the guaranteed four (4) hours of work and chooses to punch out instead of performing other work assigned by management, he shall only be paid for the time he actually works.

## **ARTICLE 7** **VACATIONS**

**Section 1. A)** Employees hired before January 1, 2011 with less than 25 years of service will retain their current vacation time off and thereafter earn vacation under the new schedule. Employees hired before January 1, 2011 with more than 25 year of service will retain 30 working days of vacation. Employees hired after January 1, 2011 will earn vacation in accordance with Section 2-598 of the Mishawaka Code of Ordinances. Vacation eligibility for City employees hiring into the Central Services Department/Fleet Maintenance Technicians work group from outside of the bargaining unit will be in accordance with the "me-too" agreement between the parties.

**B)** Employees with the most department seniority shall have priority in the selection of their vacation periods. Seniority will prevail for any vacation time selected for the year, as long as the vacation selection was made prior to January 31. After January 31, any vacation requests shall be granted on a first come, first granted basis. All vacation periods selected by employees are subject to prior approval by the employer.

It shall be the employee's responsibility to make a good faith effort to request all vacation leave available to them in the year it is accrued. Management shall make an effort to allow employees to take their vacation within the year it is accrued, but retains the right to deny vacation requests in the interest of efficiency.

If, at the end of a calendar year, an employee has not been able to use all of his vacation days as a result of a repeated denial by management, the employee shall have the right, by way of grievance, to request that the unused vacation days be paid out as regular paid time.

C) An employee shall not take more than two (2) weeks of vacation (10 working days) at one time unless otherwise permitted by the Department Head.

D) Vacations may be taken in one-half day or full-day increments. Granting an employee's vacation time is subject to Management's approval.

E) Employees must give twenty-four (24) hours' notice prior to requesting the Vacation days, Compensation Time days and Random days. Employees must give a minimum thirty (30) minutes notice prior to scheduled start time of the employees' shift for FTO and Bonus days. Employees who do not give proper notice shall receive disciplinary action in accordance with Article 5 (Tardiness/Leaving Early), Section 1.

**Section 2.** When a paid holiday occurs during an employee's vacation, he shall receive an additional day of paid vacation.

**Section 3. Bonus Days** - A maximum of four (4) bonus days will be awarded on January 1. One (1) bonus day will be earned every three (3) months if an employee has received no more than one occurrence (attendance or disciplinary) in a three-month period. A newly hired employee may earn Bonus Days prorated from the date of hire to the next December 31st calculated on the basis of one Bonus Day for each full three (3) month period of employment. Such days shall be awarded the next year. An occurrence is defined as anytime an employee is in violation of departmental rules, fails to punch in or out, leaves before completion of shift without supervisor's approval or is late.

Bonus Days may be taken in one-half (½) day increments. Bonus days may be requested at any time and are granted at the complete discretion of management. Employees must realize, however, that a bonus day request is more likely to be granted the earlier it is requested.

## **ARTICLE 8** **GROUP INSURANCE**

(A) The City will continue to provide health insurance to employees and their families at the same cost to the employee as other City departments.

(B) Employees under the age of sixty-five (65) shall receive Fifteen Thousand Dollars (\$ 15,000) life insurance.

## **ARTICLE 9** **RETIREMENT PROGRAM**

**Section 1. PERF** - The employer agrees to continue the regular Public Employee's Retirement Fund.

**Section 2. Retiree Health Insurance** - The retiree health insurance plan shall be consistent with the policy established in Section 2-610 of the Mishawaka Code of Ordinances.

## **ARTICLE 10** **STEWARDS**

**Section 1.** The Employer recognizes the right of the Union to designate a steward and alternate to handle such Union business as may from time to time be delegated to them by the Union. Stewards and alternates have no authority to take strike action or any other action interrupting the Employer's business in violation of this Agreement or any action in violation of law, except as authorized by official action of the Union.



**Section 2.** The Union shall be allowed space for a Union bulletin board on which to post notices. Only notices concerning Union business shall be posted.

**Section 3.** Employees who are representatives of the Union shall not leave jobs or work areas for the purpose of assisting in the settlement of grievances or attending meetings with management representatives until prior permission has been obtained from their immediate supervisors, which permission shall not be unreasonably withheld. Meetings shall be held after regular working hours unless determined otherwise by mutual agreement. Grievances, however, shall be processed during working hours.

## **ARTICLE 11** **SENIORITY**

**Section 1. Types of Seniority** - City employees within the bargaining unit shall obtain seniority on their 91st day of continuous, full-time employment, and such seniority shall be calculated to include the prior 90-day probationary period when successfully completed. There shall be two types of seniority for the Mishawaka Central Services Department and Fleet Maintenance Technicians work group.

**A) Bargaining Unit Seniority**

Bargaining unit seniority shall be computed from the employee's most recent date of hire in the bargaining unit.

**B) Departmental Seniority**

Departmental seniority shall be computed from the employee's previous date of hire in the Parks and Recreation, Street, or Central Motor Pool Departments.

For newly-hired employees, seniority shall begin with their date of hire into the Central Services Department or Fleet Maintenance Technicians work group.

In the event two or more employees are hired into the Central Services Department or Fleet Maintenance Technicians work group on the same day, seniority status shall be determined alphabetically by the first letter of the employee's last name at the time of hire.

**Section 2. Computation of Seniority** - Any time spent by an employee on sick leave, vacation and military leave shall be included within the computation for seniority.

**Section 3. Seniority Loss** - The seniority of an employee shall terminate under any of the following conditions.

- A) When a laid-off employee fails to give notice of his intention to return to work within three (3) working days after the city has sent a certified letter to his last known address requesting his return to work.
- B) When a laid-off employee gives timely notice of his intention to return to work after the City has requested his return but fails to return to work on the specified date and time of recall.
- C) When an employee resigns his employment with the City.
- D) When an employee is discharged for just cause.
- E) When an employee is laid off for more than twelve (12) months.
- F) When an employee receives total permanent disability compensation.

G) When an employee retires.

## **ARTICLE 12** **LAYOFF PROCEDURES**

**Section 1.** If it becomes necessary for the employer to lay-off employees, the employer shall follow departmental seniority in determining which employees to lay-off. Employees with the least amount of departmental seniority shall be the first employees laid off.

**Section 2.** Any laid off employee shall be placed on a Central Services Department/Fleet Maintenance Technicians work group call-back roster and a bargaining unit call-back roster.

## **ARTICLE 13** **CALL-BACK**

**Section 1. Call-back Roster** - In the event that an employee is laid off, the name of that employee will be placed on a Central Services Department/Fleet Maintenance Technicians work group call-back roster and a bargaining unit call-back roster.

**Section 2. Call-back Procedure** - When a job becomes available in the Central Services Department/Fleet Maintenance Technicians work group covered by this agreement and there are employees whose names are on the appropriate departmental call-back roster, the employee with the most departmental seniority who is qualified for the job shall be offered the job. Once the departmental seniority list is exhausted the bargaining unit seniority list will be used. If there are employees whose names are on the bargaining unit call-back roster, the employee with the most bargaining unit seniority who is qualified for the job shall be offered the job.

**Section 3. Employee Call-back Rights and Obligations** - If an employee accepts a recall to another bargaining unit department other than the one from which they were laid off they will be allowed recall to their original department for a period of 12 months before their recalled position becomes permanent.

**Section 4. Notice of Recall** - In the event of a recall, an employee shall be given one (1) week's notice of recall by certified mail to his last known address, in the event that the recalled employee fails to make it known within three (3) working days of the receipt of the letter to the City Personnel Department of his intent to accept or reject the recall offer (as provided in paragraphs entitled, Call-back Procedure and Employee Call-back Rights and Obligations) that employee shall lose his bargaining unit seniority and shall be terminated from employment.

**Section 5. City Records** It is the responsibility of all laid-off employees to furnish the Personnel office with a current mailing address and telephone number. Any laid off employee not doing so shall be terminated.

## **ARTICLE 14** **JOB VACANCIES**

**Section 1.** All vacant and newly created jobs in the Central Services Department/Fleet Maintenance Technicians work group will be posted for bid for a period of three (3) working days. If no employee from the Central Services Department/Fleet Maintenance Technicians work group bids and qualifies for the vacant or newly created job, then the bid shall be posted for a period of three (3) working days at other bargaining unit work sites and the Personnel office.

**Section 2. Bidding Priorities** - Provided the employee who bids for the vacant or newly created job is

qualified for the job, current employees will be given priority to fill the job opening as follows:

A) First priority will be given to bidders from the Central Services Department/Fleet Maintenance Technicians work group with the greatest departmental seniority.

B) Second priority will be given to senior employees in other bargaining unit departments.

**Note:** Departmental seniority is not transferable from bargaining unit department to bargaining unit department.

**Section 3. Successful Bidders** – Successful bidders shall be allowed no more than thirty (30) calendar days to accept or be accepted into the vacant or newly created job. If an employee is disqualified or disqualifies himself, he shall be returned to his original job classification. Management will give specific reasons for disqualifying an employee.

**Section 4. Promotion within Central Services Classifications** – An employee of the Central Services Department may appeal to the Central Services Director to advance to a higher classification in the department based on his skills acquired through cross-training. The Central Services Director will respond to the request for promotion within three (3) working days of the request. Additional time for evaluation may be granted with mutual agreement of the Director and the representing steward. One appeal for promotion may be made in a three-month period commencing with the Director's response to a request.

**Section 5. Promotion to a Non-Bargaining Unit Position** - Any unit employee who accepts a non-bargaining unit position within the bargaining unit will have a thirty (30) day tryout period before being removed from the Union seniority list. After thirty (30) days of employment such employee's bargaining unit seniority will be frozen for the duration of his service in a non-bargaining unit job. If said employee is permitted by the Employer to return to the bargaining unit in an open job, he will carry his frozen bargaining unit seniority into the new position, the individual will have no departmental seniority.

## **ARTICLE 15** **PAYDAY**

Pay will be distributed as prescribed by the City Controller.

## **ARTICLE 16** **FLEXIBLE TIME OFF/LONG TERM DISABILITY**

### **Section 1. Flexible Time Off (FTO)**

(A) In recognition of the need for its employees to be away from work, employer agrees to establish and accrue a bank of time off for any personal needs such as personal or family illness, extension of bereavement leave or vacations, or for any other purpose. Such bank may also be used to satisfy the five (5) day waiting period for Long Term Disability Leave (LTD) described in Section 2. Such bank will not include personal holidays, bereavement leave (unless as an extension), jury or subpoenaed witness duty, LTD leave, leave of absence, or military leave.

(B) FTO accrual shall begin on the first day of employment for full-time employees and may be taken as accrued. Accruals shall be credited to each employee's account on the first day of each month for the prior month's service at the rate of one-half (1/2) day per month and continue at the same rate for each month of credited service.

(C) FTO days will continue to accrue as long as the employee remains in paid status, subject to the limitation listed in (G) of this section.

(D) FTO days may be taken in full or half day increments. If becoming ill at work and leaving early, employees will be charged with one-half (1/2) FTO day if leaving after mid-shift and a full FTO day if leaving before mid-shift.

(E) Employees are expected to plan time off, setting aside some time in their personal bank for sickness. Employees are encouraged to keep a minimum of five (5) days in their bank at all times to provide for unexpected short-term sickness of for the required five (5) day LTD waiting period described in Section 2. If all FTO days or any other paid leave time is not available, any short-term illness will be an excused unauthorized absence, but without pay. Likewise, any long-term illness will result in a loss of pay for the five (5) day waiting period. The city retains the right to limit the number of excused absence occurrences as described in this subsection.

(F) Employees should schedule FTO time at least thirty (30) minutes in advance with the approval of a supervisor. The city recognizes, however, that there will be times, such as days an employee or a dependent is ill or a personal emergency arises that cannot be anticipated. In such cases, it is the responsibility of the employee to inform his/her supervisor as soon as possible prior to the beginning of a workday or shift of such absence and when the employee expects to be able to return to work.

(G) Employees may carry over accrued but unused FTO days from year to year but in no event can they accumulate more than twenty-five (25) FTO days.

(H) All FTO days shall be on the basis of the employee's regular base day's salary.

(I) Employer will buy back FTO days from any employee, up to a maximum of six (6) FTO days per year. It is the responsibility of the employee to make timely application prior to this buy-back arrangement if so desired. In any event, employer will not buy back an amount of FTO days which would reduce the employee's personal bank to less than five (5) days, except as provided in paragraph (J) of this section.

(J) In the event a regular, full-time employee's service to the employer is terminated, including termination due to death or retirement, he/she shall be entitled to pay in lieu of FTO days for days due and not yet taken as of the date of such termination, including any FTO days carried over from prior years.

**Section 2: Long Term Disability (LTD)** – The long-term disability plan shall be consistent with the policy established in Section 2-595 of the Mishawaka Code of Ordinances.

## **ARTICLE 17**

### **FUNERAL LEAVE AND LEAVE OF ABSENCE**

**Section 1.** An Employee will be eligible for paid funeral leave for three (3) working days to make preparations for and attend the funeral and burial of a member of the employee's immediate family and to attend to any necessary legal matters of the decedent or his estate. An Employee will be eligible for paid funeral leave for one (1) working day to make preparations for and attend the funeral and burial of an Employee's aunt or uncle.

**Section 2.** Employees may be granted leave of absence without pay and without discrimination or loss of seniority rights for justifiable reasons agreed upon by both the Department Head and representatives of the Union. The maximum leave of absence, except in cases of compulsory military service, shall be for no more than twelve weeks; in the event such a leave is requested, the procedures outlined in the Family Medical Leave Act

will be followed. Failure to comply with this provision shall result in the complete loss of rights for the employee involved. Seniority will be frozen during leaves of absence, except in cases involving military service and on-the-job injury.

## **ARTICLE 18**

### **JURY DUTY**

The Employer agrees to pay an employee who is called and serves as a juror in a legally constituted court the difference between his earnings as a juror and the straight time earnings he would have realized had he worked his scheduled shift. In order to be eligible for payment, employees must notify their supervisor within twenty-four (24) hours after receipt of notice of selection for jury duty, and must furnish a written statement from the appropriate public official showing the date and time served and the amount of pay received. An employee required to report at a specific time for examination as a prospective juror shall be compensated as provided above to the extent he is required to lose time from work for such examination. The examination notice is to be shown to the employee's supervisor as soon as practicable.

## **ARTICLE 19**

### **GRIEVANCE PROCEDURE AND ARBITRATION**

#### **Section 1.** Procedure to be followed:

The employer and the Union recognize that, from time to time, grievances, disputes and complaints may arise over matters within the purview of this Agreement. Therefore, whenever the Union or any employee feels that the Employer has acted erroneously or improperly in interpreting and applying any of the provisions of this Agreement, then the Union or the employee may invoke the provisions of Article 19. Except in the first step, all grievances and answers shall be in writing.

**First Step:** The aggrieved employee shall present his grievance individually, or with the union representative, to his immediate supervisor within five (5) working days of the occurrence of the grievance. The immediate supervisor shall respond to the grievance within five (5) working days after it is presented to him.

**Second Step:** If the grievance is not settled in the First Step, the employee alone, or the employee and the union representative, may submit the grievance to the head of the department within five (5) working days after the answer is given in the first step. The head of the department shall give his answer within five (5) working days after receiving the grievance.

**Third Step:** If the grievance is not settled in the Second Step, the employee alone, or the employee and the union representative may submit the grievance to the Director of the Human Resources within five (5) working days after the answer is given to the Second Step. The Director of the Human Resources shall give his answer within five (5) working days after receiving the grievance.

**Fourth Step:** There shall be a Joint Grievance Committee (JGC) comprised of two (2) union representatives to be appointed on a case-by-case basis by the Union, and two (2) City representatives to be appointed on a case-by-case basis by the City. No person shall participate as a JGC member in any case in which such person was a witness, served as a representative of any party in the grievance process, or has any personal interest in the matter. The JGC shall meet to hear grievances which have not been resolved in the above steps of the Grievance Procedure. The JGC shall have the power and authority to make a final and binding decision with respect to any matter properly brought before it, but has no power to alter the agreement, except when requested by both parties, to add the provisions of the agreement.

The City shall make its presentation first to the JGC in discharge and suspension cases, and the Union



shall present first in all other cases, but the JGC may alter such procedures and make rules of procedure to ensure a fair hearing to all parties. The JGC shall render its decision in writing in cases involving suspensions of five (5) days or longer and involving discharges, and either party may request a written decision or a bench decision in any other case.

A majority decision by the JGC is final and binding upon the Union, City, grievant, and all affected employees. Unwritten decisions and noticed from the JGC that they are deadlocked normally shall be rendered within twenty-four (24) hours of the close of the hearing, and written decisions normally shall be rendered within seventy-two (72) hours of the close of the hearing, but the JGC has the right to take such time as is necessary (such as for research) in order to render a full and fair decision.

**Fifth Step:** If the grievance cannot be settled in the Fourth Step, the employee may submit a written request to the Department of Human Resources within 5 (five) days requesting the services of an arbitrator from the State of Indiana to decide the issue. Either party may send a letter to the Federal Mediation and Conciliation Service requesting the services of an arbitrator from the State of Indiana to decide the issue. As soon as possible, a meeting shall be held with a mutually agreed upon arbitrator. Both parties may submit evidence and call witnesses to testify as to the facts concerning the grievance and the arbitrator shall make the decision on the evidence presented. The arbitrator shall have no authority to add to, detract from, or in any way modify the terms of this Agreement. Both parties agree to abide by the arbitrator's decision. The City and the Union shall share equally any fees charged by the State for arbitration service.

**Section 2.** The following provisions shall apply to the grievance procedure:

- A) Saturdays, Sundays and holidays shall not be used in determining days in reference to the grievance procedure.
- B) Failure of the Employer to give an answer to the grievance as of the last day to answer shall be considered a denial of the grievance and the employee shall have the right to then proceed to the next step of the grievance procedure.
- C) The Employer shall give the Union representative sufficient copies of the written answer in each step of the grievance procedure to distribute to each employee present at the grievance meeting.
- D) Unless consolidated by agreement of the Employer and the Union, each grievance shall be considered a separate case.
- E) If the Union does not appeal within five (5) working days of each step, the grievance is considered to be void.
- F) The time for filing a grievance involving the rate of pay shall begin on the day the employee receives his paycheck containing the grieved pay rate, unless it is previously filed.

**Section 3.** Inasmuch as a grievance procedure has been agreed upon, there shall be no strikes, stoppages of work, slowdowns, sit downs, sympathy strikes or other forms of interference with normal work routines during the life of this agreement or extension thereof. Both parties recognizing the fact that service to the public is a mutual desire, they will cooperate in all matters relating to labor management.

**Section 4.** The Employer agrees that it will not cause or direct any lockout of the employees.

## **ARTICLE 20** **VALIDITY**

This Agreement shall be subject to all Federal, State and local laws, and in the event any provision of this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the provisions of this Agreement shall not be affected thereby, but shall continue in full force and effect.

It is further agreed that in the event any such provisions are finally held to be invalid, the parties hereto agree to meet within thirty (30) days thereof to negotiate the modifications of substitution of such clause or clauses so held to be invalid.

## **ARTICLE 21**

### **SUBCONTRACTING**

It is the intention of the Employer not to deprive the employees of work covered by this Agreement either by subcontracting or by hiring an outside agency. However, the parties hereto understand and agree that occasions will arise whether of an emergency nature or otherwise when it will be necessary for the Employer to authorize outside manpower and/or equipment to properly perform its function.

## **ARTICLE 22**

### **DISCHARGE OR SUSPENSION**

**Section 1.** The Employer shall not discharge, suspend or discipline any employee without just cause, but in respect to discharge or suspension the employer shall give at least one warning notice of the complaint against such employee to the employee, in writing, and a copy of the same to the Union and Steward affected; provided, however, the employee has not committed one of the following acts or omissions while on duty.

- a) dishonesty
- b) reckless misconduct
- c) carrying of unauthorized passengers
- d) fighting

If the employee has committed any of the above-mentioned acts or omissions, the employer does not need to provide the employee with said notice.

An employee who is discharged, suspended or disciplined may have recourse through the grievance procedure. If through the grievance procedure, it is determined that an injustice has been done to the employee, he shall be reinstated and compensated at his usual rate of pay while he has been out of work because of such discharge or suspension.

**Section 2.** Discipline as provided for in the work rules shall not remain in effect for a period of more than 6 months from the date of said discipline.

**Section 3.** Notice of discipline for a minor violation shall be given within three (3) working days from the date Management became aware of the violation. Notice of discipline for a major violation shall be given within thirty (30) working days from the date Management became aware of the violation.

**Section 4.** The parties shall discuss additional rules regarding just cause for discharge and disciplinary action. Such new rules and regulations shall be posted for ten (10) working days before they go into effect. All such rules and regulations shall prevail in the application and interpretation of this article.

**Section 5.** No employee will be required to speed up work in violation of Minimum Safety Standards.

**ARTICLE 23**  
**GENERAL PROVISIONS**

**Section 1. Uniforms** – The City shall furnish uniforms and gloves to be worn by the employees during all working hours. If the uniforms and gloves are damaged by normal wear and tear due to daily working conditions, the employer shall provide replacement uniforms and gloves. A total of eleven (11) uniforms will be furnished per year.

The City shall provide a uniform allowance to employees with more than one (1) year of service. This allowance can be used for the purchase of boots, rain gear and cold weather gear. It will be the responsibility of the employees to purchase and maintain their own inclement weather gear.

Employees with less than one (1) year of service will be issued rain gear and cold weather gear provided by the City. Except for fleet maintenance technicians, each employee shall have an allowance to be spent on boots or inclement weather gear according to the following schedule:

|                                                                        |          |
|------------------------------------------------------------------------|----------|
| Employed with Central Services after 12-31-2021 but before 12-31-2022: | \$525.00 |
| Employed with Central Services after 12-31-2022 but before 12-31-2023: | \$350.00 |
| Employed with Central Services after 12-31-2023 but before 12-31-2024: | \$175.00 |

The purchase price of each properly documented purchase of work boots will be deducted from the employee's allowance, with the remainder available for future uniform purchases through the end of the term of this contract. Upon termination of employment with Central Services, the employee forfeits any remaining allowance. Employees are responsible for any overages when purchasing boots or inclement weather gear.

**Section 2. Revoked or Suspended License** - In the event an employee has his Commercial Driver's License revoked or suspended due to negligence, driving under the influence of alcohol or narcotics, or driving while intoxicated, he shall be placed in the lowest job classification and pay rate within that department for sixty (60) calendar days or until the Commercial Driver's License has been reinstated, whichever occurs first. Upon reinstatement of his Commercial Driver's License, the employee will be returned to his former job classification and pay rate. If the license is not reinstated within the sixty (60) calendar day time period, the employee shall be terminated. If an employee is disqualified from driving under DOT requirements for more than sixty (60) calendar days he shall be terminated immediately without suspension.

**Section 3. Training** - The City shall provide the opportunity for employees to attend and/or participate in training, seminars, or other forms of instruction necessary to perform the duties of the job classifications. However, the City reserves the right to approve classes and instructors.

The Employer shall pay in advance the cost for all approved training and seminar courses. The Employees shall pay in advance the cost of all other approved forms of instruction with the Employer reimbursing the Employee for the cost of such instruction upon successful completion of the course.

**Section 4. Physicals** - Employees holding a CDL will have the option of having their required physical examination arranged and paid for by the Employer at a facility of the Employer's choice and billed directly to the Employer, or arranging the physical examination at a facility or physician of the Employee's choice and at the Employee's expense.

**Section 5. Commercial Driver's License** - For new employees and for current employees bidding into a job requiring a CDL, the City will pay for the required drug screen and shall not pay for any other costs associated

with the CDL. If an employee moves into a new job that does not require a CDL, but wishes to maintain his CDL, the employer shall not be responsible for paying any associated costs.

**Section 6. Cross-Training** – To accommodate mobility between classifications, the employer will provide cross-training for employees either during regular working hours or outside of regular working hours as the workload permits. Management and/or bargaining unit employees will conduct training.

**Section 7. Tool Allowance** – Fleet Maintenance Technicians with more than one (1) year of service shall have a combined boot, tool and inclement weather gear allowance according to the following schedule:

|                                                                        |            |
|------------------------------------------------------------------------|------------|
| Employed with Central Services after 12-31-2021 but before 12-31-2022: | \$1,200.00 |
| Employed with Central Services after 12-31-2022 but before 12-31-2023: | \$800.00   |
| Employed with Central Services after 12-31-2023 but before 12-31-2024: | \$400.00   |

The purchase price of each properly documented purchase of work boots, inclement weather gear and tools will be deducted from the employee's allowance, with the remainder available for future uniform purchases through the end of the term of this contract. Upon termination of employment with Central Services, the employee forfeits any remaining allowance. Employees are responsible for any overages when purchasing boots, inclement weather gear or tools.

## **ARTICLE 24** **WORKER'S COMPENSATION**

**Section 1.** In the event an employee is absent due to an injury sustained on the premises that is determined to be compensable under Worker's Compensation laws, the employee will receive:

- A) Full salary for the first five (5) workdays or the first seven (7) Worker's Compensation days of absence.
- B) The difference between the daily rate paid through Worker's Compensation and the employee's daily salary less the seven-(7) days of absence. In the event the employee is absent twenty-two (22) or more days, the city's subsidy to the employee's Worker's Compensation pay will terminate until an amount equal to the Worker's Compensation check for the first seven (7) Worker's Compensation days of absence has been paid to the City. Upon receipt of such reimbursement the City's subsidy will resume until the employee returns to work or is absent for a total of sixty (60) days, whichever first occurs.
- C) The employer's physician must validate the employee's absence during any of the first seven (7) days. In the event that Worker's Compensation is to be used it shall be the responsibility of the employee to follow all of the established procedures for applying for Worker's Compensation.

**Section 2.** If an employee is absent due to a work-related injury or illness for more than twenty-one (21) days and uses sick leave or other paid time off for the first five (5) working days, the City shall reinstate the employee's sick leave or other paid time off used for the first five (5) workdays.

**Section 3.** In the event of an occupational injury, the employee will follow the treatment procedures as provided through the City's Occupational Health system. If an employee's occupational injury is determined as temporary partial disability (TPD), the employee, in consultation with the attending physician, may be released for modified duty performing tasks that would not likely aggravate or lead to further injury. Light duty opportunities may include but are not limited to, desk and clerical work, janitorial, grounds keeping and other non-bargaining unit jobs assigned by the Supervisor.

**Section 4.** If an employee sustains an on-the-job injury, the employee shall obtain a written medical release from the employer's treating health care provider before such employee can return to work.

**ARTICLE 25**  
**DRUG-FREE WORKPLACE**

The Union and the employees agree that they shall comply with all reasonable drug and alcohol policies, which may be established by the City for all City employees covered by and set forth in its Personnel Policies and Procedures.

**ARTICLE 26**  
**LONGEVITY BONUS PLAN**

The following Longevity Bonus Plan will be provided to the Central Services/Fleet Maintenance Technicians work group employees according to the following terms. Said schedule is based upon years of service and does not have an upper limit. Longevity pay shall be distributed annually on the first pay day following each individual employee's anniversary date as part of his regular paycheck.

Payments shall be made according to the following schedule:

| <u>Years of Service</u> | <u>Annual Increment</u> | <u>Bonus</u> |
|-------------------------|-------------------------|--------------|
| 5                       | \$0.00                  | \$150.00     |
| 6                       | \$75.00                 | \$225.00     |
| 7                       | \$75.00                 | \$300.00     |
| 8                       | \$75.00                 | \$375.00     |
| 9                       | \$75.00                 | \$450.00     |
| 10                      | \$75.00                 | \$525.00     |

An additional \$80.00 will be added for each year of service after the tenth year.

**ARTICLE 27**  
**TEMPORARY JOB TRANSFERS**

**Section 1.** Temporary job transfers to another bargaining unit department shall be assigned from a group of employees which the employer determines is available and qualified. The group of employees will then have input into who is transferred. If the group of employees cannot resolve who will be transferred, the transfer will be at the employer's sole discretion.

A) When an employee is temporarily transferred to a job in a higher-paying classification, he shall be upgraded to the pay rate of that classification for time spent on that job.

B) An employee temporarily assigned a job with a lower rate shall not be downgraded in pay.

C) Should overtime be needed, the employer shall at all times offer the overtime to employees who work within the department requiring the overtime according to their specific overtime procedure. In the event that nobody accepts the overtime from within the department, the employer shall have the right to utilize employees outside of that department subject to all of the conditions contained in this Article.

D) Should overtime be necessary for a temporarily transferred employee, the employee who has performed the work during regular hours will continue to work the overtime assignment if additional manpower is needed after exhausting the overtime list/procedure in the affected department.

**Section 2.** Employees temporarily transferred to a higher paying classification or job within the Central



Services Department/Fleet Maintenance work group will be upgraded to the pay rate of that classification or job for time spent on the temporary transfer.

**Section 3.** Pay will not be upgraded in cross-training situations.

## **ARTICLE 28** **JOB CLASSIFICATIONS**

The following list of job classifications in the Central Services Department/Fleet Maintenance Technicians work group:

- Group 3 Operator
- Group 2 Operator
- Group 1 Operator
- Fleet Maintenance Technician

Additional classifications established during the term of the Agreement will be reviewed with the Union Steward and Business Agent prior to being implemented.

Changes in job descriptions will be reviewed with the Union Steward and Business Agent prior to being implemented.

|                                                        |          |
|--------------------------------------------------------|----------|
| Specialty pay for CDL holders: Tanker endorsement      | \$50.00  |
| (for the duration of the contract) Class B CDL holders | \$200.00 |
| Class A CDL holders                                    | \$400.00 |

## **ARTICLE 29** **TENURE OF AGREEMENT**

**Section 1.** This Agreement shall be in full force and effect from January 1, 2022, to and including December 31, 2024.

**Section 2.** The parties agree to open negotiations with sixty (60) days' prior notice provided on or about July 1 in the years 2022, 2023, and 2024 for the purpose of negotiating wages only.

**Section 3.** The parties agree to open negotiations with sixty (60) days' prior notice provided on or about July 1, 2024 for the purpose of negotiating a new labor agreement, including wages and benefits.

**LOCAL UNION NO. 364 affiliated with the  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

By Robert R Warnock III  
Robert R. Warnock, III, President

Date: November 29, 2021

**CITY OF MISHAWAKA BOARD OF PUBLIC WORKS AND SAFETY**

By Ken Prince  
Ken Prince, President

Date: 12/7/2021

By Rebecca S Maguire  
Rebecca S. Maguire, Vice President

Date: 12/07/2021

By Ronald E Watson  
Ronald E. Watson, Member

Date: 12/7/2021

ATTEST: Kari Myers  
Kari Myers, Clerk, BPWS

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PROPOSED ORDINANCE NO. 2021-47

DEC 15 2021

ORDINANCE NO. \_\_\_\_\_

City Clerk  
Mishawaka, IN

**AN ORDINANCE APPROVING AN AGREEMENT BETWEEN  
THE CITY OF MISHAWAKA AND THE EMPLOYEES OF THE ELECTRIC  
DEPARTMENT, REPRESENTED BY THE INTERNATIONAL  
BROTHERHOOD OF ELECTRICAL WORKERS LOCAL 1392**

WHEREAS, the contract negotiating committees for the City of Mishawaka, Indiana and the International Brotherhood of Electrical Workers Local 1392 have mutually reached an agreement on amendments to the Collective Bargaining Agreement expiring the 31<sup>st</sup> day of December 2021; and

WHEREAS, the members of the International Brotherhood of Electrical Workers Local 1392 have ratified the new Collective Bargaining Agreement and the governing body of said Association has executed the new Agreement on their behalf; and

WHEREAS, on the 6th day of December, 2021, the City of Mishawaka, Indiana, acting by and through its Board of Public Works & Safety, approved the new Collective Bargaining Agreement with the International Brotherhood of International Electrical Workers 1392, a copy of which is attached hereto; and

WHEREAS, Ordinance No. 1666 requires all Collective Bargaining Agreements to be approved by the Common Council of the City of Mishawaka.

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

Section 1. The Collective Bargaining Agreement executed the 6th<sup>h</sup> day of December, 2021, effective January 1, 2022, between the Board of Public Works & Safety of the City of Mishawaka, Indiana and the International Brotherhood of Electrical Workers Local 1392 is hereby approved.

Section 2. 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 \_\_\_\_\_, 2021, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Gregg Hixenbaugh  
Presiding Officer

ATTEST:

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

PRESENTED by me to the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2021, at  
\_\_\_\_\_ o'clock \_\_\_\_\_.M.

\_\_\_\_\_  
Deborah S. Block, CMC, City Clerk

APPROVED by me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_\_  
o'clock \_\_\_\_\_.M.

\_\_\_\_\_  
David A. Wood, Mayor





# CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF HR

December 16, 2021

Deborah S. Block, IAMC, MMC

Mishawaka Common Council  
600 East Third Street  
Mishawaka, Indiana 46544

DEC 15 2021  
City Clerk  
Mishawaka, IN

Mr. President and Honorable Members of the Council:

I respectfully request your approval of the attached proposed ordinance, approving the collective bargaining agreement between the City of Mishawaka and the International Brotherhood of Electrical Workers, Local No. 1392 for certain employees of Mishawaka Utilities.

I plan to attend the meeting to speak in favor of approval and to be available to answer questions at the pre-Council meeting that evening. Feel free to contact me prior to the meeting at 574-258-1615 or at [skile@mishawaka.in.gov](mailto:skile@mishawaka.in.gov).

Thank you in advance for your consideration.

Sincerely,

Susan W. Kile, PHR  
Human Resources Director

**RESOLUTION NO. 2021-05**

**MISHAWAKA BOARD OF UTILITIES**

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF  
MISHAWAKA AND THE EMPLOYEES OF MISHAWAKA UTILITIES  
REPRESENTED BY THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL  
WORKERS, LOCAL 1392

**WHEREAS**, the City of Mishawaka and the International Brotherhood of Electrical Workers Local 1392 have agreed to a Collective Bargaining Agreement for the period of January 1, 2022 to December 31, 2025; and

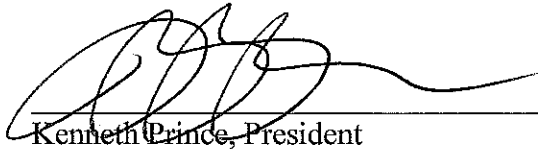
**WHEREAS**, such Agreement requires the approval of the Mishawaka Board of Utilities and the Mishawaka Common Council;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Utilities of the City of Mishawaka that:

Section 1. The attached Collective Bargaining Agreement between the City of Mishawaka and the International Brotherhood of Electrical Workers 1392 is hereby approved, and

Section 2. This Resolution shall be forwarded to the Mishawaka Common Council for its review and final action.

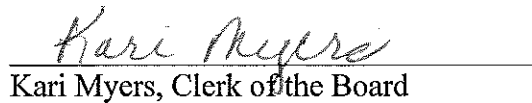
ADOPTED by the Board of Public Works of the City of Mishawaka, on this 7th day of December, 2021.

  
Kenneth Prince, President

  
Rebecca Maguire, Vice President

  
Ronald E. Watson, Member

ATTEST:

  
Kari Myers, Clerk of the Board



# **COLLECTIVE BARGAINING AGREEMENT**

**Between**

**CITY OF MISHAWAKA, INDIANA**

**And**

**THE INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL #1392**

*Dated January 1, 2022 - December 31, 2025*

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## **ARTICLE 1: PARTIES TO WORKING AGREEMENT**

- A. This Agreement is entered into between the City of Mishawaka Utility Board on behalf of the City's municipally owned utility operation pursuant to the grant of statutory authority by IC Section 8-1.5-3-3, et seq. to the Utility Board to exercise general supervision over the City's municipally owned utilities and the International Brotherhood of Electrical Workers, Local #1392.
- B. The City of Mishawaka's Utility Board and Mishawaka Utilities shall hereinafter be referred to as the "Utility". The International Brotherhood of Electrical Workers, Local #1392 shall herein after be referred to as the "Union".
- C. It is the intent and purpose of this Agreement to assure a sound and mutually beneficial working relationship between the parties hereto, to provide an orderly means of resolving any differences which may arise, and to set forth herein the full and complete agreement between the parties as to non-economic working relationships.
- D. It is understood that economic terms and conditions will be the subject of a separate agreement.

## **ARTICLE 2: PERIOD OF AGREEMENT**

This agreement shall take effect January 1, 2022 and shall continue in full force and effect until December 31, 2025. This agreement shall remain in full force and effect until written notice of a desire to modify, cancel or terminate the Agreement is served by either party upon the other with at least sixty (60) days' notice.

## **ARTICLE 3: RECOGNITION**

- A. The Utility agrees to recognize Local #1392, the International Brotherhood of Electrical Workers as the exclusive representative and bargaining agent with respect to wages, hours and all other terms and conditions of employment of all probationary and regular Electric Division, Water Division, Wastewater Division, Metering Department and Business Office employees of the municipally owned Utility. Specifically excluded from this recognized unit, however, are all part-time employees, summer/seasonal help, temporary employees, technical employees, confidential employees, professional employees and management employees.
- B. The Utility retains the right to determine and designate which employees are part-time, summer/seasonal, temporary, technical, confidential, professional, and management employees. Such determination and designation shall be in conformity with the definitions in Article 5.

- C. The Utility agrees that employees outside of the bargaining unit shall not be assigned work performed by bargaining unit employees, except where provided in this agreement. This shall not be construed, however, in such a manner as to preclude training or work required in emergencies where qualified bargaining unit employees are unavailable for required work.

#### **ARTICLE 4: NON-DISCRIMINATION AND MUTUAL COOPERATION**

- A. The Utility will not in any manner discriminate against any employee because of his membership or official position in, or activity on behalf of the Union. The Union agrees that it will do everything within its power to cause and encourage the employee to furnish efficient work and services for the Utility and the citizens of the City of Mishawaka. The Utility and the Union, recognizing that service to the public is a mutual objective, affirm they will cooperate in all matters relating to labor-management relations.
- B. The Business Manager of the International Brotherhood of Electrical Workers, Local #1392, or his designee, shall be granted access to bargaining unit employees, on or off Utility or City premises, at reasonable times after receiving the approval of the Division Manager.
- C. It is hereby acknowledged that the Utility shall have the right to utilize personnel outside the bargaining unit for the purpose of facility or grounds maintenance, repair, and cleaning.

#### **ARTICLE 5: DEFINITIONS**

- A. *Bargain Collectively* - shall mean the performance of the mutual obligation of the employer through its designee and the designees of the exclusive representative to meet at reasonable times, including meetings in advance of the budget-making process and negotiate in good faith with respect to wages, hours and other terms and conditions of employment and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.
- B. *Confidential Employee* - means an employee whose unrestricted access to confidential personnel files or whose functional responsibilities or knowledge in connection with the issues involved in dealings between the employer and its employees would make his membership in an employee organization incompatible with his official duties.
- C. *Grievance* - means any dispute, controversy or difference between the parties or the Utility and the employee or employees in the bargaining unit, concerning the meaning, interpretation or application of this Agreement.
- D. *Management* - means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.



- E. *Probationary Employee* - an employee hired for full-time employment who has not satisfactorily completed three (3) full months of continuous employment and who is not hired for specific jobs of limited duration. The Utility shall have the exclusive right to terminate probationary employees and such termination shall not be the subject of a grievance. The probationary period may be extended in individual instances by mutual consent of the parties.
- F. *Professional Employee* - means any employee engaged in work:
1. Predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work;
  2. Involving the consistent exercise of discretion and judgment in their performance;
  3. Of such a character that the output produced or the result accomplished cannot be standardized in relation to a fixed period of time;
  4. Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process.
- G. *Regular Employee* - an employee hired for full-time employment who has satisfactorily completed probationary employment and who is not hired for specific jobs of limited duration.
- H. *Strike* - means concerted failure to report for duty, willful absence from one's position, stoppage of work, slowdown, sit-down, sympathy strike or abstinence in whole or in part from the full, faithful and proper performance of the duties of employment, without the lawful approval of the employer or in any concerted manner interfering with the operation of the Utility as defined in Article 6 of this Agreement for any purpose.
- I. *Summer/Seasonal Help* - shall be construed as unskilled labor who shall work less than four (4) months in any given year. They shall not normally work call-outs. Their overtime, except in emergencies, shall be limited to one hour per occurrence.
- J. *Technical Employee* - means any employee engaged in work requiring knowledge and training in a specialized complex procedure or operation as opposed to routine mental, manual, mechanical or physical work.
- K. *Temporary Employee* - an employee hired for a specific job of limited duration not to exceed six (6) months of employment excepting for the temporary employee hired to replace a disabled employee for a more extended period, in the anticipation of the disabled employee ultimately returning to work.

## **ARTICLE 6: MANAGEMENT RIGHTS**

The Utility shall have the right to:

1. Direct the work of its employees;
2. Hire, promote, demote, transfer, assign, discharge, suspend, discipline and retain employees;
3. Suspend or discharge employees for proper cause;
4. Maintain the efficiency of operations;
5. Relieve employees from duties because of lack of work or for other legal and legitimate reasons;
6. Take actions as may be necessary to carry out the missions of the Utility in emergencies; and
7. Determine the methods, means, policies, personnel and equipment by which utility operations are to be conducted.

## **ARTICLE 7: UNION SECURITY AND DUES DEDUCTIONS**

- A. No unit employee shall be required to become a member of the Union as a condition of Employment or continued employment. The parties agree that there shall be no discrimination by either the Utility or the Union against any unit employees because of membership or non-membership in the Union.
- B. It is recognized and agreed that unit employees may or may not join the Union in accordance with the desires of an individual employee.
- C. It is further recognized that the Union, as the exclusive representative of all unit employees, regardless of whether or not individual employees are Union members, owes the same duty of representation to all unit employees and provides services to all unit employees: therefore, all unit employees shall, within ninety (90) days of the date of hire, pay a collective bargaining contract administration fee to the Union in an amount equal to the actual cost to the Union of its representation of all unit employees, but in no event to exceed the monthly dues assessment of Union members. The Union further agrees that no portion of non-union unit employee service fee assessments shall be used or expended for the support of political campaigns of individual, local, state or national political candidates for public office, nor shall any union dues be used for this purpose.

- D. The Utility shall deduct from the pay due all employees in the bargaining unit covered by this Agreement one month's union dues or service fee each alternate pay period not exceeding an amount certified by the Union and shall forward such dues and service fees to the Financial Secretary of the Union not later than the tenth (10th) day of the following month, providing the employee has signed a written wage assignment. Such wage assignment shall continue in effect for the duration of this contract or until receipt by the Utility of a written notice of revocation of such order by the employee. This section will comply and be in accordance with IC Section 8-1.5-3-3, et seq.
- E. The Utility shall not have liability to collect union dues or service fees for any month in which the employee in his last pay period received (after deduction) pay less than the amount of such dues or service fees.
- F. In the event an employee is receiving advance pay, union dues or service fees shall be deducted from that pay.
- G. Probationary employees shall not pay union dues or service fees until they become regular full-time employees.
- H. Unless the context indicates otherwise, the word "employee" or "employees", whichever used herein, shall mean and refer only to full-time regular and probationary employees now or hereafter in the employment of the Utility.
- I. It is agreed between the Utility and the Union that union dues and service fees shall be authorized only during the existence of this Agreement.

#### **ARTICLE 8: STRIKES**

- A. There shall be no strikes, as defined in Article 5 of this Agreement for any purpose.
- B. In the event of a violation of Section A of this Article, the grant of recognition to the exclusive representative shall automatically be withdrawn and no election by unit employees for a successor exclusive representative shall be held for six (6) months after de-certification of the employee organization, nor shall a dues deduction-service fee privilege exist unless and until a successor contract is executed.
- C. Any employee engaging in a work stoppage of any kind shall be dismissed immediately by the Utility.

## ARTICLE 9: GRIEVANCE PROCEDURE

- A. A grievance is any dispute, controversy, or difference between either the parties or the Utility and an employee or employees in the bargaining unit concerning the meaning, interpretation, or application of this Agreement; however it is agreed that a dispute, controversy or difference shall not be a grievance until it has first been discussed by the employee with his immediate supervisor without satisfactory adjustment. The procedure set forth herein shall be the sole and exclusive forum for the adjustment of disputes and differences arising under this Agreement.
- B. Grievances may be initiated by an employee or group of employees in the bargaining unit or the Union. If the Union initiates filing the grievance, it may skip the first two steps of the grievance procedure, and file the grievance directly to the third step of the procedure.
- C. Any grievance not initiated or appealed to the next step within the time limits specified will be considered settled on the basis of the last answer by the Utility. Time limits may be extended by mutual agreement of the parties.
- D. An employee presenting a grievance shall decide whether or not he wishes to be represented by a Union representative. The Union shall be notified in writing of all grievances filed where the employee does not seek Union representation. The employee may process his or her own grievance through the third step of the procedure; however, any settlement must be consistent with this Agreement and the Union shall be apprised in writing of the terms of the settlement. An employee choosing not to be represented by the Union shall not have the right to bring his or her grievance to arbitration without Union sanction.
- E. In no case shall there be a strike by any employee or group of employees as defined in Article 5, Section H over a grievable matter, either before a grievance is filed, while it is pending, or following its final settlement. Any such work stoppage shall be cause for immediate discharge as provided for by Article 8, Section C.
- F. Hearings and conferences held under this procedure shall be conducted at times set by the Utility representative involved, with preference given to scheduling said hearings and conferences during regular working hours. If such times are during the employee's and/or Union representative's normal working hours, they shall be compensated for the time spent by the Utility according to their normal rate of pay. If the times set are outside the normal working hours of the employee and/or the Union representative, they shall not be compensated by the Utility.
- G. Grievances will be processed in the following manner within the stated time limits except that grievances over discipline or discharge may be grieved under Section H of this Article.

1. *Step One:* The aggrieved employee or employees shall present a grievance informally to the foreman or immediate supervisor of the employee, to attempt to resolve the dispute. Or, as the employee or employees determine, he or they shall record their grievance on a grievance form and present it to their Union representative. The grievance shall set out the facts alleged, the Article and Section of the Working Agreement alleged to have been violated, the parties involved, and any other information deemed pertinent, and shall be signed and dated by the grievant and the Union representative (unless Union representation has been waived). If the grievance is presented to the Steward, he will then meet with the foreman or immediate supervisor of the employee in an attempt to settle the grievance and to sign a meeting confirmation. The grievance must be brought to the attention of the immediate management supervisor within five (5) working days of its occurrence or the grievance will be considered waived. The foreman or immediate supervisor shall provide a written answer to the grievance, within five (5) working days, not including the day of the meeting.
2. *Step Two:* If the grievance is not settled in Step One, it may be appealed in writing to the Division or Department Manager within five (5) working days after receipt of the Step One meeting confirmation, not including the date upon which the confirmation was signed. Where the grievance has been properly presented, the Division or Department Manager shall reply to the grievance in writing within five (5) working days of the date of receipt, not including the date of receipt. The Division or Department Manager will confer with the shop steward and the employee in an attempt to come to an agreement on a fair and appropriate adjustment of the grievance and to sign a meeting confirmation. In any hearing, the Division or Department Manager shall not be bound by the rules of evidence prevailing in the courts.
3. *Step Three:* If the grievance is not settled in Step Two, it may be appealed in writing to the Mayor (or his designee) within five (5) working days after the signing of the Step Two meeting confirmation, not including the date upon which the confirmation was signed. The grievance form and Division or Department Manager's answer shall be presented to the Mayor (or his designee). Where the grievance has been properly presented, the Mayor (or his designee) shall reply to the grievance in writing within five (5) working days of the date of the hearing, not including the date of hearing. The Mayor (or his designee) will confer with the shop steward and the employee in an attempt to come to an agreement on a fair and appropriate adjustment of the grievance. In any hearing, the Mayor (or his designee) shall not be bound by the rules of evidence prevailing in the courts.
4. *Step Four:* If the grievance is not settled in Step Three, arbitration may be requested by the Union. Such request shall be made in writing to the Human Resources Director within ten (10) working days of the Step Three response, not including the day the response was made. Upon receipt of the written request, the Human Resources Director and the Union representative shall attempt to select a mutually agreeable arbitrator. In the event an arbitrator cannot be selected by mutual

agreement within ten (10) working days of the request for arbitration, not including the day of the request, the Federal Mediation and Conciliation Service shall be requested to submit a list of seven (7) names from which shall be selected an arbitrator. The arbitrator shall be selected from the list by the following procedure: the Union representative shall strike the first name from the list, next the Human Resources Director shall strike a name from the list, thereafter each shall strike a name alternatively until only one name is left. That person shall be the arbitrator. The arbitrator shall have the power and duty to:

- a. hold hearings or conferences on the grievance,
- b. make such investigations as are deemed necessary,
- c. make findings of fact,
- d. hear necessary evidence, accept records, or hear witnesses, and
- e. render an award on the grievance.

The arbitrator shall have no authority to delete from, add to, or modify any provision of this Working Agreement. For the purposes of arbitration, this Working Agreement is the sole and total Agreement between the parties and any arbitrator's award which references itself to or is based upon any law, rule, regulation, or past practice not explicitly found in this Working Agreement shall be null and void. The arbitrator shall make no decision which would order the Utility to perform an action which is inconsistent with the law or this Working Agreement. The decision rendered by the arbitrator shall be binding upon the parties to this Agreement. The cost and expense of any such arbitration shall be borne by the unsuccessful party.

H. An employee or group of employees covered by this Agreement who has been subject to discipline resulting in suspension in excess of two (2) days or discharge who chooses to grieve such action may do so through an expedited procedure. The time limits in Section G of this Article for filing grievances will be applicable to this Section.

1. The grievance is filed directly to Step Three of the grievance procedure. The grievance will be written and shall set out the facts alleged, the section of the Working Agreement alleged to have been violated, the parties involved, and any other information deemed pertinent, and will be signed by the Union's Business Manager or his designee, unless Union representation has been waived. The Mayor (or his designee) shall reply within ten (10) working days of the presentation, not including the date of presentation. The Mayor (or his designee) shall confer with involved management personnel, the shop steward, the employee, and the Union's Business Manager or designee in an attempt to come to an agreement on a fair and appropriate adjustment of the grievance.



2. If the grievance is not settled at Step Three, arbitration may be requested by the Union, in the same manner as in Section G (4) of this Article. No transcripts will be made of the arbitration hearing, and briefs will be accepted by the arbitrator at his discretion. The arbitrator will issue an award only, without an opinion, within ten (10) days of the close of the arbitration hearing. Under this Agreement an award without an opinion shall consist of a summary statement by the arbitrator of no more than two (2) pages which briefly sets forth the basis of the award. An opinion shall follow within thirty (30) days.

#### **ARTICLE 10: DISCIPLINE AND DISCHARGE**

- A. No employee covered by this Working Agreement shall be subject to discipline or discharge except for good cause, provided, however, that this Article in no way limits the Utility's authority to lay off employees in conformity with Article 13.
- B. "Good Cause" shall include violations of work rules, regulations, or policies regularly established and enforced by the Utility.
- C. In the case of discharge, discipline resulting in loss of work, or issuance of letters of warning, the Utility shall give notice within five (5) working days thereof to the employee and the Union Business Manager who shall acknowledge, in writing, receipt of said notice within ten (10) working days of the date of his receipt of the notice from the Utility. Any objections shall be included in said acknowledgment and shall comply with the Article 9 Section G (1) detailed information requirement.
- D. Should the Union fail to object in writing to any discharge, discipline, or letter of warning within ten (10) days, as provided in Section C above, it will be presumed that the Union assents to such action, and such discharge, discipline or letter of warning shall not be subject to grievance. Further, should such discharge, discipline or letters of warning be at issue in subsequent proceedings, the Union cannot deny their validity.
- E. The Utility shall set reasonable work rules which are to be posted in each location. Any changes in the rules shall be posted no less than twenty-four (24) working hours in advance of their effective date and a copy shall be sent to the Union and to the Human Resources Director at the time when said rule is posted and prior to its effective date. These Work Rules will not be enforced in any arbitrary, capricious, or discriminatory manner.

#### **ARTICLE 11: SENIORITY**

- A. Seniority shall mean the status attained by length of continuous service within a seniority unit.
- B. Seniority shall not begin nor become effective during the probationary period.

- C. Probationary employees, upon successfully completing their probation, shall become regular employees and their seniority shall be computed as of the date of their initial hire as a probationary employee.
- D. Employees shall lose their seniority for the following reasons:
1. Discharge if not reversed,
  2. Resignation,
  3. Unexcused failure to report to work; (a) when recalled from layoff, or (b) for three (3) consecutive working days without the permission of the Division or Department Manager,
  4. Failure to return to work after expiration of a formal leave of absence, without notification to the Utility,
  5. Retirement, or
  6. Layoff for a continuous period of one (1) year or more.
- E. The Utility shall maintain seniority rosters showing employees arranged according to seniority in each seniority unit. The seniority units shall be as follows:
1. Electric Division
  2. Water Division
  3. Wastewater Division
  4. Business Office
  5. Metering Department
- F. Seniority shall apply to promotions, involuntary and voluntary transfers, the filling of newly-created jobs, the filling of vacancies, vacant shift assignments, vacations, and layoffs and recall if qualifications are sufficient. In determining the sufficiency of qualifications, the following factors shall apply:
1. Skill, based on job descriptions and/or any pre-employment testing required of new employees.
  2. Efficiency
  3. Ability
  4. Knowledge

5. Training
  6. Physical Fitness, based on job descriptions and/or any pre-employment testing required of new employees.
- G. Seniority shall apply only within each employee's seniority unit, with the exception of Utility man. The Utility agrees, however, to accept on condition, the principal of "Utility Wide Seniority" with regard to voluntary transfers and/or promotion. This status is to be considered at all times as secondary to seniority-unit status which is to remain primary. However, in the event a full-time position is not filled by a current member of the seniority unit after being posted, permanent full-time members of other seniority units shall be given preferential consideration over other applicants, provided that their past work record is satisfactory and provided they evidence the necessary skill, ability and experience to perform the requirements of the position.
- H. An employee who has been promoted to a management position, and any employee so promoted in the future, shall not forfeit any of his seniority in his regular unit and shall retain his seniority in that unit should he be permitted to return. The employee may be returned to his former job in the bargaining unit, at the request of the employee or the Utility, for any reason prior to completion of a ninety (90) day probation period in the management position.
- I. An employee who transfers from one seniority unit to another shall retain the seniority accrued in his prior seniority unit.
- J. Prior to transfer from one job classification to another, the Utility shall apprise the employee requesting transfer of all the required job-related qualifications for the job vacancy. Provided base qualifications are met, the Division Manager shall judge the candidate's job-related qualifications during a thirty-five (35) working day qualification period. The employee shall receive the rate of pay in the new job grade classification as posted. If an employee is disqualified by the Utility during the thirty-five (35) working day qualifying period, said employee may automatically return to his former job. However, if an employee elects to withdraw his bid during said period, he shall not be entitled to automatically return to his former job unless said withdrawal occurs during the first fifteen (15) working days of the qualification period. If the employee withdraws his bid after the first fifteen (15) working days of the qualification period and his former job has been filled, the employee may bump the junior employee in his original seniority unit, or he may choose to have the Utility assign him to any open job for which he qualifies within any of the five (5) seniority units. If an employee is returned for cause to his former and/or other job by the Utility, a written evaluation of his performance based on the aforementioned description of required job-related qualifications shall be given to the employee by the Division Manager. The disqualified employee shall have the right to have his evaluation reviewed by the grievance procedure. The required job-related qualifications shall not be subject to compromise. An employee who qualifies or is disqualified may not request transfer to another job classification for a period of twelve (12) months after the date of his transfer. This twelve (12)-month restriction shall not apply to intra-seniority unit transfers.

- K. Utilityman Job Classification seniority shall apply to all job categories within the Water Department where the employee holds appropriate experience, certifications, and/or qualifications.

## **ARTICLE 12: POSTING OF VACANCIES**

- A. In the event that there is a vacancy or a newly created job to be filled in a job classification covered by this Agreement, a notice to that effect, indicating the rate of pay range and specific work schedules and hours, shall be posted with the job description in all Utility working areas.
- B. Such notice shall be posted for five (5) working days (not including Saturdays, Sundays and Holidays). The date of the last day of filing applications shall be posted on such notice of the job vacancy.
- C. Employees shall apply for posted job vacancies on forms agreed upon by the Utility and the Union. The Union Business Manager shall be furnished a copy of all job vacancy notices and job bids. Employees who have exercised their voluntary transfer privilege during the preceding twelve (12) month period shall be ineligible to apply for a posted job vacancy until the expiration of said twelve (12) month period, subject to the provisions of Article 11, Section J of this Agreement.
- D. If no qualified employee is available through the posting procedure the Utility may hire new personnel. If a qualified or new employee is not used to fill the job vacancy or the vacancy is not filled for any reason, after the expiration of ninety (90) calendar days or more from the date of original notice, the job shall be re-posted or a new employee may be hired.
- E. In filling the job vacancies covered by this Agreement, seniority shall be applied as follows:
1. Seniority unit seniority within a job category:
  2. Seniority unit seniority within the area where the vacancy exists,
  3. Seniority within the Utility
- F. No posting for jobs will be required for:
1. Jobs resumed by an employee returning from military service;
  2. An employee returning from a disability due to illness or injury; or
  3. An employee returning from a leave of absence or vacation.
  4. Promoting employees from one grade level to another, subject to Article 33 Section B.

- G. If there is an apparent vacancy in a job classification covered by this Agreement, the Utility shall post such vacancy within two (2) weeks of the occurrence of said vacancy; or post that the vacancy will not be filled at this time.
- H. The Utility shall transfer the successful bidder within thirty (30) working days from the date the job is awarded.
- I. If a vacancy occurs due to a disqualification, that vacancy shall not be re-posted; the vacancy shall be filled from those who bid on the original vacancy. If there are no such other bidders, then the job may be re-posted or a new employee may be hired.

### **ARTICLE 13: LAYOFFS AND RECALLS**

- A. Layoff shall mean the separation of employees from the active work force due to lack of work or funds or to abolition of positions because of changes in organization.
- B. Order of layoff:
  - 1. Layoff shall be accomplished so that the remaining bargaining unit employees will be those with the skill, ability and experience to perform the duties remaining.
  - 2. Where not in conflict with the principle expressed in subsection (1) above, layoff shall further be accomplished in each seniority unit as follows:
    - a. contractors' employees shall be laid off first; then
    - b. temporary and part-time employees, then
    - c. probationary employees, then
    - d. permanent employees according to seniority.
- C. An employee notified of his layoff may, within three (3) days of such notification, request demotion in lieu of layoff. If there exists within the employee's seniority unit a job classification lower than the one the employee presently holds having duties which the employee is capable of performing and in which there are other employees with less seniority, then the affected employee shall be entitled to employment in the lower classification. The employee displaced and laid off in the lower classification shall be the one with the least seniority. Where the layoff process results in surplus employees in any given seniority unit, the Utility will attempt, where consistent with efficient operation, to place the laid off employees in vacant job classifications in other seniority units. Permanent employees will be given at least ten (10) working days' notice before being laid off.

- D. The Mayor (or his designee) may approve deviations from seniority in layoffs when seniority alone would result in retaining employees unable to maintain a satisfactory level of performance. In such cases, the affected employees shall be given written notice of the determination and the reasons therefore, as well as the opportunity for a formal hearing with Union representation following such notification. Unsatisfactory hearing determinations may be grieved directly to Step Four of the grievance procedure.
- E. Recall:
1. Recall shall be accomplished so that the employees recalled shall be those with the skill, ability and experience necessary to perform the available work.
  2. Where not in conflict with the principle expressed in subsection (1) above, recall shall be by seniority.

#### **ARTICLE 14: HOURS AND OVERTIME, NON-SHIFT EMPLOYEES**

- A. For record purposes:
1. The work week shall consist of seven (7) consecutive calendar days, beginning at 12:00 A.M. on Saturday and ending at midnight on Friday.
  2. The work day shall be a period of twenty-four (24) hours starting and ending at midnight.
  3. Once a higher rate of pay has been earned the rate of pay shall not decrease until released from work by the company.
- B. Employees shall normally be scheduled to work eight (8) hours during a work day and forty (40) hours during a work week. However, this provision shall not be construed as a guarantee of hours of work or pay.
- C. Regular work schedules within the work week are Monday through Friday. Regular work shifts within the work schedule are eight (8) consecutive hours, exclusive of the lunch period provided for in Article 22. Regular work shifts are:

|                     |                        |
|---------------------|------------------------|
| Business Office     | 8:00 a.m. to 5:00 p.m. |
| All Other Divisions | 7:30 a.m. to 4:00 p.m. |

Deviation from the above regular schedules and shifts for current jobs may be arranged at any time between management, affected personnel and the Union. Senior employees will be given preference for any such deviation in the following order of priority: 1) classification, 2) work group, and 3) seniority unit (as defined in Article 11, Section E). Newly posted jobs may deviate from the above regular schedules and shifts.



D. Employees shall, as a condition of employment, make themselves reasonably available for overtime work. The Utility agrees to pay any employee overtime at the rate of one and one-half (1-1/2) times his regular straight time rate of pay for all hours worked outside of his assigned schedule and for all hours worked or paid in excess of forty (40) hours per week, except as otherwise provided herein.

1. Unless a higher rate is applicable, an employee shall be paid at one and one-half (1-1/2) times his regular straight time rate of pay for hours worked on his first scheduled day off within the work week.
2. An employee shall be paid double his regular straight time rate of pay for hours worked on his second scheduled day off within the work week.
3. When an employee works more than sixteen (16) hours within a twenty-four (24)-hour workday, he shall be paid at the rate of double his regular straight-time rate of pay for all such hours in excess of sixteen (16) hours. If an employee is called out within one (1) hour of the time he was released from work, the total paid working hours in such periods shall be considered in determining said sixteen (16) hours.
4. No employee shall receive overtime pay for both weekly and daily overtime for the same overtime work.
5. In no event shall an employee receive more than double his regular straight time rate for any hours worked.
6. All hours worked in support of Mutual Aid of other governmental entities or municipalities shall be paid at double the employee's regular rate of pay. The time paid at the double-time rate shall begin when the employee departs in a vehicle to travel to the affected area. For Mutual Aid work, the Utility will take volunteers. Management shall maintain a list of employees' accumulated Mutual Aid hours, first accepting for each project those volunteers with the fewest accumulated Mutual Aid hours.

Upon returning from a mutual aid assignment, each employee shall, if earned in accordance with Article 15 E., get an eight (8)-hour rest period prior to returning to work. If any part of this eight (8)-hour rest period falls within his regularly scheduled work day, he shall be paid for such part at his straight-time regular rate of pay (funded by the entity where the rest was earned).

E. A non-shift employee filling in for a shift employee is considered a deviation from the above schedule. In such cases, "first and second days off" will not be considered for overtime purposes. Instead, the first eight (8) hours worked or paid beyond forty (40) in a work week, as defined above, will be paid at one and one-half (1-1/2) times his regular straight time rate of pay; all hours worked or paid beyond forty-eight (48) hours in a work week, as defined above, will be paid at double his regular straight time rate of pay. Such employees attain this schedule/pay status any time the employees fill in for less than a full shift work schedule. A non-shift employee filling in for a shift employee for a full shift work schedule shall be paid as a shift employee.

F. An employee who is required to work sixteen (16) hours or more during any twenty-four (24)-hour period shall be entitled to an eight (8) hour rest period. The rest period shall begin at the earlier of the following: 1) when the employee is released from work, or 2) at the beginning of the next regularly scheduled day.

If any part of this eight (8) hour rest period falls within his regularly scheduled work day, he shall be paid for such part at his straight-time regular rate of pay. Should an employee be required to work any part of his eight (8) hour rest period which falls within his regularly scheduled shift, he shall receive in addition his straight-time regular rate for such hours worked. If, after an employee has worked sufficient hours to qualify for a rest period and is released, he shall have eight (8) hours off duty time prior to being required to return to work.

G. Overtime work shall be distributed as equally as is possible among the employees performing the same type of work within each seniority unit. Overtime distribution schedules shall be negotiated individually in each seniority unit between the Manager and the Union steward.

H. A record of the overtime hours offered and worked by each employee shall be maintained and posted monthly by each division or department at each location.

#### **ARTICLE 15: HOURS AND OVERTIME, SHIFT EMPLOYEES**

A. For record purposes:

1. The work week shall consist of seven (7) consecutive calendar days, beginning at 12:00 A.M. on **Saturday** and ending at midnight on **Friday**.
2. The work day shall be a period of twenty-four (24) hours starting and ending at midnight.
3. Once a higher rate of pay has been earned the rate of pay shall not decrease until released from work by the company.

B. Employees shall normally be scheduled to work eight (8) hours during a work day and forty (40) hours during a work week. However, this provision shall not be construed as a guarantee of hours of work or pay.

C. The Utility will establish regular shift schedules, normally:

First Shift      **12:00 A.M. to 8:00 P.M.**

Second Shift    **8:00 A.M. to 4:00 P.M.**

Third Shift      **4:00 P.M. to 12:00 A.M.**

D. Employees shall, as a condition of employment, make themselves reasonably available for overtime work. The Utility agrees to pay any employee overtime at the rate of one and one-half (1-1/2) times his regular straight time rate of pay for all hours worked outside of his assigned schedule and for all hours worked or paid in excess of forty (40) hours per week, except as otherwise provided herein.

1. Unless a higher rate is applicable, an employee shall be paid at one and one-half (1-1/2) times his regular straight time rate of pay for hours worked on his first scheduled day off within the work week.
2. An employee shall be paid double his regular straight time rate of pay for hours worked on his second scheduled day off within the work week.
3. When an employee works more than sixteen (16) hours within a twenty-four (24)-hour workday, he shall be paid at the rate of double his regular straight-time rate of pay for all such hours in excess of sixteen (16) hours. If an employee is called out within one (1) hour of the time he was released from work, the total paid working hours in such periods shall be considered in determining said sixteen (16) hours.
4. No employee shall receive overtime pay for both weekly and daily overtime for the same overtime work.
5. In no event shall an employee receive more than double his regular straight time rate for any hours worked.

E. An employee who is required to work sixteen (16) hours or more during any twenty-four (24) hour period shall be entitled to an eight (8) hour rest period. The rest period shall begin at the earlier of the following: 1) when the employee is released from work, or 2) at the beginning of the next regularly scheduled day.

If any part of this eight (8) hour rest period falls within his regularly scheduled work day shift, he shall be paid for such part at his straight-time regular rate of pay. Should an employee be required to work any part of his eight (8) hour rest period which falls within his regularly scheduled shift, he shall receive in addition his straight-time regular rate for such hours worked. If, after an employee has worked sufficient hours to qualify for a rest period and is released, he shall have eight (8) hours off duty time prior to being required to return to work.

F. For all shift jobs with assigned schedules including Saturdays, Sundays and holidays, schedules shall be rotated in such a manner so as to equalize such work as much as possible among the employees performing the same type of work within each Division.

- G. Shift workers who work first and third shifts shall receive a shift bonus, to be negotiated with wages and listed in the salary ordinance.
- H. Shift workers shall not be required to change shifts to cover a one-day absence of a fellow shift worker.
- I. Shift workers who have similar qualifications shall be allowed to exchange shifts with approval of the Division Manager.
- J. For those workers who have been assigned to the current 6-2 rotation, it is understood that this provision is not intended by either party to guarantee nor mandate continuation of the currently-configured six (6)-day, forty-eight (48)-hour shift work schedule rotation.

#### **ARTICLE 16: EMERGENCY CALL-OUT**

- A. The minimum time allowed for an emergency call outside of normal working hours covered by this contract shall be two (2) hours. If such two (2)-hour period extends beyond the beginning time of the employee's normal working day, the regular pay for hours worked on such day shall commence at the regular beginning time of such employee on that day.
- B. Regardless of the time worked by the employee or the number of times called during such two (2)-hour period, the compensation for such full period shall be limited to two (2) hours at the applicable overtime rate. In the event the time worked by the employee is less than two (2) hours during such call-out, the employee shall make himself available for the full two (2)-hour period.

#### **ARTICLE 17: INCLEMENT WEATHER**

- A. Employees who are unable to work outside because of inclement weather shall be provided other safe work or training.
- B. Inclement weather will be deemed to mean weather conditions that will make the work unsafe. It is understood and agreed that such determination shall be the right of the Department or Division Manager or the Mayor (or his designee).
- C. Emergency work shall be performed regardless of the weather conditions.

#### **ARTICLE 18: TEMPORARY ASSIGNMENTS**

- A. When bargaining unit employees are temporarily assigned jobs in a higher classification, they shall receive the rate of pay of that classification.
- B. An employee who is temporarily assigned a job with a lower rate of pay than his regular rate of pay shall receive his regular rate of pay.

- C. Temporary assignments shall not exceed forty-five (45) working days per year except when extended by mutual agreement.
- D. Work outside the bargaining unit can be arranged with agreement of the business managers and the affected employees under creation of a 3<sup>rd</sup> party MOU.

#### **ARTICLE 19: SAFETY**

- A. The Utility shall make every reasonable effort to provide safe working conditions for its employees and no employees shall be required to work with an unsafe workman or under unsafe conditions.
- B. Safety training meetings shall be conducted at each headquarters at least six (6) times during a calendar year, except in the Business Office where such meetings shall be conducted as necessary. All employees will be required to attend unless they are excused by their supervisor.
- C. A joint safety program shall function in each Division with a committee comprised of representatives from the Utility and the Union in each such Division.

#### **ARTICLE 20: EMPLOYEE TOOLS, EQUIPMENT, CLOTHING**

- A. The Utility shall furnish all tools, equipment and clothing (such as foul weather gear and hard hats) required for the job. Personal tools shall be provided by the employee. Such tools provided by the employee shall be replaced by the Utility upon receipt of the worn-out or broken tools as evidence of need of replacement. All such broken and worn-out tools will become the property of the Utility. Employees who are being provided with uniforms upon the execution of this Working Agreement will continue to be provided with eleven (11) of said properly fitted uniforms during the period of said Agreement. Size adjustments to uniforms may be allowed once during a twelve (12)-month period at Utility expense. Any additional size adjustments during that twelve (12)-month period will be at the employee's expense. Electric Division field employees' uniforms shall be of flame retarding material.
- B. All Job Descriptions which require approved safety shoes or boots to comply with OSHA Guide 1910.136, and in recognition of the fact that such protective footwear is required to be worn by certain employees on the job, but that those employees may choose to wear such safety shoes or boots off the job as well, Mishawaka Utilities will participate in the footwear required by this policy according to the following procedure:
  - 1. Employees will purchase footwear required by their job description from any supplier, so long as such footwear complies with ANSI Z41-1991, "American National Standard for Personal Protection -- Protective Footwear".
  - 2. Employees shall submit an acceptable receipt of purchase, to be accompanied by a claim form signed by the Department Manager, certifying that the

purchased footwear is required by the job and suitable for it, according to the 1910 OSHA Guide

3. Mishawaka Utilities will reimburse employees for the purchase price of the footwear, but in no event will the reimbursement exceed three hundred dollars (\$300.00) every two years. Direct billing to the Company and subsequent employee payroll withholding will not be permitted.

#### **ARTICLE 21: BREAKS, MEALS AND CLEAN-UP TIME**

- A. Except as otherwise herein provided, all employees shall provide their own noon lunch. The unpaid lunch period shall be one-half (½) hour unless otherwise mutually agreed, except that Business Office employees shall be entitled to a one (1)-hour unpaid lunch period. The Utility may, at its discretion, require employees to eat in the vicinity of the job site or work activity near a suitable facility or allow employees to return to their respective headquarters for lunch. For the purpose of this Article a "suitable facility" is any facility with public washrooms. If employees are required to eat in the vicinity of the job site, the Utility will provide coolers with ice for worker-carried lunches.
- B. In the event an employee is called in to work more than two (2) hours before the start of his normal scheduled shift, or held over more than three (3) hours beyond the end of a normal scheduled shift, the Utility shall furnish a suitable meal to the employee, or reimburse him for the expense thereof, including gratuity. If an employee is called back within one (1) hour of having been released from work at the end of a normal work day, the Utility shall include the time during which the employee was punched out to determine the three (3) hour eligibility for meal reimbursement. No meals shall be provided for scheduled overtime, defined as any work scheduled with the employee not less than four (4) hours in advance.

However, Utility meal expense reimbursement to an employee shall not exceed seven dollars (\$7.00) for a meal eaten between 12:00 midnight and 6:00 p.m. or eleven dollars (\$11.00) for a meal eaten between 6:00 p.m. and 12:00 midnight.

- C. In the event an employee is called in for work outside of, but not immediately before his regularly scheduled shift, he shall be furnished a meal or be reimbursed for the expense of thereof for each six (6) hours of continuous work, as outlined in Section B of this Article.
- D. Whenever practical, actual meals should be provided at an authorized facility designated by the Utility to bill directly for employee meals. In recognition of the fact that circumstances sometimes prevent such practice, the Utility will reimburse employees for meals taken, subject to the limitations expressed in Section B of this Article. In lieu of meals to which employees are entitled but which are not actually taken, the Utility will pay the employee the reimbursable equivalent of that meal as defined in Section B of this Article.
- E. Employees shall be allowed ten (10) minutes clean-up time at the end of each work day or call-out period.



- F. Employees shall be allowed one (1) fifteen (15)-minute break during each four (4)-hour work segment, whether inside or outside his normal scheduled shift, at a reasonable time authorized by immediate management personnel. Breaks not so taken cannot accumulate from one four (4)-hour segment to the next. Nor will employees be allowed to take a break in advance of a given four (4)-hour segment, so as to result in one (1) thirty (30)-minute break daily. Breaks shall be taken at the job site for employees working away from respective headquarters, unless another break location is authorized by the Division Manager.

## **ARTICLE 22: JURY OR MILITARY DUTY**

- A. When an employee is required to serve on a jury or is subpoenaed to be a witness, he shall not suffer loss of pay for such absence. The fees received for the above service shall be deducted from his regular pay and he shall report to normal work (if reasonable to do so) upon release from such service.
- B. When an employee is required to serve on Temporary Military Training Duty of fifteen (15) days or less in a calendar year the employee will be paid as if he had worked. The fee received will not be deducted from regular pay.
- C. Employees requesting leave pursuant to this Article shall notify management as soon as practical prior to the leave and shall submit applicable paperwork in a timely manner.

## **ARTICLE 23: HOLIDAY PAY**

- A. All regular, full-time employees covered by this Agreement shall receive eight (8) hours at their regular rate of pay for the following holidays: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and the Friday after Thanksgiving, the day before Christmas and Christmas Day, and two (2) personal holidays, which can be taken in full- or half-day increments subject to prior approval by the Department or Division Manager.

When such personal holiday picks are requested by employees between December 1st of the current year and January 15 of the upcoming year, seniority will determine which employees are granted or denied such future dates, based on Division or work group strength. In approving or denying such optional holiday requests after January 15, management can consider Division and workgroup strength, and grant or deny the holiday on a first-come, first-serve basis. Employees in their first year of employment will be paid for named holidays as they occur, but are not eligible for either of the two (2) personal holidays until they have been employed for six (6) months.

- B. Holidays will not accumulate or carry over from year to year, except if LTD leave at the end of a year would cause an employee to forfeit unused personal holidays, in which case unused personal holidays shall carry over to the new year. Such personal holidays shall be used at the termination of LTD leave, but shall be paid at the prior year's rate of pay.

- C. Employees who work on a scheduled holiday as defined in Section A of this Article shall receive double their regular rate of pay plus holiday pay for the day worked except for Wastewater shift employees as described in this Article Section F.
- D. Employees must work the scheduled day before and after a holiday in order to receive pay for the holiday unless the time off was scheduled at least twenty-four (24) hours prior to the start of the employee's shift on the last work day before the holiday or as approved by the Division Manager.
- E. When a holiday occurs on Sunday, the holiday will be observed on Monday. Except for New Year's Day, when a holiday occurs on Saturday, the holiday will be observed on Friday. When New Year's Day occurs on Saturday, it will be observed on Monday.
- F. Wastewater Division shift employees shall be paid double time for the actual holidays worked and not observed city holidays. Shift employees shall receive eight (8) hours holiday pay on the observed holiday.
- G. Shift workers shall work holidays in accordance with their schedule unless requested to not work by the employer.

#### **ARTICLE 24: FUNERAL LEAVE**

- A. Full-time permanent employees shall be entitled to funeral leave as indicated:
  - (1) At time of death of an employee's wife, husband, child, mother, father, mother-in-law, father-in-law – a maximum of five (5) scheduled workdays. "Child" shall include stepchildren.
  - (2) At the time of death of an employee's brother or sister, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandchild or grandparent or spouse's grandparents – a maximum of three (3) scheduled workdays.
- B. Funeral leave days under (A1) above must be taken consecutively and must include the day of the funeral. Funeral leave days under (A2) and (A3) above must be taken between the date of death and the day following the funeral. Days of funeral leave shall be paid at the rate of eight (8) hours per day at the employee's regular straight time rate of pay. The days paid as funeral leave under this Article shall be only regular scheduled workdays.
- C. In cases of suspected abuse the Utility may require an employee to submit to the Human Resources Department, upon his return, proof of relationship and verification of the death of such relative. If the employee does not attend the funeral, he will not be entitled to any payment.
- D. The Utility shall pay an employee up to four (4) hours at his regular straight time rate for hours actually spent serving as a pall bearer for an employee or a retired Utility employee, provided proper advance notice is given to the Utility.
- E. In the case of an employee's death, the Utility may, at its discretion, grant a limited number of employees time off without loss of pay to attend the funeral.

- F. In the event of the death of an immediate family member as defined in Section A (1) or (2) while an employee is on vacation, funeral leave will commence as stated in Section B. Those vacation days replaced by funeral leave will be granted back to the employees earned vacation bank for use at a later time. The days of vacation replaced by funeral leave will only apply to regular scheduled workdays.

#### **ARTICLE 25: LEAVES OF ABSENCE**

- A. Employees may be granted an unpaid leave of absence for a period of six (6) months upon request to the Utility. Such leave is subject to the approval of the Utility and the Union and may be granted for any legitimate purpose other than engaging in other gainful employment. Extensions of leaves of absences may be granted by the Utility and the Union upon request.
- B. Any employee of the Utility (limited to one employee at any given time) who is elected to an office in the Local Union or is appointed to an office in the IBEW requiring his leave of absence from the Utility shall, with the approval of the Utility, be granted an unpaid leave for a period not to exceed four (4) years.

Any such employee returning to the Utility will be reinstated to his former position, provided he is physically able to perform the duties of that position and providing that a vacancy exists. If the vacancy has been filled, the employee shall have the right to be assigned to any open job for which he can qualify within any of the five (5) seniority units as described in Article 11, Section E.

- C. During leaves of absence described in Sections A or B above, employees on leave status shall not be paid and shall not accrue employee or pension benefits or seniority. Following the leave period, employees shall return with the seniority level attained at the time the leave began. If the employee wishes to participate in group benefit programs, he must reimburse the Utility for the total cost of such programs. In the event an employee has been granted a leave of absence and becomes disabled while on such leave of absence, he shall not be entitled to Long Term Disability benefit coverage.
- D. The Utility and the Union agree to comply with the FMLA policies established by the City of Mishawaka for all City employees.
- E. All leaves of absence shall be issued in writing and state the conditions thereof. Such notice shall be kept on file by the Mayor (or his designee), with a copy furnished to the employee, the Human Resources Department and the Union.
- F. Bargaining unit employees may request unpaid time off with 24 hours' notice. All unpaid leave is at the sole discretion of Management.

## ARTICLE 26: VACATIONS

- A. Employees will be granted vacation time away from work according to the following schedule:

|                                                                                     |    |
|-------------------------------------------------------------------------------------|----|
| Hiring date to December 31 <sup>st</sup> (first year)                               | 0  |
| 1 year but less than 2 – one day awarded for each month worked with a maximum of 10 | 10 |
| 2 years but less than 5 years                                                       | 10 |
| 5 years but less than 12 years                                                      | 15 |
| 12 years but less than 17 years                                                     | 20 |
| 17 years but less than 25 years                                                     | 25 |
| 25 years but less than 31 years                                                     | 30 |
| One additional day for each year, starting with year 31                             |    |

The First Year is defined as that period of time from the date of hire to December 31<sup>st</sup> of the same year. When determining the number of years of service for vacation purposes, date of hire to December 31<sup>st</sup> of the first year will count as one full year.

- B. For non-shift employees, all vacation days may be taken in increments of at least one (1) full day with twenty-four (24) hours' advance notice and approval by management. For shift employees, ten (10) such days may be taken per year and shall not be taken on Saturday, Sunday, or any day observed as a holiday in Article 24. Management reserves the right to limit the number of employees taking the same day(s) off. When two or more employees request the same day(s) off, management may limit the number of approvals, based on a first-come, first-served basis.

Remaining vacation days shall normally be taken in blocks of at least five (5) consecutive days, subject to the discretion of the Division or Department Manager. Shift workers shall take the number of consecutive vacation days as are normally worked in their assigned weekly schedule.

- C. Employees are encouraged to schedule their vacation periods between December 1<sup>st</sup> of the current year and January 15 of the upcoming year. If so requested, employees will be granted vacation time according to seniority within a work group subject to work group staffing requirements. Any vacation request submitted after January 15 will be granted on a first-come, first-served basis, with such request normally requiring thirty (30) days' advance notice, and subject to work group staffing requirements.

An employee who elects not to take all of his vacation in one consecutive period shall retain seniority rights to only one consecutive period as his first choice. First choice shall be designated by the employee prior to January 15 in order to secure his seniority pick.

- D. All vacation days paid shall be on the basis of eight (8) hours of regular pay, excluding any shift bonus or crew leader pay (for other than grandfathered crew leaders).

- E. In the event an employee is on sick leave with pay at the beginning of his scheduled vacation leave, he shall be considered on sick leave. His vacation shall begin upon termination of his sick leave unless the employee and management agree to reschedule the vacation time to a later date, except as provided in Paragraph G, below.
- F. Vacations shall not be allowed to accumulate and carry over from one calendar year to the next except if LTD leave at the end of a year would cause an employee to forfeit unused vacation time, in which case all unused vacation time shall carry over to the new year. Such vacation time shall be used at the termination of LTD leave, but shall be paid at the prior year's rate of pay.
- G. In the event a regular employee's employment with the Utility is terminated, including termination due to death or retirement, he shall be entitled to pay in lieu of vacation leave for any vacation awarded but not yet taken during the calendar year of his termination.
- H. An employee who requests his vacation pay in advance shall make his request at least ten (10) days prior to the beginning of his vacation period. Such advance vacation pay shall be granted only if the vacation pay is for ten (10) or more work days.
- I. The Utility shall not buy back any unused vacation time from employees.

#### **ARTICLE 27: FLEXIBLE TIME OFF (FTO)**

- A. In recognition of the need for its employees to be away from work, the Utility agrees to establish and accrue a bank of time off for any personal needs such as personal or family illness, extension of contractual bereavement leave or vacations, or for any other purpose. Such bank may also be used to satisfy the five (5)-day waiting period for Long Term Disability Leave (LTD) described in Article 29. Such bank will not include personal holidays, bereavement leave (unless as an extension), jury or subpoenaed witness duty, LTD leave, leave of absence, or military leave.
- B. FTO accrual shall begin on the first day of employment for full-time employees and may be taken as accrued. Accruals shall be credited to each employee's account on the first day of each month for the prior month's service at the rate of one-half (½) day per month and continue at the same rate for each month of credited service.
- C. FTO days will continue to accrue as long as the employee remains in paid status, subject to the limitation listed in Section G of this Article.
- D. FTO days may be taken in full or half day increments. If becoming ill at work and leaving early, employees will be charged with one-half (½) FTO day if leaving after mid-shift and a full FTO day if leaving before mid-shift.

- E. Employees are expected to plan time off, setting aside some time in their personal bank for sickness. Employees are encouraged to keep a minimum of five (5) days in their bank at all times to provide for unexpected short-term sickness or for the required five (5)-day LTD waiting period. If all FTO days have been used for vacation or other personal use, any short-term illness will be an excused absence, but without pay. The Utility retains the right to limit, through its Work Rules, the number of excused absence occurrences as described in this Section.
- F. Employees should schedule FTO time at least twenty-four (24) hours in advance with the approval of a supervisor. The Utility recognizes, however, that there will be times, such as days an employee or a dependent is ill or a personal emergency arises that cannot be anticipated. In such cases, it is the responsibility of the employee to inform his supervisor as soon as possible prior to the beginning of a work day or shift of such absence and when the employee expects to be able to return to work.
- G. Employees may carry over accrued but unused FTO days from year to year but in no event can they accumulate more than twenty-five (25) FTO days.
- H. All FTO pay shall be on the basis of eight (8) hours of regular pay, excluding any shift bonus or crew leader pay (for other than grandfathered crew leaders).
- I. The Utility may buy back FTO days from any employee, up to a maximum of six (6) FTO days per year. It is the responsibility of the employee to make timely application to the Mayor (or his designee) for this buyback arrangement, if so desired. In any event, the Utility may not buy back an amount of FTO days which would reduce the employee's personal bank to less than five (5) days, except as provided in Section J of this Article.
- J. In the event a regular, full-time employee's service to the Utility is terminated, including termination due to death or retirement under the Utility's retirement plan, he shall be entitled to pay in lieu of FTO days for days due and not yet taken as of the date of such termination, including any FTO days carried over from prior years.

#### **ARTICLE 28: LONG-TERM DISABILITY (LTD) LEAVE**

- A. In recognition of the fact that employees may become disabled and may not be able to perform their normal duties, due to a long-term illness or injury (whether occupational or otherwise), the Utility hereby agrees to establish, beginning January 1, 1993, a Long-Term Disability (LTD) leave program for all regular, full-time employees.
- B. LTD leave will not begin until a five (5)-working day waiting period has elapsed. Employees must bridge this waiting period with any leave time available to them at the start of the leave period.



- C. The LTD leave period shall be for a maximum of fifty-two (52) weeks. While on leave, employees will be paid all or part of their regular pay, based on forty (40) hours of pay per week, exclusive of shift bonus or crew leader pay (for other than grandfathered crew leaders), according to the following schedule:

For each complete year of service, one (1) week LTD benefits at one hundred percent (100%) of pay, to a maximum of twenty-six (26) weeks, after the waiting period has expired.

Then, sixty-seven percent (67%) of pay through the twenty-sixth (26th) week following the waiting period.

Then, fifty percent (50%) of pay through the fifty-second (52nd) week following the waiting period.

Then, no benefit (0%).

The LTD benefit paid to an employee on LTD leave will be reduced or replaced entirely by any amount of Workers' Compensation or Social Security Disability pay received by the employee, including waiting period reimbursement. It is the employee's responsibility to make timely application for such benefits if physically possible and to submit applicable paperwork as soon as practical.

- D. The employee's seniority shall continue during LTD leave. However, any wage increases scheduled to occur during disability will not become effective until returning to work. Benefits, such as group medical and group life insurance, and FTO day accrual, will continue during LTD leave.
- E. The employee must provide medical documentation as to proof of his physical disability to qualify for LTD leave and proof of his ability to return to work following LTD leave. The Utility retains the right to request an independent medical examination by a physician of the Utility's choice. Additionally, the Utility may require subsequent proof of continued disability, obtained at Utility expense, at intervals of not less than two (2) months during a disability period. Failure to comply with this provision on a timely basis, or failure to return to work as soon as possible may result in termination.
- F. No employee will be entitled to LTD leave for a disability resulting from the use of alcohol or drugs, for injury during the commission of a crime, or for disabilities occurring in the course of employment for other than the Utility or for remuneration through self-employment, for injury occurring while performing any outside work for remuneration or profit, or while on official Leave of Absence, pursuant to Article 26.
- G. If the employee returns to work and becomes disabled again within six (6) months of returning from the same injury or illness, the disability is considered a continuation. In this event, no new waiting period will be required. The employee will resume the LTD schedule where he left off upon returning to work.

A new disability period, including the requirement for a waiting period, shall begin if the employee returns to work for at least six (6) months and becomes disabled again from the same injury or illness, or returns and becomes disabled due to an unrelated injury or illness.

- H. An employee returning to work following LTD leave shall return to his regular work, if so released by a physician. If requested by the physician, light work may be arranged by the Division Manager, if such light duty work is available and practical with reasonable accommodation.

An employee declared by a physician to be incapable of returning to his regular work may be placed in any available job covered by this Agreement for which the employee is declared by a physician to be physically fit, without regard to the seniority provisions of this Agreement.

An employee who has been retrogressed to another position under this Section shall retain his seniority in the job classification from which he was so retrogressed for a maximum period of two (2) years.

If the employee recovers from the disability during the period in which he has such retained seniority to the extent that the Utility considers him to be qualified to perform the normal duties of the classification from which he was removed due to the disability, or to any interim classification, this will be done provided his retained seniority is sufficient to displace other employees who occupy the job to which he is being restored. The Utility may require medical evidence of the extent of his recovery on which to base its consideration.

The employee's rate of pay following retrogression will be the greater of 1) the rate of pay for his new job classification, or 2) two-thirds (2/3) of his prior position's pay. In case of the latter, the employee shall remain at this rate of pay, without periodic negotiated increases, until the rate of pay for his new classification equals or exceeds his retrogression rate of pay.

## **ARTICLE 29: HOSPITALIZATION AND MEDICAL INSURANCE**

Explanation and agreement with reference to the foregoing shall be by agreement of the parties during wage negotiations since this document is a Working Agreement and not intended to cover economic terms and conditions; however, such hospitalization and medical insurance shall be in conformity with that available to other employees of the municipality in which the Utility operates.

## **ARTICLE 30: LIFE INSURANCE**

The Utility agrees to pay the entire cost of a \$15,000.00 life, accidental death and dismemberment insurance policy for each employee and retiree. Said policy shall be reduced to \$7,500.00 for all employees upon reaching the age of 65.

### **ARTICLE 31: RETIREMENT PLAN**

The present Retirement Plan shall be retained and fully funded by the Utility.

### **ARTICLE 32: TRAINING PROGRAM**

- A. A training program shall be established during regular working hours to the degree possible but not confined to regular working hours for skilled trades and crafts for the purpose of developing better-informed and qualified employees. Additional job-related training approved by the Division Manager may be available on non-working hours; tuition, books and required materials shall be paid for by the Utility if the employee completes and passes the course of study; however, there shall be no wages nor compensation paid for attendance at such courses, whether passed or not.
- B. Employees in a job classification which has more than one (1) grade level shall not be advanced to the next grade level until they have been evaluated. Such employees shall be evaluated at least as often as every 1,040 hours of work completed.
- C. An Apprenticeship, Safety and Training Program for Linemen has been established in the Electric Division and registered as No. 020-0529 with the U.S. Department of Labor, Bureau of Apprenticeship and Training. The Standards governing the administration of this program shall be part of this agreement.

### **ARTICLE 33: BULLETIN BOARDS**

The Utility shall provide space at each work headquarters for bulletin boards for the exclusive use of the Union, provided such bulletin boards shall not be used for the posting of any political announcements or information of any kind, nor shall they be used for the posting of any scandalous or defamatory matter.

### **ARTICLE 34: EMPLOYEE CLASSIFICATIONS, JOB DESCRIPTIONS**

- A. By the first day of February of each year, the Utility and the Union shall exchange lists of all bargaining unit employees. Said list shall show each employee's job classification and their pay rate. The Utility shall notify the Union of changes in employees' classification, pay, and shift to the degree they are able to do so.

- B. Employees shall be classified according to job titles. Each job title, including grade ranks, shall have a job description on file with the Union. Job descriptions may be changed from time to time. The Utility agrees to seek input from affected employees prior to such changes. However, final decisions regarding such changes will remain with management. Such changed job descriptions will be communicated to affected employees and the Union. When job vacancies are posted, the applicable current job description will be posted. Employee evaluations will include a discussion of the current job description. It is also understood and agreed that job descriptions will specify a job, not a shift, in the event the same job is performed on various shifts.
- C. The Utility will notify the IBEW office when a new Union employee is hired, giving the name, job title and beginning pay.

### **ARTICLE 35: LONGEVITY BONUS PLAN**

The following longevity bonus plan will be provided to Utility employees according to the following terms. Said schedule is based upon years of service and does not have an upper limit. Longevity pay shall be distributed annually on the first pay day following each employee's anniversary date as part of his regular paycheck.

For employees hired in or after 2017, payments shall begin at year five at \$150 with \$125 added each year beginning with year six.

For employees hired in 2016 or before, their longevity bonus shall be calculated as follows: the amount of their longevity bonus received in 2021 (their base) with \$125 added each year thereafter.

The new longevity bonus is not retroactive. The change in the annual longevity bonus increment shall not take effect until January 1, 2022

### **ARTICLE 36: COMMERCIAL DRIVER'S LICENSE (CDL), PHYSICALS**

In recognition of the fact that a Commercial Driver's License (CDL) is required by law for certain employees identified by job description in order for such employees to operate certain Utility vehicles, the Utility agrees to the following:

- A. For CDL renewals, the Utility will reimburse employees the difference between the cost of the license itself and the cost of a basic operator's license.

- B. For employees holding a CDL, the cost of required physicals will be paid by the Utility, limited to one standard CDL physical exam every two years. Such physicals will be arranged by the Utility at a facility of its choice and billed directly to the Utility.
- C. The cost of any testing beyond the standard CDL physical exam provided in B, above, (skills test or follow-up medical tests or visits, for example) will be paid by the employee.
- D. None of the costs described in Sections A or B, above will be paid by the Utility for any employee holding or moving to a job which does not by job description require a CDL.
- E. The Utility cannot waive the CDL requirement for any employee working in or bidding into a job which requires a CDL. However, when bidding into a job which requires a CDL, the employee awarded the job may have up to 35 working days to obtain one. The Utility shall be under no obligation to provide CDL training for such employees.

#### **ARTICLE 37: DRUG-FREE WORKPLACE**

In recognition of the importance, both in human and economic terms, of alcohol and drug abuse, the Utility and the Union are committed to make every effort to have a drug- and alcohol-free workplace and workforce. Therefore, the Utility and the Union agree to comply with all reasonable drug and alcohol policies established by the City of Mishawaka for all City employees.

#### **ARTICLE 38: PAYROLL**

Employees will be paid bi-weekly in conformity with the payroll procedure in existence on the date of the execution of this Working Agreement. When and if the City should change to weekly pay, it will extend to the employees of the Utility the option of receiving weekly pay.

#### **ARTICLE 39: INDEMNIFICATION**

- A. *Claims and Judgment* - the Utility shall indemnify and save harmless any Utility employee from all legal claims, suits, cost and judgment arising out of the acts or omissions to act on the part of the Utility employee which arise out of and in the course of the performance of his duties as a Utility employee subject to the terms and conditions contained herein. Indemnity shall not be provided in the event any Utility employee willfully violates any legal order or direction of a superior, the rules and regulations of the Utility, or is guilty of gross negligence and/or of willful and/or wanton misconduct.
- B. *Executions of Judgments* - the Utility shall take such actions as it deems appropriate to forestall the execution of judgment against the Utility employee personally and if not withstanding such efforts by the Utility, the Utility will indemnify and hold harmless the Utility employee on any judgment covered under Section (A) of this Article subject to the terms and conditions contained herein.

C. *Trials:*

1. The Utility shall provide legal counsel of the Utility's choosing to any Utility employee against whom legal action has been commenced, within the coverage set forth in Section A of this Article.
2. The Utility employee shall have the option to retain his own attorney at his own personal expense to represent his interest in litigation without any effect upon the responsibilities of the Utility under this Article.

D. *Employee Responsibilities:*

1. As a condition precedent to the right of indemnification under this Article, any Utility employee desiring indemnification shall:
  - a. Tender in writing to the Utility's attorney a notice of its right to appear and to defend any litigation as may result in a judgment covered by this Article and grant to the City the right to make such investigation, negotiation and compromise or settlement of any such claim as the Utility shall deem appropriate.
  - b. Give written notice containing the particulars sufficient to identify the Utility employee involved and information as to the time, place and complete circumstances thereof to the attorney for the Utility as soon as is reasonably practical following a covered occurrence.
  - c. Forward immediately any and all suit papers, demands, notices, summons, complaint or other legal process received by such Utility employee or his representative to the attorney for the Utility.
  - d. Cooperate fully with the Utility in the entire conduct, defense, and/or compromise in settlement of any legal proceeding, and additionally grant to the Utility the right to free access and use of all hospital, medical, physician and/or other medical or dental provider with respect to records, reports, x-rays and all other material pertaining to the Utility employee's physical, mental and/or emotional condition in the conduct, defense and/or compromise and settlement of any legal proceedings hereunder.

**ARTICLE 40: SEXIST APOLOGIA**

Words used in this Agreement in the masculine gender shall also include the feminine.



#### **ARTICLE 41: SUCCESSOR CLAUSE**

In the event the City should, during the term hereof, sell or otherwise transfer any of the Utilities covered by this Agreement, it is agreed that the provisions of this Agreement shall continue in full force and effect for the stated term hereof and shall be binding upon any successors, administrators, executors and assigns. The City acknowledges that any such transfer shall not affect its obligations to employees who have duly retired from employment under the terms of this Agreement during the stated term hereof (or a predecessor agreement between the parties hereto) prior to the effective date of any such transfer. The City shall give prior notice of the existence of this Agreement to any potential purchaser, lessee, assignee, etc. Such notice shall be in writing with a copy to the Union.

#### **ARTICLE 42: ENTIRE AGREEMENT**

- A. The Utility and the Union shall not be bound by any arrangement, provision, practice or procedure not specifically stated in this Agreement. Arrangements, provisions, practices or procedures previously agreed to by the Utility and the Union, either formally or informally shall henceforth be void as of the date of the execution of this Working Agreement by the Utility and the Union.
- B. The Utility and the Union agree that this Agreement is intended to cover all matters affecting hours and terms and conditions of employment of the unit employees, and that neither the Utility nor the Union shall be required to negotiate any of the aforementioned, or any other subjects not specifically set forth in this Agreement, during the term of this Agreement.
- C. If any provision of this Agreement or the application thereof to any person or circumstances is adjudicated invalid by an appellate level court of the State of Indiana, such invalidity shall not affect the remaining provision or applications of this Agreement which can be given effect without the invalid provision or application and to this end the provisions of this Agreement are declared to be severable. If any portion of this Agreement is so held to be invalid, then the subject matter of said provision shall be renegotiated by the Utility and the Union. Said re-negotiation shall begin within thirty (30) days after the earlier of the expiration of the time for appealing the determination of invalidity or the mutual decision of the Utility and the Union not to pursue such an appeal. Renegotiated language shall be effective retroactively to the date of the determination of invalidity.
- D. The waiver or any breach or condition of this Agreement by either the Utility or the Union shall not constitute a precedent with respect to future enforcement of all the terms and conditions of this Agreement.
- E. Where this Agreement requires the appropriation of funds by the Common Council of the City of Mishawaka to effect the carrying out of any provision thereof, to that extent this Agreement is subject to such Council appropriation.

**SIGNATURES:**

The International Board of Electrical  
Workers, Local #1392, by its Negotiating  
Committee:

Mishawaka Utilities by its Negotiating  
Committee:

December 6, 2021  
Date

December 6, 2021  
Date

Bill D. Scally  
Bill D. Scally, Business Manager

Patrick Hinkle  
Patrick Hinkle, Mayor Designee

Shane Reynolds  
Shane Reynolds, Electric Division

Susan W. Kile  
Susan W. Kile, Director of Human Resources

Aaron DeCoker  
Aaron W. DeCoker, Water Division

Joseph P. Schrader  
Joseph P. Schrader, Electric Division

John Francis  
John Francis, Wastewater Division

Approved by the Board of Utilities of the City of Mishawaka, Indiana, this 7<sup>th</sup> day of  
December, 2021.

Kenneth B. Prince  
Kenneth B. Prince, President

Rebecca S. Maguire  
Rebecca S. Maguire, Vice President  
Maguire

Ronald E. Watson  
Ronald E. Watson, Member

**ATTEST:**

Kari Meyers  
Kari Meyers, Clerk of the Board

**PROPOSED ORDINANCE NO. 2021-48**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE APPROVING AN AGREEMENT BETWEEN  
THE CITY OF MISHAWAKA AND THE EMPLOYEES OF THE SEWER  
DEPARTMENT, REPRESENTED BY THE INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS LOCAL NO. 364**

WHEREAS, the contract negotiating committees for the City of Mishawaka, Indiana and the International Brotherhood of Teamsters Local No. 364 have mutually reached an agreement on amendments to the Collective Bargaining Agreement expiring the 31<sup>st</sup> day of December 2021; and

WHEREAS, the members of the International Brotherhood of Teamsters Local No. 364 have ratified the new Collective Bargaining Agreement and the governing body of said Association has executed the new Agreement on their behalf; and

WHEREAS, on the 14th day of December, 2021, the City of Mishawaka, Indiana, acting by and through its Board of Public Works & Safety, approved the new Collective Bargaining Agreement with the International Brotherhood of Teamsters Local No. 364, a copy of which is attached hereto; and

WHEREAS, Ordinance No. 1666 requires all Collective Bargaining Agreements to be approved by the Common Council of the City of Mishawaka.

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

Section 1. The Collective Bargaining Agreement executed the 14<sup>th</sup> day of December, 2021, effective January 1, 2022, between the Board of Public Works & Safety of the City of Mishawaka, Indiana and the International Brotherhood of Teamsters Local No. 364 is hereby approved.

Section 2. 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 \_\_\_\_\_, 2021, at \_\_\_\_\_ o'clock \_\_\_\_\_ .M.

\_\_\_\_\_  
Gregg Hixenbaugh  
Presiding Officer

ATTEST:

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

PRESENTED by me to the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2021, at  
\_\_\_\_\_ o'clock \_\_\_\_\_.M.

\_\_\_\_\_  
Deborah S. Block, CMC, City Clerk

APPROVED by me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_\_  
o'clock \_\_\_\_\_.M.

\_\_\_\_\_  
David A. Wood, Mayor



# CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF HR

December 16 , 2021

Mishawaka Common Council  
600 East Third Street  
Mishawaka, Indiana 46544

Deborah S. Block, IAMC, MMC

DEC 15 2021

City Clerk  
Mishawaka, IN

Mr. President and Honorable Members of the Council:

I respectfully request your approval of the attached proposed ordinance, approving the collective bargaining agreement between the City of Mishawaka and the International Brotherhood of Teamsters, Local No. 364 for certain employees of the City of Mishawaka Sewer Department.

I plan to attend the meeting to speak in favor of approval and to be available to answer questions at the pre-Council meeting that evening. Feel free to contact me prior to the meeting at 574-258-1615 or at [skile@mishawaka.in.gov](mailto:skile@mishawaka.in.gov).

Thank you in advance for your consideration.

Sincerely,

Susan W. Kile, PHR  
Human Resources Director

**RESOLUTION NO. 2021-06**

**MISHAWAKA BOARD OF PUBLIC WORKS AND SAFETY**

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF  
MISHAWAKA AND THE EMPLOYEES OF THE SEWER DEPARTMENT,  
REPRESENTED BY THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,  
LOCAL NO. 364.

**WHEREAS**, the City of Mishawaka and the International Brotherhood of Teamsters  
Local 364, Local No. 360 have agreed to a Collective Bargaining Agreement for the  
period of January 1, 2022 to December 31, 2024; and

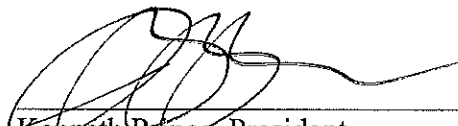
**WHEREAS**, such Agreement requires the approval of the Mishawaka Board of Public  
Works and Safety and the Mishawaka Common Council;

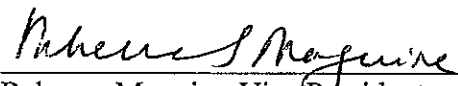
**NOW, THEREFORE, BE IT RESOLVED** by the Board of Public Works and Safety of  
the City of Mishawaka that:

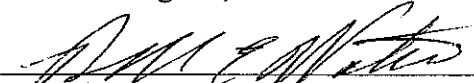
Section 1. The attached Collective Bargaining Agreement between the City of  
Mishawaka and the International Brotherhood of Teamsters Local 364 is hereby  
approved, and

Section 2. This Resolution shall be forwarded to the Mishawaka Common  
Council for its review and final action.

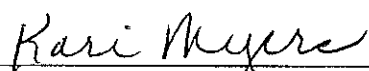
ADOPTED by the Board of Public Works of the City of Mishawaka, on this 14th  
day of December, 2021.

  
\_\_\_\_\_  
Kenneth Prince, President

  
\_\_\_\_\_  
Rebecca Maguire, Vice President

  
\_\_\_\_\_  
Ronald E. Watson, Member

ATTEST:

  
\_\_\_\_\_  
Kari Myers, Clerk of the Board

**ARTICLES OF AGREEMENT  
CITY OF MISHAWAKA SEWER DEPARTMENT  
AND TEAMSTERS LOCAL UNION NO. 364  
1-1-2022 through 12-31-2024**

THIS AGREEMENT is between the City of Mishawaka ("City") and Teamsters Local No. 364 ("Union").

The City and the Union desire to establish and maintain sound labor relations, to facilitate the peaceful adjustment of grievances which may arise between the City and its employees, to promote safe and efficient operation of the Department, and to strive for a high standard of workmanship in the Department.

**ARTICLE 1  
RECOGNITION, UNION SHOP AND CHECK-OFF**

**Section 1.**

- A. No unit employee shall be required to become a member of the Union as a condition of employment or continued employment, and the parties agree that there shall be no discrimination by either the City or the Union against any unit employee because of membership or non-membership in the Union.
- B. It is recognized and agreed that unit employees may or may not join the Union in accordance with the desires of individual employees.
- C. It is further recognized that the Union, as the exclusive representative of all unit employees, regardless of whether the individual employees are Union members or not, owes the same duty of representation to all unit employees and agrees to provide such services to all unit employees; therefore, all unit employees shall, within ninety (90) days of the date of hire, pay a collective bargaining contract administration fee to the Union in an amount equal to the actual cost incurred by the Union for its representation of all unit employees, but such amount shall not exceed the monthly dues assessed Union members. The Union further agrees that no portion of the union dues or service fee assessments shall be used or expended for the support of political campaigns of individual, local, state, or national political candidates for public office, nor shall any union dues be used for this purpose.
- D. The City shall deduct from the pay due all employees in the bargaining unit covered by this Agreement one month's union dues or service fee each alternate pay period not exceeding an amount certified by the Union and shall forward such dues and service fees to the Financial Secretary of the Union not later than the tenth (10th) day of the following month; provided, however, the employee has signed a written wage assignment. Such wage assignment shall continue in effect for the duration of this contract or until receipt by the City of a written notice of revocation of such order by the employee.
- E. The City shall not be held liable for not collecting union dues or service fees for any month in which the employee receives (after deduction) pay less than the amount of such dues or service fees during the last pay period.
- F. In the event an employee is receiving advance pay, such employee's union dues or service fees shall be deducted from that pay.
- G. Union dues and service fees shall be authorized only during the existence of this Agreement.



**ARTICLE 2**  
**DEFINITIONS**

The following definitions are a part of this Agreement:

- A) **Advance Pay** -- Any compensation earned by an employee that is paid one (1) to three (3) days before that employee's vacation leave period begins.
- B) **Bargaining Unit** -- All employees of the Mishawaka Sewer, Street, Central Motor Pool and Park Departments who are represented by the Union for collective bargaining purposes.
- C) **City** -- Shall mean the Civil City of Mishawaka.
- D) **Classification** -- Means any grouping of employees with similar job duties and with the same rate of pay.
- E) **Compensatory Time** -- Means paid time off, which is accrued for overtime hours actually worked at the rate consistent with overtime pay.
- F) **Employee** -- Any person employed full-time by the City of Mishawaka Sewer Department, except department heads, supervisors, professional people, general foremen, part-time employees, temporary employees, office manager, and clerical personnel.
- G) **Full-Time Employee** -- An employee who works at least forty (40) hours per week and for more than five (5) consecutive months in a calendar year.
- H) **Holiday Rate** -- Employee's regular pay rate plus time and one-half.
- I) **Immediate Family** -- Father, mother, sister, brother, spouse, child, grandparents, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, daughter-in-law, son-in-law, step-father, step-mother, step-children, or other person residing in the same household of the affected employee.
- J) **Extended Family** -- Uncle and aunt.
- K) **Occurrence (attendance)** -- A failure to punch in or out, a late arrival, an early leave, or an absence that is not paid or excused in accordance with the terms of the Collective Bargaining Agreement.
- L) **Occurrence (disciplinary)** -- A verbal warning, written warning, suspension or discharge for a violation of the Department's policies, procedures, rules and regulations.
- M) **Overtime** -- Any hours worked beyond the eight (8) hour workday or beyond the forty (40) hour workweek.
- N) **Part-Time Employee** -- An employee that works less than forty (40) hours per week and for more than five (5) consecutive months in a calendar year.
- O) **Probationary Employee** -- A newly hired full-time employee who has worked for less than 91 calendar days. Such employee will be on probation for a period of 90 calendar days from the date of hiring unless the parties mutually agree to extend the probationary period and may be laid off or discharged during this period without recourse to this Agreement. After an employee's probationary period ends, the employee shall become a regular full-time employee and shall be subject to all the

terms and conditions of this Agreement. Probationary employees shall not pay union dues or service fees until they become regular full-time employees.

- P) **Pyramid** -- Compensating an employee twice for the same hours worked or compensating them at an amount equal to twice the permissible holiday or premium rates. Pyramiding does not include compensation for work performed on a holiday.
- Q) **Reckless Misconduct** -- An employee engages in reckless misconduct when he intentionally does an act, or intentionally fails to do an act in violation of his duty that creates an unreasonable risk of danger to others.
- R) **Supervisor** -- Any employee who is part of management and not a member of the bargaining unit.
- S) **Temporary Employee** -- An employee who works full-time or part-time but for less than five (5) consecutive months in a calendar year.

### **ARTICLE 3** **RIGHTS OF MANAGEMENT**

Nothing in this Agreement shall permit or authorize the Union or any of its members to officiate in management or in a supervisory capacity. It is agreed that the City will not use this prerogative for the purpose of discrimination against the Union.

Except where specifically restricted in this Agreement, the parties agree that the City shall possess all the customary prerogatives of management including, but not limited to, those enumerated below:

- A) To hire, promote, suspend, discharge or otherwise discipline employees for violation of rules it deems necessary to impose for the overall benefit of the residents of the City of Mishawaka, its employees and/or its plant operations, or for other proper and just causes.
- B) Nothing in this Article shall abrogate the employee's rights to the grievance procedure.
- C) To share resources (personnel) at all sites and locations within the bargaining unit. This provision only applies to personnel with the qualifications requisite to perform the work to be done. This provision shall not be construed, however, in such a manner as to preclude training or work required in emergencies where qualified bargaining unit employees are unavailable for required work.

### **ARTICLE 4** **HOURS OF WORK**

**Section 1.** Eight (8) consecutive working hours within a twenty-four (24) hour period will constitute a normal workday. Five (5) consecutive workdays, or forty (40) consecutive work hours shall constitute a normal workweek. All employees shall be paid time and one-half for all work done in excess of eight (8) consecutive hours per day or in excess of forty (40) work hours per work week. Overtime, premium and holiday rates shall not be pyramided. Double time will be paid for any Sunday worked and for all hours worked in excess of twelve (12) hours per shift.

**Section 2.** Unless otherwise stated by the City, the work hours for employees shall be 7:00 a.m. to 3:00 p.m. If the City chooses to deviate from this schedule, the City shall provide the employees with at least five (5) working days' notice of any new schedule changes prior to their implementation. If the City gives less than five (5) working days' notice, the parties must mutually agree to the schedule change. There shall be one work break per day of one-half (1/2) hour length to be taken at the City garage or place designated by the City. If it becomes necessary for employees to work through their scheduled break, the break may be waived with supervisory approval, and the employee's workday will end one-half hour earlier than the normal scheduled time.

**Section 3.**

- A) For the computation of overtime, an excused absence or an official holiday will be computed as a day worked.
- B) Employees can accrue up to twenty-four (24) hours of compensation time. Employees will be given the option of pay or comp time for hours earned up to twenty-four (24) hours. Any hours earned over twenty-four (24) will be paid out in overtime pay. Employees must make a good faith effort to use comp time in a timely fashion. Comp time may be requested at any time, and may be granted at the complete discretion of management. Employees must realize, however, that a comp time request is more likely to be granted the earlier it is requested.

**Section 4.**

- A) If a job cannot be completed during the regular shift and management decides that the job must be completed on that particular day, the employee who has been working on that job during his regular shift shall be entitled to the overtime prior to senior employees being asked for overtime.
- B) If an employee works on a scheduled day off, that employee will be guaranteed four (4) hours of work. If the employee completes the work for which he was scheduled in less than the guaranteed work period, then, at the employee's option, he may elect to be paid for the time actually worked, or he may perform other work assigned by management until the guaranteed work has expired.
- C) If an employee is recalled to work after their regular shift, that employee will be guaranteed two (2) hours of work. However, if that employee completes the work for which he was recalled in less time than the guaranteed two (2) hours of work and chooses to punch out instead of performing other work assigned by management, he shall only be paid for the time he actually works.

**Section 5.** If, under normal operating conditions, management determines that additional employees are needed for work, management shall select employees for overtime work according to Article 4, Section 4, (A) of this collective bargaining agreement, and then from the overtime rotation list, taking first those employees within their classifications by seniority. Management shall update the rotation list for employees each day.

After-hours overtime in the event of an emergency will be offered first to the appropriate classification and then to the next qualified employee at the top of the rotation list. If an after-hours emergency occurs that requires any other classifications, those classification will first be considered before going to the rotation list. Any employee working overtime in a classification that is at a higher rate will be paid at the higher rate for overtime worked.

**Section 6.** Only in the event of a blatant overtime missed assignment, where management has not corrected a reported error, will pay be awarded. All other overtime missed assignments will be corrected by the subsequent assignment of overtime work.

**Section 7. Overtime Call Out:** Considering we are a Utility providing service to the residents of the City Of Mishawaka we must be able to provide service regardless of rain, snow, or shine. Here below are situations listed that may warrant being called in for overtime or asked to stay over:

- \* Requests to Patrol problem areas while waiting for a rain event.
- \* Clearing blockages to inlets to prevent road hazards
- \* Vacuuming standing water to prevent road hazards
- \* Requests from residents/businesses to respond to sewer backups, sewer problems or standing water issues
- \* Contractors request for emergencies for exploratory reasons that have time constraints
- \* Completion of a job that started before the end of a shift that could not be completed in the time remaining.

Employees will be required to respond to 30 % of Overtime call out requests every six months whether they be a requested hold over from shift schedule, recalled back in after having ended shift and have left the sewer department, or called in on scheduled days off.

Management will ask skilled employees if needed first before calling other department employees (Example: an Advanced Operator is needed to operate a combination truck or camera truck), (Repairmen), (Locates-Inspections).

Management will call qualified employees that are not on a scheduled day off or holiday first.

All Employees will be called according to the overtime list for other emergencies not requiring a skilled position.

These overtime requests will not include requests made from Central Services for Snow or leaf removal.

Employees who have been requested to work overtime that do not meet the 30% requirement every six months will be written up according to the disciplinary schedule.

Application of Article 4, Section 7 is at the discretion of management and doesn't apply if an employee gets more than one callout per incident. Only one call per incident will be count.

## **ARTICLE 5** **TARDINESS/LEAVING EARLY**

**Section 1.** The following disciplinary schedule shall be followed:

| <b><u>Number of Tardiness/Leaving Early</u></b> | <b><u>Disciplinary step</u></b> |
|-------------------------------------------------|---------------------------------|
| One (1)                                         | Verbal Warning                  |
| Two (2)                                         | 1st Written Warning             |
| Three (3)                                       | 2nd Written Warning             |
| Four (4)                                        | 1 Day off Without Pay           |
| Five (5)                                        | 2 Days off Without Pay          |
| Six (6)                                         | 3 Days off Without Pay          |
| Seven (7)                                       | Discharge                       |

The number of occurrences accrued during the previous calendar year will be dropped to zero (0) on January 1 of the following year.

**ARTICLE 6**  
**HOLIDAYS**

**Section 1.** Employees shall be granted ten (10) paid holidays each year in accordance with the City's holiday schedule. The City's holiday schedule will be posted by December 1<sup>st</sup> of the prior calendar year. In addition, the employees shall have two (2) random holidays each year.

**Section 2.** Any employee who works on any holiday shall receive their regular hourly rate plus time and one-half (1½) for the amount of hours worked; provided, however, the employees have worked the regularly scheduled day before and after the holiday unless officially excused by the Department Head or his assistants.

**Section 3.** Any employee called to work on a scheduled holiday shall be paid the holiday rate plus a minimum of four (4) hours' work at the double time rate.

**ARTICLE 7**  
**VACATIONS**

**Section 1.**

- A) Employees hired before January 1, 2011 with less than twenty-five (25) years of service will retain their current vacation time off and thereafter earn vacation under the new schedule. Employees hired before January 1, 2011 with more than twenty-five (25) years of service will retain thirty (30) working days of vacation. Employees hired after January 1, 2011 will earn vacation in accordance with Section 2-598 of the Mishawaka Code of Ordinances.
- B) Employees with the most department seniority shall have priority in selecting their vacation periods.

Seniority will prevail for any vacation time selected for the year, as long as the vacation time was selected between January 1 and March 31. After March 31, all vacations will be granted on a first-come, first-awarded basis. However, all vacation periods selected by employees are subject to prior approval by the City. The City may deny a vacation request if the City believes that granting a vacation to an employee will adversely affect the efficient operations of the Department.

- C) An employee shall not take more than two (2) weeks of vacation (10 working days) at one time unless otherwise permitted by the Department Head.
- D) Vacations can be taken in one-half day or one full day increments upon providing the Department Head twenty-four (24) hours' notice.

In computing vacation time to be allowed, years of service shall be deemed to be the calendar year in which the employee will have completed the years of service listed in the above schedule. With the exception of the employee with only one (1) year of service, that employee will receive his/her five (5) days after their anniversary date.

**Section 2.** When a paid holiday occurs during an employee's vacation, he shall receive an additional day of paid vacation.

**Section 3. Bonus Days** - A maximum of four (4) bonus days will be awarded on January 1. One (1) bonus day will be earned every three (3) months if an employee has received no more than one occurrence (attendance or disciplinary) in a three (3)-month period. A newly hired employee may earn bonus days prorated from the date of hire to the next December 31 calculated on the basis of one bonus day for each full three (3)-month period of employment. Such days shall be awarded the next year. An Occurrence is defined as anytime an employee is in violation of departmental rules, fails to punch in or out, leaves before completion of shift without supervisor's approval, or is late.

Bonus days may be taken in one-half (1/2) day increments. Bonus days may be requested at any time, and are granted at the complete discretion of management. Employees must realize, however, that a bonus day request is more likely to be granted the earlier it is requested.

**Section 4.** No vacation time or bonus days may be carried over to the next year. The employee must make every effort to use his paid time off during the year it is available.

## **ARTICLE 8** **GROUP INSURANCE**

- A) The City will provide health insurance to employees and their families at the same cost to the employee as other City departments.
- B) Employees under the age of sixty-five (65) shall receive Fifteen Thousand Dollars (\$15,000) life insurance.

## **ARTICLE 9** **RETIREMENT PROGRAM**

**Section 1. PERF** - The City agrees to continue the regular Public Employee's Retirement Fund.

**Section 2. Retiree Health Insurance** - The retiree health insurance plan shall be consistent with the policy

established in Section 2-160 of the Mishawaka Code of Ordinances.

## **ARTICLE 10** **STEWARDS**

**Section 1.** The City recognizes the right of the Union to designate a steward and alternate to handle such Union business as may from time to time be delegated to them by the Union. Stewards and alternates have no authority to take strike action or any other action interrupting the City's business in violation of this Agreement or any action in violation of law, except as authorized by official action of the Union.

**Section 2.** The Union shall be allowed space for a Union bulletin board on which to post notices. Only notices concerning Union business shall be posted.

**Section 3.** Employees who are representatives of the Union shall not leave jobs or work areas for the purpose of assisting in the settlement of grievances or attending meetings with management representatives until prior permission has been obtained from their immediate supervisors, which permission shall not be unreasonably withheld. Meetings are to be held during regular working hours unless determined otherwise by mutual agreement.

## **ARTICLE 11** **SENIORITY**

**Section 1. Types of Seniority** - City employees within a bargaining unit shall obtain seniority on their ninety-first (91<sup>st</sup>) day of continuous, full-time employment, and such seniority shall be calculated to include the prior ninety (90)-day probationary period when successfully completed.

In the event a probationary employee has been given a thirty (30) or sixty (60) day extension after their ninety (90)-day probationary period to obtain his CDL, the employee will have no bidding rights until the employee has received his CDL. If the employee is unable to obtain his CDL within the agreed extension period, the employee will have no seniority and will be terminated.

There shall be two types Of seniority for Mishawaka Sewer Department employees:

### **A) Bargaining Unit Seniority**

Bargaining unit seniority shall be computed from the employee's most recent date of hire in this bargaining unit.

### **B) Departmental Seniority**

Departmental seniority shall be computed from the employee's most recent date of hire within the specific department in which he is presently employed.

**Section 2. Computation of Seniority** - Any time spent by an employee on sick leave, vacation and military leave shall be included within the computation for seniority.

**Section 3. Seniority Loss** - The seniority Of an employee shall terminate under any of the following



conditions.

- A) When a laid-off employee fails to give notice of his intention to return to work within three (3) working days after the City has sent a certified letter to his last known address requesting his return to work.
- B) When a laid-off employee gives timely notice of his intention to return to work after the City has requested his return but fails to return to work on the specified date and time of recall.
- C) When an employee resigns his employment with the City.
- D) When an employee is discharged for just cause.
- E) When an employee is laid off for more than twelve (12) months.
- F) When an employee receives total permanent disability compensation.
- G) When an employee retires.

## **ARTICLE 12**

### **LAYOFF PROCEDURES**

**Section 1.** If it becomes necessary for the City to lay off employees working in skilled or semiskilled job classifications, the City shall follow departmental seniority in determining which employees within each prescribed job classification to lay off. Employees with the least amount of seniority within each job classification shall be the first employees laid off. However, senior employees so laid off shall have the right to work within their department if qualified in a classification where their seniority warrants.

If a laid-off employee is not qualified in any other skilled or semi-skilled classification, he shall then be able to bid into the general labor job classification within his department and replace the junior employee in that classification. All employees doing so will retain their total departmental seniority.

**Section 2.** If the City must lay off an employee working in a general labor classification, the City shall lay off those employees with the least departmental seniority. Any laid-off employee shall be placed on a departmental call-back roster and a bargaining unit call-back roster.

**Section 3. Voluntary Layoffs** - In the event of a work slowdown, the City may offer a voluntary layoff (VLO) to employees by seniority. The employees choosing to accept a VLO will be released for the day without pay. In the event no employee volunteers for layoff, the employee with the least departmental seniority will be released for the day without pay. Any employee who has punched in will punch out and will be paid for the time worked on the clock for that day.

## **ARTICLE 13**

### **CALL-BACK**

**Section 1. Call-back Roster** - In the event that an employee is laid off, the name of that employee will be placed on a departmental call-back roster and a bargaining unit call-back roster. The roster will contain the employee's name, address and telephone number, amount of departmental seniority and bargaining unit

seniority, the department from which the employee was laid off, the employee's last job classification and the employee's qualifications.

**Section 2. Call-back Procedure** - When a job becomes available in the Sewer Department covered by this agreement, and there are employees whose names are on the departmental call-back roster, the employee with the most departmental seniority who is qualified for the job shall be offered the job. Once the departmental seniority list is gone through the bargaining unit seniority list will be used. If there are employees whose names are on the bargaining unit call-back roster, the employee with the most bargaining unit seniority who is qualified for the job shall be offered the job.

**Section 3. Employee Call-back Rights and Obligations** - Employees whose names are on the call-back roster may refuse to take a job in a department other than the one from which they were laid off without loss of seniority. However, any employee refusing to work in the department from which he was laid off for which he is qualified shall be terminated.

**Section 4. Notice of Recall** - In the event of a recall, an employee shall be given one (1) week notice of recall by certified mail to his last known address. In the event that the recalled employee fails to make it known, within three (3) working days of the receipt of the letter, to the City Human Resources Department of his intent to accept or reject the recall offer (as provided in paragraphs entitled, Callback Procedure and Employee Call-back Rights and Obligations), that employee shall lose his bargaining unit seniority and shall be terminated from employment.

**Section 5. City Records** - It is the responsibility of all laid off employees to furnish the Human Resources office with a current mailing address and telephone number. Any laid off employee not doing so shall be terminated.

## **ARTICLE 14** **JOB VACANCIES**

**Section 1.** If there is an apparent vacancy in a job classification covered by this agreement, the City shall post such vacancy within five (5) working days of the occurrence of said vacancy; or post that the vacancy will not be filled at this time. All vacant and newly-created positions covered by this Agreement shall be posted for bid at the department at which the opening exists for a period of three (3) working days. If no employee from that department bids and qualifies for that job opening, then the job opening shall be posted for a period of three (3) working days at all other City bargaining unit work sites and the Human Resources office. There shall be a maximum of two (2) successive bids to fill vacancies caused by the initial bid. Only one (1) later move or transfer within the bargaining unit per employee within a six (6)-month period may be exercised. This provision may be waived by mutual agreement between the City and the Union.

**Section 2. Bidding Priorities** - Provided the employee who bids for the job opening is qualified for the job, current employees will be given priority to fill the job opening as follows:

- A) First priority will be given to employees with the greatest departmental seniority in the department in which the job exists.
- B) Second priority will be given to employees with the greatest bargaining unit seniority.
- C) Employees will be given consideration in filling posted vacant positions in the Mishawaka Utilities that are open to the public.

D) Departmental Seniority is not transferable from department to department.

**Section 3. Qualifications for Jobs** - Employees shall be allowed a reasonable qualifying time with a thirty (30)-day maximum to qualify for the vacancy. The Department Head will determine the qualifications of the employee and will also give specific reasons resulting in disqualification. Any dispute arising from the Department Head's decision is subject to the review of a Qualifications Committee composed of an equal number of representatives of the City and the Union. If an employee is disqualified, he shall be returned to his original job classification without loss of seniority.

**Section 4. Promotion** - Any unit employee who accepts a non-bargaining unit position within his department will have a thirty (30)-day tryout period before being removed from the Union seniority list. After thirty (30) days of employment such employee's seniority will be frozen for the duration of his service in a non-bargaining unit job. If said employee is permitted by the City to return to the bargaining unit in an open job, he will carry his total bargaining unit service as of his seniority date.

#### **ARTICLE 15** **PAYDAYS**

Pay will be distributed as prescribed by the City Controller.

#### **ARTICLE 16** **FLEXIBLE TIME OFF/LONG-TERM DISABILITY**

##### **Section 1. Flexible Time Off (FTO)**

A) In recognition of the need for its employees to be away from work, City agrees to establish and accrue a bank of time off for any personal needs such as personal or family illness, extension of bereavement leave or vacations, or for any other purpose. Such bank may also be used to satisfy the five (5)-day waiting period for Long Term Disability Leave (LTD) described in Section 2. Such bank will not include personal holidays, bereavement leave (unless as an extension), jury or subpoenaed witness duty, LTD leave, leave of absence, or military leave.

B) FTO accrual shall begin on the first day of employment for full-time employees and may be taken as accrued. Accruals shall be credited to each employee's account on the first day of each month for the prior month's service at the rate of one-half (1/2) day per month and continue at the same rate for each month of credited service.

C) FTO days will continue to accrue as long as the employee remains in paid status, subject to the limitation listed in (G) of this section.

D) FTO days may be taken in full or half-day increments. If becoming ill at work and leaving early, employees will be charged with one-half (1/2) FTO day if leaving after mid shift and a full FTO day if leaving before mid shift.

E) Employees are expected to plan time off, setting aside some time in their personal bank for sickness. Employees are encouraged to keep a minimum of five (5) days in their bank at all times to provide for unexpected short-term sickness or for the required five (5)-day LTD waiting period described in Section 2. If all FTO days or any other paid leave time are not available, any short-term illness will be an excused absence, but without pay. Likewise, any long-term illness will result in a loss of pay for the five (5)-day waiting period. The City retains the right to limit the number of excused absence occurrences as

described in this subsection.

- F) Employees should schedule FTO time at least twenty-four (24) hours in advance with the approval of a supervisor. The City recognizes, however, that there will be times, such as days an employee or a dependent is ill or a personal emergency arises that cannot be anticipated. In such cases, it is the responsibility of the employee to inform his/her supervisor as soon as possible prior to the beginning of a workday or shift of such absence and when the employee expects to be able to return to work.
- G) Employees may carry over accrued but unused FTO days from year to year but in no event can they accumulate more than twenty-five (25) FTO days.
- H) All FTO days shall be on the basis of the employee's regular base day's salary.
- I) City will buy back FTO days from any employee, up to a maximum of six (6) FTO days per year. It is the responsibility of the employee to make timely application prior to this buy-back arrangement if so desired. In any event, City will not buy back an amount of FTO days which would reduce the employee's personal bank to less than five (5) days, except as provided in paragraph (J) of this section.
- J) In the event a regular, full-time employee's service to the City is terminated, including termination due to death or retirement, he/she shall be entitled to pay in lieu of FTO days for days due and not yet taken as of the date of such termination, including any FTO days carried over from prior years.

**Section 2. Long-Term Disability (LTD)** – The long-term disability plan shall be consistent with the policy established in Section 2-595(b) of the Mishawaka Code of Ordinances.

## **ARTICLE 17**

### **FUNERAL LEAVE AND LEAVE OF ABSENCE**

**Section 1.** An employee will be eligible for paid funeral leave for three (3) working days to make preparations for and attend the funeral and burial of a member of the employee's immediate family and to attend to any necessary legal matters of the decedent or his/her estate. An employee will be eligible for paid funeral leave for one (1) working day to make preparations for and attend the funeral and burial of a member of the employee's extended family and to attend to any necessary legal matters of the decedent or his/her estate.

**Section 2.** Employees may be granted leave of absence without pay and without discrimination or loss of seniority rights for justifiable reasons agreed upon by both the Department Head and representatives of the Union. The maximum leave of absence, except in cases of compulsory military service, shall be for no more than twelve (12) weeks. In the event such a leave is requested, the procedures outlined in the Family Medical Leave Act will be followed. Failure to comply with this provision shall result in the complete loss of rights for the employee involved. Seniority will be frozen during leaves of absence, except in cases involving military service and on-the-job injury.

## **ARTICLE 18**

### **JURY DUTY**

The City agrees to pay an employee who is called and serves as a juror in a legally constituted court, the difference between his earnings as a juror and the straight-time earnings he would have realized had he worked his scheduled shift. In order to be eligible for payment, employees must notify their supervisor within twenty-four (24) hours after receipt of notice of selection for jury duty and must furnish a written statement from the appropriate public official showing the date and time served and the amount of pay received. An employee

required to report at a specific time for examination as a prospective juror shall be compensated as provided above to the extent he is required to lose time from work for such examination. The examination notice is to be shown to the employee's supervisor as soon as practicable.

## **ARTICLE 19**

### **GRIEVANCE PROCEDURE AND ARBITRATION**

#### **Section 1.** Procedure to be followed:

The City and the Union recognize that, from time to time, grievances, disputes and complaints may arise over matters within the purview of this Agreement. Therefore, whenever the Union or any employee feels that the City has acted erroneously or improperly in interpreting and applying any of the provisions of this Agreement, then the Union or the employee may invoke the provisions of Article 19. Except in the first step, all grievances and answers shall be in writing. The grievance shall be processed only outside working hours or by mutual agreement in a manner hereinafter set forth.

**First Step:** The aggrieved employee shall present his grievance individually, or with the union representative, to his immediate supervisor within five (5) working days of the occurrence of the grievance. The immediate supervisor shall respond to the grievance within five (5) working days after it is presented to him/her.

**Second Step:** If the grievance is not settled in the First Step, the employee alone, or the employee and the union representative, may submit the grievance to the head of the Department within five (5) working days after the answer is given in the First Step. The Department Head shall give his answer within five (5) working days after receiving the grievance.

**Third Step:** If the grievance is not settled in the Second Step, the employee alone, or the employee and the union representative may submit the grievance to the Director of the Human Resources within five (5) working days after the answer is given to the Second Step. The Director of the Human Resources shall give his answer within five (5) working days after receiving the grievance.

**Fourth Step:** There shall be a Joint Grievance Committee (JGC) comprised of two (2) union representatives to be appointed on a case-by-case basis by the Union, and two (2) City representatives to be appointed on a case-by-case basis by the City. No person shall participate as a JGC member in any case in which such person was a witness, served as a representative of any party in the grievance process, or has any personal interest in the matter. The JGC shall meet to hear grievances which have not been resolved in the above steps of the Grievance Procedure. The JGC shall have the power and authority to make a final and binding decision with respect to any matter properly brought before it, but has no power to alter the agreement, except when requested by both parties, to modify provisions of the agreement.

The City shall make its presentation first to the JGC in discharge and suspension cases, and the Union shall present first in all other cases, but the JGC may alter such procedures and make rules of procedure to ensure a fair hearing to all parties. The JGC shall render its decision in writing in cases involving suspensions of five (5) days or longer and involving discharges, and either party may request a written decision or a bench decision in any other case.

A majority decision by the JGC is final and binding upon the Union, City, grievant, and all affected employees. Unwritten decisions and noticed from the JGC that they are deadlocked normally shall be rendered within twenty-four (24) hours of the close of the hearing, and written decisions normally shall be rendered within seventy-two (72) hours of the close of the hearing, but the JGC has the right to take such time as is necessary (such as for research) in order to render a full and fair decision.

**Fifth Step:** If the grievance cannot be settled in the Fourth Step, the employee may submit a written request to the Department of Human Resources within 5 (five) days requesting the services of an arbitrator from the State of Indiana to decide the issue. Either party may send a letter to the Federal Mediation and Conciliation Service requesting the services of an arbitrator from the State of Indiana to decide the issue. As soon as possible, a meeting shall be held with a mutually agreed-upon arbitrator. Both parties may submit evidence and call witnesses to testify as to the facts concerning the grievance and the arbitrator shall make the decision on the evidence presented. The arbitrator shall have no authority to add to, detract from, or in any way modify the terms of this Agreement. Both parties agree to abide by the arbitrator's decision. The City and the Union shall share equally any fees charged by the State for arbitration service.

**Section 2.** The following provisions shall apply to the grievance procedure:

- A) Saturdays, Sundays and holidays shall not be used in determining days in reference to the grievance procedure.
- B) Failure of the City to give an answer to the grievance as of the last day to answer shall be considered a denial of the grievance and the employee shall have the right to then proceed to the next step of the grievance procedure.
- C) The City shall give the Union representative sufficient copies of the written answer in each step of the grievance procedure to distribute to each employee present at the grievance meeting.
- D) Unless consolidated by agreement of the City and the Union, each grievance shall be considered a separate case.
- E) If the Union does not appeal within five (5) days of each step, the grievance is considered to be void.
- F) The time for filing a grievance involving the rate of pay shall begin on the day the employee receives his paycheck containing the grieved pay rate, unless it is previously filed.

**Section 3.** Inasmuch as a grievance procedure has been agreed upon, there shall be no strikes, stoppages of work, slowdowns, sit downs, sympathy strikes or other forms of interference with normal work routines during the life of this agreement or extension thereof. Both parties recognize the fact that service to the public is of mutual interest and will cooperate in all matters relating to labor management.

**Section 4.** The City agrees that it will not cause or direct any lockout of the employees.

## **ARTICLE 20** **VALIDITY**

This Agreement shall be subject to all Federal, State and local laws, and in the event any provision of this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the provisions of this Agreement shall not be affected thereby, but shall continue in full force and effect.

It is further agreed that in the event any such provisions are finally held to be invalid, the parties hereto agree to meet within thirty (30) days thereof to negotiate the modifications or substitution of such clause or clauses so held to be invalid.

**ARTICLE 21**  
**SUBCONTRACTING**

It is the intention of the City not to deprive the employees of work covered by this Agreement either by subcontracting or by hiring an outside agency. However, the parties hereto understand and agree that occasions will arise whether of an emergency nature or otherwise when it will be necessary for the City to authorize outside manpower and/or equipment to properly perform its function.

**ARTICLE 22**  
**DISCHARGE OR SUSPENSION**

A) (1) The City shall not discharge nor suspend any employee without just cause, but in respect to discharge or suspension the City shall give at least one (1) warning notice of the complaint against such employee to the employee, in writing, and a copy of the same to the Union and Steward; provided, however, the employee has not committed one of the following acts or omissions performed while on duty:

- (a) Dishonesty
- (b) Recklessness Misconduct
- (c) Carrying of unauthorized passengers
- (d) Fighting
- (e) Failure to perform first echelon maintenance

If the employee has committed any of the above-mentioned acts or omissions, the City does not need to provide the employee with said notice.

(2) The warning notice herein provided shall not remain in effect for a period of more than six (6) months from date of said warning notice.

B) (1) Discharge must be by proper written notice to the employee and the Union. Any employee may have recourse to the grievance procedure upon his discharge or suspension. Should such procedure prove that an employee was discharged without cause, he shall be reinstated and compensated at his usual rate of pay while he has been out of work because of such discharge or suspension.

(2) The parties shall mutually agree to additional rules regarding just cause for discharge and disciplinary action.

C) No employee will be required to speed up work in violation of minimum safety standards.

D) Uniform rules and regulations with respect to disciplinary action may be drafted and posted for seven (7) working days. Such approved uniform rules and regulations shall prevail in the application and interpretation of this Article.

**ARTICLE 23**  
**GENERAL PROVISIONS**

**Section 1. Uniforms –**

A) The City shall provide a sufficient amount of rainwear and boots to employees for use during inclement weather. The City shall also furnish uniforms and gloves to be worn by the employees during all



working hours. A total of eleven (11) uniforms will be furnished per year.

- B) Each employee shall have an allowance to be spent on work boots according to the following schedule:

Employed with Sewer Department on or before December 31, 2022: \$525;

Employed with Sewer Department after December 31, 2022, but before December 31, 2023: \$350;

Employed with Sewer Department after December 31, 2023, but before December 31, 2024: \$175.

The purchase price of each properly-documented purchase of work boots will be deducted from the employee's allowance, with the remainder available for future work boot purchases through the end of the term of this contract. Upon termination of employment with Sewer Department, the employee forfeits any remaining allowance.

- C) The City will provide seasonal apparel (winter jacket, lightweight jacket, hooded sweatshirt).
- D) The City will allow for the exchange and replacement or repair of apparel damaged in the line of duty with the approval of the Department Manager.
- E) Employees shall be held responsible for any damage they cause to their uniform as well as any uniforms they lose. However, no employee shall be required to pay for uniform damage caused by normal wear and tear, nor shall they be held responsible for damaged or missing uniforms the condition of which was created by forces outside of their control.

**Section 2. Revoked or Suspended License** - In the event an employee has his Commercial Driver's License revoked or suspended due to negligence, driving under the influence of alcohol or narcotics, or driving while intoxicated, he shall be placed in the lowest job classification and pay rate within that department for no more than one hundred twenty (120) days or until the Commercial Driver's License has been reinstated, whichever occurs first. Upon reinstatement of his Commercial Driver's License, the employee will be returned to his former job classification and pay rate. If the license is not reinstated within that time period, the employee shall be terminated.

### **Section 3. Training –**

- A) A wastewater collection system operator certification program shall be established for the purpose of developing better-informed and qualified employees. Job related training must be available during non-working hours and approved by the Department Manager. Tuition, books and required materials shall be paid for by the Department if the employee completes and passes the course of study; however, there shall be no wages nor compensation paid for the attendance at such course, whether passed or not. Upon satisfactory completion of each class level of the course, a certification bonus shall be added to the qualifying employee's base wage.
- B) Employees in a job classification which has more than one (1) grade level shall not be advanced to the next grade level until they have been evaluated. Such employees shall be evaluated at least as often as every 1,040 hours of work completed.

**Section 4. Physicals** - Employees holding a CDL will have the option of having their required physical examination arranged and paid for by the City at a facility of the City's choice and billed directly to the City, or arranging the physical examination at a facility or physician of the Employee's choice and at his own expense.

**Section 5. CDL** - For new employees and for current employees bidding into a job requiring a CDL, the City will pay for the required drug screen and may allow the employee to use a City vehicle to take the driver's test. In the event that the City decides not to allow the employee to use a City vehicle, the City shall reimburse a

maximum of \$50 to the employee for the rental of a BMV vehicle for the test. This reimbursement may only be requested once during the tenure of the employee. If an employee moves into a new job that does not require a CDL, but wishes to maintain his CDL, the City shall not be responsible for paying any associated costs.

**Section 6. Cross-Training** – The City will provide cross-training for employees either during regular working hours or outside of regular working hours as the workload permits. Pay will not be upgraded in cross-training situations.

## **ARTICLE 24**

### **WORKER'S COMPENSATION**

**Section 1.** In the event an employee is absent due to an injury sustained on the premises which is determined to be compensable under Worker's Compensation laws, the following applies:

- A) Employees must bridge the first five (5) workdays with any leave time available to them at the time.
- B) Employees will be paid the difference between the daily rate paid through Worker's Compensation and the employee's daily salary less seven (7) days of absence. In the event the employee is absent twenty-two (22) or more days, the City's subsidy to the employee's Worker's Compensation pay will terminate until an amount equal to the Worker's Compensation check for the first seven (7) Worker's Compensation days of absence has been paid to the City. Upon receipt of such reimbursement the City's subsidy will be in accordance with Article 16 Flexible Time Off/Long Term Disability.
- C) The City's physician must validate their employee's absence during any of the first seven (7) days. In the event that Worker's Compensation is to be used it shall be the responsibility of the employee to follow all of the established procedures for applying for Worker's Compensation.

**Section 2.** If an employee is absent due to a work-related injury or illness for more than twenty-one (21) days and uses paid time off for the first five (5) working days, the City shall reinstate the employee's paid time off used for the first five (5) workdays.

**Section 3.** In the event of an occupational injury, the employee will follow the treatment procedures as provided through the City's occupational health provider. If an employee's occupational injury is determined as temporary partial disability (TPD), the employee, in consultation with the attending physician, may be released for modified duty, performing tasks that would not likely aggravate or lead to further injury. Light duty opportunities may include, but are not limited to, desk and clerical work, janitorial, grounds keeping and other non-bargaining unit jobs assigned by the Supervisor.

**Section 4.** If an employee sustains an on-the-job injury, the employee shall obtain a written medical release from the employee's treating health care provider before such employee can return to work.

## **ARTICLE 25**

### **DRUG-FREE WORKPLACE**

The Union and the employees agree that they shall comply with all reasonable drug and alcohol policies which may be established by the City for all City employees covered by and set forth in its personnel policies and procedures.

**ARTICLE 26**  
**LONGEVITY BONUS PLAN**

The following Longevity Bonus Plan will be provided to the Sewer Department employees according to the following terms. This schedule is based upon years of service and does not have an upper limit. Longevity pay shall be distributed annually on the first payday following each individual employee's anniversary date, as part of his regular paycheck.

Payments shall be made according to the following schedule:

| <u>Years of Service</u> | <u>Annual Increment</u> | <u>Bonus</u> |
|-------------------------|-------------------------|--------------|
| 1                       | \$15.00                 | \$10.00      |
| 2                       | \$25.00                 | \$30.00      |
| 3                       | \$35.00                 | \$60.00      |
| 4                       | \$45.00                 | \$100.00     |
| 5                       | \$55.00                 | \$150.00     |
| 6                       | \$80.00                 | \$225.00     |
| 7                       | \$80.00                 | \$300.00     |
| 8                       | \$80.00                 | \$375.00     |
| 9                       | \$80.00                 | \$450.00     |
| 10                      | \$80.00                 | \$525.00     |

An additional \$85.00 will be added for each year of service after the tenth year.

**ARTICLE 27**  
**TEMPORARY JOB TRANSFERS**

Temporary job transfers to another bargaining unit department shall be assigned from a group of employees which the City determines is available and qualified. The group of employees will then have input into who is transferred. If the group of employees cannot resolve who will be transferred, the transfer will be at the City's sole discretion.

- A) When an employee is temporarily transferred to a job in a higher-paying classification, he shall be upgraded to the pay rate of that classification for time spent on that job.
- B) An employee temporarily assigned a job with a lower rate shall not be downgraded in pay.
- C) Should overtime be needed, the City shall at all times offer the overtime to employees who work within the Department requiring the overtime according to their specific overtime procedure. In the event that nobody accepts the overtime from within the Department, the City shall have the right to utilize employees outside of the Department, subject to all of the conditions contained in this Article.
- D) Should overtime be necessary for a temporarily transferred employee, the employee who has performed the work during regular hours will continue to work the overtime assignment if additional manpower is needed after exhausting the overtime list procedure in the affected department.

**ARTICLE 28**  
**JOB**  
**CLASSIFICATIONS**

Advanced Operator – this classification includes:

- (a) Vactor Combination Truck Operator
- (b) Aquatech Combination Truck Operator
- (c) Camera Truck

OperatorGIS Coordinator

Repairman

Utility

Operator

General Laborer II

General Laborer I

General Laborer

Probationary Remove

|                                                   |          |
|---------------------------------------------------|----------|
| Specialty pay for CDL holders: Tanker endorsement | \$125.00 |
| Class B                                           | \$250.00 |
| Class A                                           | \$500.00 |

**ARTICLE 29**  
**TENURE OF AGREEMENT**

**Section 1.** This Agreement shall be in full force and effect from January 1, 2022 to and including December 31, 2024.

**Section 2.** The parties agree to open negotiations with sixty (60) days' prior notice provided on or about July 1, 2022 for the purpose of negotiating wages.

**Section 3.** The parties agree to open negotiations with sixty (60) days' prior notice provided on or about July 1, 2023 for the purpose of negotiating wages.

**Section 4.** The parties agree to open negotiations with sixty (60) days' prior notice provided on or about July 1, 2024 for the purpose of negotiating a new labor agreement, including wages and benefits.

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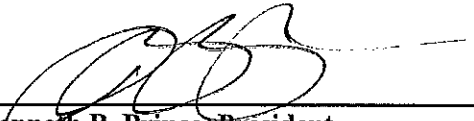
**2022 WAGES**

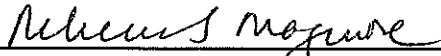
| <b><u>Classification</u></b> | <b><u>Wages</u></b> |
|------------------------------|---------------------|
| Advanced Operator            | \$25.55             |
| GIS Coordinator              | 24.73               |
| Repairman                    | 24.48               |
| Utility Operator             | 23.96               |
| General Laborer II           | 22.24               |
| General Laborer I            | 22.03               |
| General Laborer              | 19.14               |



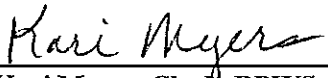
Approved this 14<sup>th</sup> day of December, 2021.

**BOARD OF PUBLIC WORKS AND SAFETY  
for and on behalf of the  
CITY OF MISHAWAKA, INDIANA**

By   
Kenneth B. Prince, President

By   
Rebecca S. Maguire, Vice-President

By   
Ronald E. Watson, Member

ATTEST:   
Kari Myers, Clerk, BPWS

**CHAUFFEURS, TEAMSTERS AND HELPERS  
LOCAL UNION NO. 364 affiliated with the  
INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS**

By   
Robert R. Warnock, III, President

**PROPOSED ORDINANCE NO. 2021-49**

DEC 09 2021

City Clerk  
Mishawaka, IN

**ORDINANCE NO.**

**AN ORDINANCE APPROVING AN INTERLOCAL AGREEMENT BETWEEN  
THE CITY OF SOUTH BEND, INDIANA, THE CITY OF MISHAWAKA,  
INDIANA AND ST. JOSEPH COUNTY, INDIANA, FOR THE MUTUAL  
OPERATION OF THE SPECIAL VICTIMS UNITS  
ADDRESSING CRIMES OF SPECIAL GRAVITY IN ST. JOSEPH COUNTY**

WHEREAS, the City of Mishawaka, Indiana, through the Mishawaka Police Department ("MPD") has a history of cooperating with the St. Joseph County Prosecutor in the investigation and prosecution of crime within the City of Mishawaka; and

WHEREAS, St. Joseph County, Indiana, has created the Special Victims Unit ("SVU") that conducts criminal investigations of child abuse and sex crimes deemed to have high impact upon the safety and welfare of citizens of St. Joseph County, Indiana, and which further provide services to victims of certain crimes; and

WHEREAS, the SVU presently combines the expertise of highly skilled and trained law enforcement officers from the St. Joseph County Police Department, the SBPD, and the MPD, as well as the technical and support services of Indiana University South Bend and the Notre Dame Security Police Department, to among other things investigate, provide services to victims, gather and report data, and share information with the MPD concerning crimes involving child abuse and sex crimes and other connected crimes in St. Joseph County; and

WHEREAS, Indiana Code 36-1-7, the Interlocal Cooperation Act, authorizes one or more governmental entities to exercise, jointly or by one entity on behalf of others, powers that may be exercised by such units severally; and

WHEREAS, the Indiana Cities of South Bend and Mishawaka, along with the County of St. Joseph share a combined interest in entering into an Interlocal Agreement so that by working cooperatively, they may efficiently and effectively investigate, provide services to victims, gather and report data, and share information concerning crimes of child abuse and sex crimes and other connected crimes in St. Joseph County.

WHEREAS, pursuant to IC 36-1-7, the City of South Bend will cooperatively assist the SVU operation by providing officers to serve as Investigators. The Prosecutor of St. Joseph County will provide for the facilities needed for the SVU operations, and the cost of the SVU command staff, among other things. The City of Mishawaka will provide one officer to serve as an Investigator; and

WHEREAS, The City of South Bend, the City of Mishawaka, and St. Joseph County, Indiana, have entered into an Interlocal Agreement, a copy of which is attached hereto and

incorporated herein as Exhibit A, containing all the governing provisions for the City of Mishawaka's participation in the cooperative SVU crime investigation and service program; and

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

Section I. The Common Council of the City of Mishawaka, Indiana, has considered and hereby ratifies, confirms, and approves the Interlocal Agreement attached as Exhibit A to this Ordinance, governing the City of Mishawaka Police Department's participation in the SVU crime investigation and service program in St. Joseph County, Indiana.

Section II. The Mayor is authorized to execute the Interlocal Agreement in form and substance the same as or similar to that of the Agreement attached hereto as Exhibit A.

Section III. 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 \_\_\_\_\_, 2021, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

Common Council  
City of Mishawaka, Indiana

\_\_\_\_\_  
Gregg Hixenbaugh, President

ATTEST:

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

Presented by me, the undersigned City Clerk of the City of Mishawaka, Indiana, to the Mayor of the City of Mishawaka, Indiana, for approval on the \_\_\_\_ day of \_\_\_\_\_, 2021 at \_\_\_\_\_ o'clock \_\_\_\_ m.

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

Having examined the foregoing Ordinance, I do as the Mayor of the City of Mishawaka, Indiana, approve said Ordinance and return the same to the City Clerk of the City of Mishawaka, Indiana, this \_\_\_\_ day of \_\_\_\_\_, 2021.

---

David A. Wood, Mayor  
City of Mishawaka, Indiana

## Re: SVU Interlocal Agreement

Pat Hinkle <pat.hinkle@mishawaka.in.gov>

Thu 12/9/2021 9:18 AM

To: Deb Block <dblock@mishawaka.in.gov>

Cc: Raven S. Boston <rboston@mishawaka.in.gov>; Ken Witkowski <kwitkowski@mishawaka.in.gov>

 1 attachments (13 KB)

mish's ordinance - svu.docx;

Debbie,

Attached is the Ordinance in word format.

I ask that the Council suspend their rules to have 1st and 2nd reading at the December 20, 2021 meeting.

Thank you for your help and please let me know if there is anything else I need to do.

Pat.

Patrick J. Hinkle  
Corporation Counsel  
City of Mishawaka  
574.258.1702  
[pat.hinkle@mishawaka.in.gov](mailto:pat.hinkle@mishawaka.in.gov)

On Dec 8, 2021, at 4:54 PM, Deb Block <[dblock@mishawaka.in.gov](mailto:dblock@mishawaka.in.gov)> wrote:

This should be in ordinance form and you will need to ask the council to suspend their rules to have 1st and 2nd reading.

Sent from my iPhone

On Dec 8, 2021, at 3:55 PM, Pat Hinkle <[pat.hinkle@mishawaka.in.gov](mailto:pat.hinkle@mishawaka.in.gov)> wrote:

Thank you.

Patrick J. Hinkle  
Corporation Counsel  
City of Mishawaka

574.258.1702

[pat.hinkle@mishawaka.in.gov](mailto:pat.hinkle@mishawaka.in.gov)

On Dec 8, 2021, at 3:20 PM, Deb Block  
<[dblock@mishawaka.in.gov](mailto:dblock@mishawaka.in.gov)> wrote:

Since it is a resolution it only has 1 reading. We will put it on the agenda for 12/20.

**From:** Pat Hinkle  
**Sent:** Wednesday, December 8, 2021 3:16 PM  
**To:** Deb Block <[dblock@mishawaka.in.gov](mailto:dblock@mishawaka.in.gov)>  
**Cc:** Ken Witkowski <[kwitkowski@mishawaka.in.gov](mailto:kwitkowski@mishawaka.in.gov)>  
**Subject:** SVU Interlocal Agreement

Debbie,

Attached in word format is the following entitled document:

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF SOUTH BEND, INDIANA, THE CITY OF MISHAWAKA, INDIANA AND ST. JOSEPH COUNTY, INDIANA, FOR THE MUTUAL OPERATION OF THE SPECIAL VICTIMS UNITS ADDRESSING CRIMES OF SPECIAL GRAVITY IN ST. JOSEPH COUNTY**

Also attached is the Interlocal Agreement in PDF format that was just finalized yesterday.

The entities want it to take effect January 1, 2022.

Can we get this on the December 20, 2021 calendar and ask the Council to suspend their rules and hold 1<sup>st</sup> and 2<sup>nd</sup> reading at the December 20, 2021, meeting?

Please let me know.

Thanks, Pat.

Patrick J. Hinkle  
Corporation Counsel  
City of Mishawaka  
574.258.1702

[pat.hinkle@mishawaka.in.gov](mailto:pat.hinkle@mishawaka.in.gov)

<mish's resolution - svu.docx> <2021 SVU Interlocal Agreement  
12.8.21 Final.pdf>



## **ST. JOSEPH COUNTY SPECIAL VICTIMS UNIT INTERLOCAL AGREEMENT**

This St. Joseph County Special Victims Unit Interlocal Agreement (this "Agreement") is entered into on \_\_\_\_\_, 2021 by and between the Board of Commissioners of St. Joseph County, Indiana (the "County"), the City of South Bend, Indiana ("South Bend"), and the City of Mishawaka, Indiana ("Mishawaka") (collectively, the "parties") as it relates to the South Bend Police Department's (the "SBPD"), the Mishawaka Police Department's (the "MPD"), the St. Joseph County Police Department's (the "SJCPD") and the St. Joseph County Prosecutor's Office (the "Prosecutor's Office") participation in the St. Joseph County Special Victims Unit ("SVU").

### **RECITALS**

A. The SBPD is a public safety and law enforcement unit supervised by the Chief of Police (the "SBPD Chief") and operating within South Bend in St. Joseph County, Indiana, in accordance with its legal authority and jurisdiction; and

B. The MPD is a public safety and law enforcement unit supervised by the Chief of Police (the "MPD Chief") and operating within Mishawaka in St. Joseph County, Indiana in accordance with its legal authority and jurisdiction; and

C. The SJCPD is a public safety and law enforcement unit supervised by the Sheriff (the "Sheriff") and operating within St. Joseph County, Indiana in accordance with its legal authority and jurisdiction; and

D. The Prosecutor's Office is tasked with prosecuting individuals who are charged with committing crimes within St. Joseph County, Indiana supervised by the Prosecuting Attorney (the "Prosecutor"); and

E. The parties desire to continue past and ongoing efforts to cooperate and coordinate their functions and expertise and agree that the terms, conditions, and operations provided for in this Agreement will be in the best interest of their respective communities; and

F. The parties are governmental entities and political subdivisions organized and existing pursuant to the laws of the State of Indiana; and

G. Indiana Code 36-1-7, the Interlocal Cooperation Act, authorizes one or more governmental entities to exercise, jointly or by one entity on behalf of others, powers that may be exercised by such units severally; and

H. The parties agree that it is desirable, advantageous, and in the public interest to enter into an Agreement for joint and cooperative action as embodied herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein, and pursuant to the authority granted the parties under Ind. Code 36-1-7, the parties agree as follows:

**Article I. Statutory Authority; Purpose and Duration of Agreement; The Special Victims Unit Mission; Physical Location**

Section 1.01 Authority. The parties make this Agreement under the authority and subject to the terms and provisions of the Interlocal Cooperation Act, Ind. Code 36-1-7 (the "Act"). The parties agree that, upon its full approval by South Bend, Mishawaka, and the County (and their respective fiscal bodies,), this Agreement will satisfy each requirement of Section 4(a) of the Act, exempting it from the necessity of approval by the Indiana Attorney General.

Section 1.02. Purpose. Pursuant to Section 3(a)(2) of the Act, the parties agree that the purpose of this Agreement is to define the mutual responsibilities of the parties concerning the functions and management of the Special Victims Unit (the "SVU").

Section 1.03. Duration. Pursuant to Section 3(a)(1) of the Act, the parties agree that this Agreement shall become effective January 1, 2022 and will continue until it is terminated in writing by the parties.

Section 1.04. Termination. Pursuant to Section 3(a)(4) of the Act, the parties may, at any time, mutually agree in writing to terminate the Agreement. Before June 1 of any year, a party may unilaterally terminate the Agreement for the following year by providing written notice to the other parties that the Agreement will not continue beyond December 31 of that year.

Section 1.05. Amendments. This Agreement may be amended, modified, or supplemented at any time by a written instrument signed by an authorized representative of each party.

Section 1.06. The Special Victims Unit Mission and Objective. The parties mutually acknowledge that the SVU has and pursues the following mission and objective, respectively:

(a) The SVU is responsible for conducting criminal investigations in all cases of child abuse and sex crimes within St. Joseph County as set forth in **Appendix I**. The objective of the SVU shall be to provide professional, compassionate, and competent assistance to victims and their families by specializing in the investigation of these classifications of cases and providing additional victim services when needed and appropriate.

Section 1.07. Physical Location. The SVU is located at 533 N. Niles Avenue, South Bend, Indiana 46617.

**Article II. Administration**

Section 2.01. Joint Board. Pursuant to Section 3(a) (5) (B) of the Act, the parties agree that this Agreement shall be administered through a joint board consisting of five (5) members (the "Joint Board") who shall be:

(a) The Prosecutor of St. Joseph County, Indiana;

- (b) The Sheriff of St. Joseph County, Indiana;
- (c) The Chief of Police of South Bend, Indiana;
- (d) The Chief of Police of Mishawaka, Indiana;
- (e) The Chief of Police of Notre Dame Police Department.

Section 2.02 Meetings. The Joint Board shall meet quarterly on the first Wednesday of the month at the SVU at 10:00 a.m., or as otherwise mutually agreed, and shall be chaired by the Prosecutor.

Section 2.03 Meeting Invitees. The parties agree that the Directors of the CASIE Center, YWCA, and the Family Justice Center shall be invited to the Joint Board meeting at least bi-annually and as otherwise needed.

Section 2.04 Budget. The Prosecutor's Office will establish and maintain a budget. The parties agree that the St. Joseph County Treasurer is delegated the duty to receive, disburse, and account for all monies of the joint undertaking, pursuant to Section 4(a) of the Act.

### **Article III. The South Bend Police Department SVU Personnel Assignments**

Section 3.01. Assignment Authority. In furtherance of the SVU mission and objective, the parties acknowledge and agree that the SBPD Chief, in his/her sole discretion, will have the authority to assign SBPD officers to the SVU.

Section 3.02. Applications for Assignment. Any SBPD officer interested in assignment to the SVU will be required to comply with all posting, application, and interview requirements of the SBPD, including, without limitation, the following procedure:

- (a) The SBPD will require officers interested in being assigned to the SVU to complete an interview with an interview committee as part of the application process. The South Bend Human Resources Department and the Office of Risk Management will screen applicants for qualifications prior to the interview. Officers not meeting all SBPD or South Bend requirements (as set forth in this Agreement) will not be granted an interview and will not proceed further in the application process. Whenever possible, the interview committee will include the SVU commander, the Prosecutor or his/her designee, one (1) SBPD officer who was formerly assigned to the SVU, one (1) member of the SBPD command staff, and a member of the South Bend Human Resources Department. Interview committee members must remain consistent for the entire round of interviews. The interview committee will score and rank the applicants based on the interview portion of the application.
- (b) After the interview committee has completed all interviews and has scored and ranked all the interviewees, the interview committee will submit the names of the top three (3) to five (5) applicants to the SBPD Chief. The SBPD Chief, based on the SVU and SBPD needs and resources, will give the names of the top three (3) to five (5) candidates to the Prosecutor. The Prosecutor shall then, from those three (3) to five (5)

candidates select the candidate(s) to be assigned to the open position(s) in the SVU. If the Prosecutor determines that none of those candidates qualify for the open position, he/she may end the hiring process at that time. Within ninety (90) days, the Prosecutor may ask for the hiring process to be re-started. South Bend will have forty-five (45) days from the date of notice by the Prosecutor to restart the hiring process.

- (c) Any interview recordings or papers/forms used for scoring, ranking, or evaluating applicants shall remain confidential. South Bend may disclose them as required by law, in defense of any claim or complaint, or in the course of any legal proceeding.

Section 3.03. Overtime. The parties understand that SBPD officers assigned to the SVU may have "on-call" responsibilities and may be required to work after-hours to conduct investigations. The SBPD Chief or his/her designee will coordinate with the SVU commander to set overtime guidelines. The SBPD Chief will review overtime usage monthly. If the SBPD Chief sets a specific limit on the number of overtime hours which may be worked, overtime hours surpassing that number set by the SBPD Chief will not be approved. The SBPD Chief or his/her designee will notify the SVU commander if budgetary concerns arise or there is need to reduce the number of overtime hours previously established by the SBPD Chief.

Section 3.04 Time Off. SBPD officers shall follow the time off scheduling and requesting procedures as outlined in the Collective Bargaining Agreement with the Fraternal Order of Police and the South Bend Police Department Duty Manual.

#### **Article IV. Mishawaka Police Department SVU Personnel Assignments**

Section 4.01. Assignment Authority. In furtherance of the SVU mission and objective, the parties acknowledge and agree that the MPD Chief, in his/her sole discretion, will have the authority to assign MPD officers to the SVU.

Section 4.02. Applications for Assignment. All open positions for SVU appointment of MPD officer shall be posted via e-mail and on the Uniform Roll Call board for 10 days by the Chief of Police. All MPD officers applying must submit a supplement to the Chief of Police and his/her designee. All applicants shall undergo an interview with the Chief of Police, or his designee chosen by the Chief of Police, the SVU commander, the Prosecutor and any designee chosen by the Prosecutor. Final applicants shall be chosen by the MPD with the approval of the Chief of Police and the Prosecutor. While the day-to-day supervisor for the MPD officer designated for the appointment to SVU shall be the SVU commander, the MPD officer shall continue to report to the MPD as their supervisor within MPD.

Section 4.03. Overtime. The parties understand that the MPD officer assigned to the SVU may have "on-call" responsibilities and may be required to work after-hours to conduct investigations. The MPD Chief or his/her designee will coordinate with the SVU commander to set overtime guidelines. The MPD Chief will review overtime usage monthly. If the MPD Chief sets a specific limit on the number of overtime hours which may be worked, overtime hours surpassing that number set by the MPD Chief will not be approved. The MPD Chief or

his/her designee will notify the SVU Commander if budgetary concerns arise or there is need to reduce the number of overtime hours previously established by the MPD Chief.

Section 4.04 Time Off. MPD Officer shall follow the time off scheduling and request procedures as outlined in the Collective Bargaining Agreement with the Fraternal Order of Police and the Mishawaka Police Department Duty Manual.

## **Article V. St. Joseph County Police Department SVU Personnel Assignments**

Section 5.01. Assignment Authority. In furtherance of the SVU mission and objective, the parties acknowledge and agree that the SJCPD Sheriff, in his/her sole discretion, will have the authority to assign SJCPD officers to the SVU.

Section 5.02. Applications for Assignment. All open positions for SVU appointment of SJCPD officer shall be posted via email or by other means by the Sheriff or the SJCPD Chief of Police. Applicants of the rank of Captain, Lieutenant, Sergeant, Corporal, and Patrol Personnel are eligible to apply for potential appointment to the SVU. All applicants shall undergo an interview with the Sheriff and any designee chosen by the Sheriff, the SVU commander, the Prosecutor and any designee chosen by the Prosecutor. The interviews shall include a review of the SJCPD applicant's personnel and internal affairs file. Final appointments shall be chosen by the SJCPD Chief with the approval of the Sheriff and the Prosecutor. While the day-to-day supervisor for SJCPD officers designated for appointment to SVU shall be the SVU commander, the SJCPD officers shall continue to report to the SJCPD as their supervisor within SJCPD.

Section 5.03. Overtime. The parties understand that SJCPD officers assigned to the SVU may have "on-call" responsibilities and may be required to work after-hours to conduct investigations. The SJCPD Chief of Police or his/her designee will coordinate with the SVU commander to set overtime guidelines. The SJCPD Chief will review overtime usage monthly. If the Sheriff or the SJCPD Chief set a specific limit on the number of overtime hours which may be worked, overtime hours surpassing that number set may not be approved. The Sheriff or his/her designee will notify the SVU commander if budgetary concerns arise or there is need to reduce the number of overtime hours previously established by the SJCPD.

Section 5.04. County Police Merit Rules and Discipline. All SJCPD officers assigned to SVU shall continue to be employees and Merit Officers of SJCPD and therefore shall continue to be subject to all terms and conditions of employment as established with the County Police Merit Rules and shall be subject to discipline by the Sheriff, SJCPD Chief, or the County Police Merit Board as provided by the County Police Merit Rules and state & federal law. The SVU Commander shall promptly report any concerns to the Sheriff or his/her designee.

Section 5.05 Hiring by the Prosecutor's Office; Limitations. The parties mutually acknowledge and agree that, as of the Effective Date of this Agreement, the Prosecutor's Office will hire three (3) full-time employees under Article 8 of this Agreement to serve as investigators at the SVU subject to the provisions of this

agreement.

(a) The Prosecutor's Office agrees that it will not hire:

- (1) any current SJCPD employee;
- (2) any former SJCPD employee who is involved, as a party or witness adverse to St. Joseph County (or St. Joseph County Police officers or employees), in any pending litigation, dispute, or controversy concerning any subject matter; or
- (3) any former SJCPD employee, unless his or her employment by SJCPD ended at least two (2) years prior to the proposed date of hiring by the Prosecutor's Office and he or she has waived in writing any and all past and future claims against SJCPD and the County and its employees and elected officials;

without first consulting with the Sheriff, which may include a review of SJCPD Internal Affairs.

## **Article VI. The Special Victims Unit Personnel**

Section 6.01. Officer Expectations. The parties expect all officers assigned to the SVU to strive to act in a professional manner in order to inspire the public trust and confidence. All officers are public servants and shall keep all contacts with the public professional and courteous. All officers have a responsibility to the community, to their own police department, and to themselves. Additionally, all officers are expected and required to comply with all policies, procedures, orders, chain of command, and rank structure of their police departments. Nothing in this Agreement shall be construed as a waiver of the policies, procedures, orders, chain of command, and rank structure of each police department.

Section 6.02. Term of Assignment. All officers assigned to the SVU are limited to a three (3) year term, with continual assignment assessments and performance reviews completed by the officer's supervisors within each police department or by the SVU commander for those hired by the Prosecutor's Office under Section 8.04. The SBPD, MPD, and SJCPD supervisors may ask for input from the SVU commander for assessments and/or performance reviews. At the request of the Prosecutor, the Chiefs or Sheriff at his/her sole discretion, may extend an officer's assignment to the SVU for no more than one (1) year, making it a potential maximum of four (4) years. However, interested officers may re-apply and repeat the entire application process if they would like to be considered for re-assignment to the SVU.

Section 6.03. Complaints. Complaints or administrative advisories regarding officers assigned to the SVU may originate from the SVU or elsewhere. If a complaint or administrative advisory originates from the SVU, it shall be directed to the Office of Professional Standards of the respective police department. The police department shall proceed with the investigation and recommendation to the Chief/Sheriff for discipline or corrective action.

Section 6.04. Officer Removal. Except as provided under Sections 7.11 and 8.02, upon no less than thirty (30) days' written notice to the SVU commander, a Chief/Sheriff, in his/her sole discretion, may remove from the SVU their own officer

appointed to serve, for any reason. Notwithstanding the foregoing sentence, the parties understand that discipline or termination may require an officer's immediate removal from the SVU, and the SVU commander will cooperate with any such requirements. The position lost by this removal shall be filled under the requirements of Articles III, IV, V et.al. and shall be subject to personnel availability.

Section 6.05. Alternates. In cases of injury or medical leave, the SVU commander may request an alternate officer to be assigned from the respective police department as a temporary or part-time assignment, with said police department bearing all expenses of the alternate officer. The police department's referral is subject to the SVU commander's acceptance. The alternate officer will be allowed to train and work with the SVU subject to any duty restrictions he or she is under.

Section 6.06. Bi-Annual Review of Needs. The SBPD, MPD, SJCPD, and the Prosecutor's Office agree to review and evaluate personnel needs and SVU assignments on at least a bi-annual basis. The bi-annual review should include an analysis of personnel distribution, staff needs or shortages, types of cases handled, efficiency of case investigation flow, efficiency of prosecution actions, and review of expenses and salaries. The SVU will provide a monthly statistical classification update to the SBPD, SJCPD, and MPD for reporting to the South Bend Board of Public Safety and other agencies as required by state and federal law.

Section 6.07. Investigator Designation. All officers assigned to the SVU will be referred to as "investigators." Some investigators may also function as crime scene technicians, or other roles as the need arises. The designation of "investigator" or any additional roles, titles, or responsibilities within the SVU does not equate to or necessitate a promotion or salary increase from the police departments. The day-to-day supervision and administrative control over the investigators, with respect to the SVU investigations and prosecutions, will be the responsibility of the SVU commander. Regarding matters related to the SVU, the investigators will also be subject to the SVU regulations and policies including those related to tactics, investigative procedures, and performance. In case of conflict between the police department policies and the SVU policies, police department policies will supersede conflicting SVU policies for their officers respectively assigned to the SVU. Each investigator shall remain subject to their respective police department's supervision and policies, with direct supervision to be administered by the SVU commander. Each investigator shall report to their respective police department regarding matters including, but not limited to caseload size, directions concerning policies and procedures that are given by the Investigative Bureau of the police department, and including matters related to standards of conduct, sexual harassment, and equal opportunity. Failure to comply with any of the foregoing may result in the investigator's removal from the SVU. Administrative advisories, recommendations, commendations, or complaints regarding officers assigned to the SVU will be directed to the respective police department in a timely manner so that the police department may determine what, if any, investigation is required, and act accordingly.

Section 6.08. On-call. Officers assigned to the SVU shall function in a rotational "on-call" capacity, according to their specialty of investigation, for after-hours emergency response. The overtime cost of the "on-call" hours worked by each assigned officer shall be



paid by their respective police department, regardless of the jurisdiction in which the “call out” originated. The call out protocol is established in the SVU On-Call Protocol. On-call supervisors will be the first contact for on-call response and the decision, in consultation with on-duty supervision of a jurisdiction, is their responsibility as it relates to protocol and the incident being dealt with at the time.

Section 6.09. Reports and Files. The SVU commander must review and approve all investigative reports which are prepared and submitted by the SVU investigators. Once approved, all investigative reports will become a part of a numbered investigative file. The SVU investigators may utilize their own investigative report format provided they conform to the criteria outlined by the SVU commander. All investigative reports and related documents, civil or criminal, will be considered permanent records of the SVU. The SVU is responsible for maintaining a readily accessible copy of every SVU generated investigative report. Any public requests for access to the records or any disclosures of information obtained by the SVU investigators will be handled by the Prosecutor’s Office, in accordance with applicable statutes, regulations, and policies pursuant to the Freedom of Information Act and the Privacy Act, Access to Public Records Act, and other applicable State and federal statutes or regulations. Reports properly requested by SPBD Internal Affairs, MPD Internal Affairs, SJCPD Internal Affairs, the South Bend Legal Department, the Mishawaka Legal Department, or the SJCPD Legal Department will be provided by the SVU and will be protected with the same level of confidentiality the SVU and the Prosecutor require. During the course of the investigation, information relating to persons involved, locations, vehicles used, and any other relevant information deemed law enforcement actionable intelligence will be shared via the Crime Portal, CIB, e-mail, Law Enforcement Strategy Sessions (L.E.S.S.) meeting dissemination, and in person to fellow law enforcement officers from the SBPD, MPD, or SJCPD. Intelligence regarding the identity of confidential sources, informants, undercover officers, or any other information which could compromise safety of such person(s) or any officer or the integrity of an investigation will be withheld when necessary. Such information will only be released to the respective Chief/Sheriff or his/her designee.

## **Article VII. The Special Victims Unit Management and Division of Responsibilities**

Section 7.01. In the event of any conflict between the terms of this Article 7 and any other Section or provision of this Agreement, the terms of Article 7 will prevail.

Section 7.02. Command Structure Authority. The Prosecutor will provide the command structure for the SVU consisting of a commander. The SVU commander shall be selected by the Prosecutor only after obtaining the advice and consent of all members of the Joint Board. The SVU commander will be responsible to and report to the Prosecutor. The SVU commander will report monthly to each Chief/Sheriff or their designee concerning the status of investigations and case assignments. The SVU commander will report to the Joint Board quarterly concerning the status of investigations. The assignment of investigations to related child abuse and sex crimes shall follow the general policies and procedures set forth in the protocol attached hereto as **Appendix I**. The SVU commander will be responsible for providing training, supervision, and case management of SVU investigators.

Section 7.03. Location and Supplies. The County agrees to provide the physical building, office supplies, and investigative equipment necessary for the SVU's existence. The SVU shall be located in a neutral location, and it shall not be housed in any building otherwise occupied by another law enforcement agency not participating in the SVU.

Section 7.04. The Prosecutor's Office Responsibility- Salaries and Benefits. Within the sole discretion of the Prosecutor, the Prosecutor will provide deputy prosecuting attorneys and support staff for the SVU. The salaries and benefits of the SVU commander, deputy prosecuting attorneys, and all support staff will be the responsibility of the County. The deputy prosecuting attorneys and the support staff provided shall be dedicated to the prosecution of crimes with the focus being on child abuse and sex crimes. The salaries and the benefits of employees hired under Section 8.04 will be the responsibility of the County.

Section 7.05. The SBPD Responsibility- Salaries and Benefits. The SBPD agrees to provide two (2) full-time sworn officers to the SVU. The salaries and benefits of any SBPD officer assigned to the SVU shall be the responsibility of South Bend.

Section 7.06. The MPD Responsibility- Salaries and Benefits. The MPD agrees to provide one (1) full-time sworn officer to the SVU. The salaries and benefits of any MPD officer assigned to the SVU shall be the responsibility of Mishawaka.

Section 7.07 The SJCPD Responsibility- Salaries and Benefits. The SJCPD agrees to provide one (1) full-time sworn officer to the SVU. The salaries and benefits of any SJCPD officer assigned to the SVU shall be the responsibility of the County.

Section 7.08. Equipment Responsibilities. The County will provide to the SVU investigators specialty equipment used in the investigative function of their job responsibilities. This equipment may include digital cameras, photo supplies, recorders, computer workstations, cellular telephones, pagers, and all appropriate office supplies necessary to conduct their investigations. Each police department agrees to provide a vehicle, police radio, and the basic departmental issued equipment for their respective full-time sworn officer(s) assigned to the SVU. The County will provide a vehicle, police radio, and the basic department issued equipment for investigators hired under Section 8.04.

Section 7.09. Specialty Training. Specialty training will be provided to the SVU investigators to enhance their job skills and further develop their specialty expertise. The costs of this training for each SVU investigator shall be shared equally between their respective police department and the Prosecutor's Office or for those hired under Section 8.04, solely by the Prosecutor's Office. Training opportunities for individual investigators within the SVU will be subject to approval by both the SVU commander and the training bureau of the investigator's respective police department.

Section 7.10. Media Relations. All media relations with respect to an SVU investigation or prosecution will be handled by the SVU commander or his/her designee. Information for press releases will be reviewed and disseminated by the Prosecutor's Office. No investigator will give a statement to the media concerning any ongoing investigation or prosecution without the approval of the SVU commander or the Prosecutor. The SVU commander or the Prosecutor shall consult with the SBPD Chief, the MPD Chief and the

Sheriff routinely concerning any release.

Section 7.11. Emergency Removal. Each police department shall maintain authority to temporarily remove employees to respond to an emergency situation as determined by the respective Chief/Sheriff in their sole discretion. Each police department may temporarily remove employees without prior approval from the SVU, the County, the Prosecutor's Office, or any other person. Should a police department desire to temporarily remove any employee, the police department shall provide written notice to the Prosecutor's Office.

#### **Article VIII. The South Bend Police Department and City of South Bend Personnel Support**

Section 8.01. Current City of South Bend Participation. The parties mutually acknowledge and agree that, as of the Effective Date of this Agreement, a total of two (2) employees of South Bend are assigned to serve in the SVU on a full-time basis and zero (0) employees of South Bend are assigned to serve in the SVU on a less-than-full-time basis. The parties agree that the two (2) employees previously hired under the previous Interlocal Agreement are approved for continued employment.

Section 8.02. Authority to Remove or Modify. Without regard to any other provision contained herein, in the event staffing for the SBPD reaches a critical level or to respond to an emergency situation, as determined by the SBPD in its sole discretion, South Bend may temporarily remove employees from the SVU or otherwise modify an employee's schedule without prior approval from the SVU, the County, the Prosecutor's Office, or any other person. Should the SBPD desire to modify the schedule or remove any employee, the SBPD shall provide written notice to the Prosecutor's Office.

Section 8.03. Future City Participation. The parties may negotiate in good faith concerning removal under Section 8.02 of the two (2) full-time sworn SBPD officers assigned to the SVU and replacement of those two (2) officers by the Prosecutor's Office under the same hiring terms in Sections 8.04-6 below.

Section 8.04. Hiring by the Prosecutor's Office; Limitations. The parties mutually acknowledge and agree that, as of the Effective Date of this Agreement, the Prosecutor's Office agrees to hire three (3) full-time employees to serve as investigators at the SVU.

- (a) Unless specifically approved by the SBPD Chief and South Bend Legal Department, the Prosecutor's Office agrees, that it will not hire:
- (1) any current South Bend employee;
  - (2) any former South Bend employee who is involved, as a party or witness adverse to the South Bend (or South Bend's officers or employees), in any pending litigation, dispute, or controversy concerning any subject matter; or
  - (3) any former South Bend employee, unless his or her employment by South Bend ended at least two (2) years prior to the proposed date of hiring by the Prosecutor's Office and he or she has waived in writing any and all past and future claims against South Bend (and South Bend's officers

- and employees). An exception may be granted for employment ending less than two (2) years but only after approval by the SBPD Chief.
- (b) The Prosecutor may confer with SBPD Internal Affairs/Office of Professional Standards for assurance, adherence, or questions.

Any person hired by the Prosecutor's Office, in accordance with this Agreement, will be an employee of the County and not an employee of South Bend. Notwithstanding the payments contemplated in Section 8.05 below, the County will directly bear all costs and expenses of hiring and employing its new employees.

Any person hired under this section, by the Prosecutor's Office, in accordance with this Agreement, will be subject to Article 6 with the Prosecutor's Office and/or SVU commander taking the role of "police department" in Article 6.

Section 8.05. City of South Bend Payments; Maximum Liability. Upon the decision to hire a new investigator by the Prosecutor's Office under Section 8.04 above, the Prosecutor's Office will notify the South Bend Human Resources Department of the name, salary, length of the service contract, and provisions for paid time off for vacation, sick and personal days of the prospective employee in writing. After receiving such notice from the Prosecutor's Office, the South Bend will have up to thirty (30) days in which to ensure that the new employee qualifies under Section 8.04. In the event South Bend determines that the Prosecutor's Office has complied with Section 8.04, then within sixty (60) days after such determination South Bend will submit payment to the St. Joseph County Treasurer in the amount as shown in **Appendix II** which is equal to the expected annual salary expense for the prospective employee, and transfer to the Prosecutor's Office ownership of one (1) unmarked vehicle. Upon transfer, the Prosecutor's Office assumes all liability and future costs for said vehicle. South Bend will only transfer a total of up to three (3) vehicles.

- (a) Each year on the anniversary date of the hire of each investigator, the Prosecutor's Office will provide to the SBPD Chief or his/her designee and the South Bend Department of Administration and Finance a written statement detailing the expenses expended under this Agreement for each investigator hired under Section 8.04 and a written statement of the name, salary, length of service contract and provisions for paid time off for vacation, sick and personal days for the upcoming year for each investigator. After receiving such statement from the Prosecutor's Office, South Bend will submit payment to the St. Joseph County Treasurer within sixty (60) days in the amount expected for the upcoming year not to exceed the amount shown in **Appendix II** which is equal to the expected annual salary expense for the employee.
- (b) Notwithstanding any provision to the contrary, in the event the employment of an employee hired under Section 8.04 ceases for any reason, then within (60) days the Prosecutor's Office will prepare the statement for the period since the last anniversary date and submit payment to South Bend the unpaid portion of the expected annual salary, including any overtime compensation.
- (c) In light of the salary limitations stated in **Appendix II**, South Bend's payments for investigators hired at any time under Section 8.04, shall not exceed the total annual wages and benefits maximum per employee as stated in **Appendix II**. The parties mutually agree and acknowledge that any payment by South Bend under

Article 8 will be applied for the sole purpose of offsetting the costs and expenses of new employees hired in accordance with Section 8.04 above, which costs and expenses will at all times remain the responsibility of the County. The parties also agree that except for compliance with Section 8.04 the decision to employ or not employ any applicant is within the sole discretion of the Prosecutor.

- (d) If the Prosecutor's Office decides to continue the employment of an investigator for a new term, as provided under Section 6.02, then it shall notify the SBPD Chief or his/her designee before the start of the new term.
- (e) If the Prosecutor's Office decides to replace an investigator hired under Section 8.04, then it shall notify the SBPD Chief or his/her designee before the start of the hiring process. The Prosecutor's Office will follow the terms of Section 8.04 for the replacement hire. All terms of Article 8 shall apply to the replacement hire.

Section 8.06. Subject to Appropriations. Notwithstanding any provision to the contrary, South Bend's payments required under this Agreement are subject to the annual appropriation of sufficient funds in accordance with I.C. 6-1.1-18. If South Bend makes a written determination that funds are not appropriated or are otherwise unavailable to support the continuation of this Agreement, it shall be cancelled. A determination by South Bend that funds are not appropriated or are otherwise unavailable to support the continuation of performance shall be final and conclusive. South Bend will not be required to pay any further or be otherwise liable for any cost associated with the Agreement after the effective date of termination.

#### **Article IX. Storage, Transportation, and Destruction of Evidence**

Section 9.01. Storage. Each police department agrees to store all drugs, firearms, currency, and other evidence taken through a SVU investigation originating within its respective jurisdictional area in accordance with the police department's guidelines for the handling of evidence and property.

Section 9.02. NIBIN. All firearm evidence taken in connection with a SVU investigation shall be submitted to the respective department's crime laboratory for National Integrated Ballistics Information Network (NIBIN) examination.

Section 9.03. Transportation. SVU investigators will be responsible for transporting to court proceedings all evidence collected in connection with a SVU investigation, as requested by the deputy prosecuting attorney assigned to an associated prosecution. The same SVU investigators will also be responsible for collecting such evidence at the conclusion of the court proceeding, as directed by the court or the deputy prosecuting attorney.

Section 9.04. Destruction. Each police department will be responsible for the authorized destruction of any evidence (including drug evidence and firearm evidence), once authorized by the Prosecutor or a court order collected in connection with a SVU investigation or prosecution, that was seized within the jurisdictional area of the respective police department, according to State and federal law and the police departments' own policies and procedures (including but not limited to: Indiana Records Retention Schedule, I.C. 35-33-5-5, St. Joseph County LR71-AR15 Rule 112, and St. Joseph County Sexual Assault Response Team Guidelines.)

## **Article X. The Special Victims Unit Conflict Resolution**

Section 10.01. Conflict Resolution. In the event any matter not addressed by the terms of this Agreement or any dispute between the parties concerning the scope or meaning of the terms of this Agreement arises, the Prosecutor, or his/her designee, will cooperate in good faith to confer with the Chiefs and Sheriff (or their designee(s)) to mutually determine (a) the proper manner in which to handle the matter or dispute that has arisen and (b) whether an amendment modifying the terms of this Agreement is appropriate to memorialize the mutual determination, to avoid future disputes, or otherwise to clarify the parties' practices and expectations.

## **Article XI. General Provisions**

Section 11.01. No Third-Party Beneficiaries. The parties expressly disclaim the existence of any third-party beneficiaries of this Agreement. Nothing in this Agreement, express or implied, is intended or will be construed to confer upon any person or entity, other than the parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant, or condition hereof, as third-party beneficiaries or otherwise, and all of the terms, covenants, and conditions hereof will be for the sole and exclusive benefit of the Parties.

Section 11.02. Relationship. Nothing in this Agreement will be construed to create an agency or joint-venture relationship between South Bend, Mishawaka, and the County nor the Prosecutor's Office, and no employee of the County, including any new employee solicited or hired in accordance with Section 8.04 above, will be deemed an employee of South Bend or Mishawaka.

Section 11.03. Indemnification. The County (and the County's employees including the Prosecutor's Office) agrees to defend, indemnify, and hold harmless South Bend and Mishawaka (and their officers and employees) from and against any and all claims of any nature which arise from the performance by the County or the Prosecutor's Office under this Agreement and from all costs and attorney fees in connection therewith, except for claims arising out of the negligence of South Bend or Mishawaka (or their officers or employees). The obligations of the County and the Prosecutor's Office under this Section 11.03 will survive the expiration or termination of this Agreement.

Section 11.04. Assignment. No party may assign this Agreement or any of its rights, interests, obligations, or duties hereunder, whether by operation of law or otherwise, without the express written consent of the other parties.

Section 11.05. No Waiver. The failure or delay of any party to enforce at any time any provision of this Agreement shall not be construed as a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of such party thereafter to enforce each and every such provision. No waiver of any such right will have effect unless given in writing signed by the party waiving such right. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach. No waiver of any right will be deemed a waiver of any other right hereunder.

Section 11.06. Severability. Should any part of this Agreement be determined by a court of competent jurisdiction to be invalid, illegal, or against public policy, said offending section shall be void and of no effect, and shall not render any other section herein, nor this Agreement as a whole, invalid. Those rights, interests, obligations, and duties hereunder, which by their nature should survive, shall remain in effect after termination, suspension, or expiration hereof.

Section 11.07. Non-Discrimination. Pursuant to Ind. Code § 22-9-1-10, neither the parties, nor any of their contractors or subcontractors shall discriminate against any employee or applicant for employment, to be employed in the performance of any work under this Agreement with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

Section 11.08. Counterparts. This Agreement may be executed in counterparts, each of which when executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same Agreement.

Section 11.09. Governing Law and Jurisdiction. This Agreement shall be governed by the laws of the State of Indiana, and any dispute relating to the subject of or arising out of this Agreement shall be subject to the sole and exclusive jurisdiction of the Circuit and Superior Courts of St. Joseph County, Indiana.

Section 11.10. Further Assurances. The parties agree that they will each undertake in good faith, as permitted by law, any action and execute and deliver any document reasonably required to carry out the intents and purposes of this Agreement.

Section 11.11. Appendices. All Appendices described herein and attached hereto are incorporated into the Agreement by reference. (**Appendix I and II**)

Section 11.12. Entire Agreement. This Agreement, as it may be amended from time to time, encompasses the entire agreement of the parties concerning its subject matter, and no understanding, discussion, negotiation, or agreement will be binding on the parties unless it is set forth herein. This Agreement supersedes and replaces all previous agreements, memorandums of understanding, contracts, or other documents concerning the SVU as it relates to the parties. All previous agreements, memorandums of understanding, contracts, or other documents concerning the SVU between the parties are here forth terminated.

[Signature page follows.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

**ST. JOSEPH COUNTY,  
INDIANA**

**CITY OF SOUTH BEND,  
INDIANA**

**CITY OF MISHAWAKA,  
INDIANA**

\_\_\_\_\_  
Andrew T. Kostielney,  
President of the Board of  
Commissioners

\_\_\_\_\_  
James Mueller, Mayor

\_\_\_\_\_  
Dave Wood, Mayor

**ATTEST:**

**ATTEST:**

\_\_\_\_\_  
Deborah Fleming, D.M.D.,  
Vice President of the Board  
of Commissioners

\_\_\_\_\_  
Dawn Jones, South Bend  
City Clerk

\_\_\_\_\_  
Deborah Block, Mishawaka  
City Clerk

\_\_\_\_\_  
Derek Dieter, Member of the  
Board of Commissioners

**ATTEST:**

\_\_\_\_\_  
Michael J. Hamann, St.  
Joseph County Auditor



APPROVED pursuant to  
St. Joseph County Council.  
Resolution  
No.: \_\_\_\_\_

APPROVED pursuant to  
South Bend Common  
Council Resolution  
No.: \_\_\_\_\_

APPROVED pursuant to  
Mishawaka Common  
Council Resolution  
No.: \_\_\_\_\_

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Rafael Morton, President of  
St. Joseph County Common  
Council

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Karen White, President of  
the South Bend Common  
Council

---

Gregg Hixenbaugh,  
President of Mishawaka  
Common Council

**APPENDIX 1**  
**Special Victims Unit Protocol**

The St. Joseph County Special Victims Unit (the "SVU") is responsible for the investigation of criminal cases occurring within St. Joseph County involving child abuse and sex crimes. This responsibility has been established through the St. Joseph County Special Victims Unit Interlocal Agreement. The Special Victims Unit Protocol ("Protocol") is created to clarify case investigation responsibilities. It will help to define and limit the referrals of cases to SVU which are better served within the partner agencies. The assignment of investigations related to child abuse and sex crimes occurring in St. Joseph County shall follow the general policies and procedures set forth in this Protocol.

All instances of domestic violence criminal offenses shall be investigated by the respective jurisdictions.

**1. CASE RESPONSIBILITIES OF THE ST. JOSEPH COUNTY SPECIAL VICTIMS UNIT:**

a. The SVU shall accept and investigate all incidents involving:

- 1) a sex offense under IC 35-42-4, subject to the provisions of subsection (c);
- 2) incest under IC 35-46-1-3;
- 3) an offense under IC 35-46-1-4 (Neglect, Child Selling);
- 4) an offense under IC 35-46-1-4.1 (Reckless Supervision);
- 5) an offense under IC 35-46-1-5 (Non-Support of a Child); and
- 6) battery to a child by a parent, step-parent, guardian, or caretaker.

b. The SVU will investigate "crime[s] involving domestic or family violence" (as defined herein) when the incident fits into at least one of the previous categories under subsection (a).

c. Notwithstanding subsections (a) and (b), the SVU will not accept for investigations the following cases:

- 1) child exploitation and child pornography cases;
- 2) offenses under IC 35-42-4-10;
- 3) offenses under IC 35-42-4-11;
- 4) offenses under IC 35-42-4-12;
- 5) offenses under IC 35-42-4-13;
- 6) offenses under IC 35-42-4-14.

Please also refer to the following protocols regarding responding to incidents of sex crimes, and child abuse:

Law Enforcement Protocol in Response to Sexual Assault

SVU Call-Out Protocol

## **Appendix II**

### Expected Annual Salary Expense

|                                   |                                               |              |          |
|-----------------------------------|-----------------------------------------------|--------------|----------|
|                                   | Annual Salary                                 | \$62,000     |          |
| Gross Wages                       | 26 Pay Periods of 75 hours - Reg Hrly Rate    | \$ 62,000.00 | \$ 31.79 |
|                                   | OT hourly rate                                |              | \$ 47.69 |
| Overtime                          | 5 hours per pay period (130 hrs)              | \$ 6,200     |          |
| Total All Wages                   |                                               | \$ 68,200    |          |
| Payroll Taxes - % of wages        | 7.65%                                         | \$ 5,217     |          |
| Perf - % of all wages             | 11.2%                                         | \$ 7,638     |          |
| Insurance - Annual Per E'ee       | 2021 Annual cost per employee                 | \$ 18,000    |          |
| <b>Total Wages &amp; Benefits</b> | Total wages and benefits maximum per employee | \$ 99,055    |          |

DEC 15 2021

City Clerk  
Mishawaka, IN

PETITION 21-18  
CITY OF MISHAWAKA, INDIANA  
PROPOSED ORDINANCE NO. 2021-50  
ORDINANCE NO. \_\_\_\_\_

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 ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA.

WHEREAS, the Plan Commission of the City of Mishawaka, Indiana, has made a favorable recommendation regarding the reclassification of the zoning as herein set forth of the real estate hereinafter described.

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

Section 1. Chapter 137, of the Municipal Code of the City of Mishawaka, commonly known as "The Zoning Ordinance of 1966", be, and the same is hereby amended as follows:

The following described real estate in the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

THAT PART OF THE NORTHEAST QUARTER AND SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, BEING DESCRIBED AS: BEGINNING AT THE SOUTHEAST CORNER OF LOT #9 OF "HECKATHORN'S 1<sup>ST</sup> SUBDIVISION" AS RECORDED IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA RECORDER'S OFFICE; THENCE S. 00°00'00" E., 60.00 FEET MORE OR LESS TO THE SOUTH LINE OF IRELAND ROAD; THENCE S. 90°00'00" W. ALONG SAID SOUTH LINE, 114.53 FEET MORE OR LESS; THENCE N. 00°00'00" E., 693.82 FEET MORE OR LESS ALONG THE WEST LINE OF LOTS #9 AND 10 IN SAID SUBDIVISION AND SAID WEST LINE'S SOUTHERLY EXTENSION TO A POINT ON THE NORTH LINE OF SAID SUBDIVISION; THENCE N. 90°00'00" E. ALONG THE NORTH LINE OF SAID SUBDIVISION 114.53 FEET TO THE NORTHEAST CORNER OF SAID LOT #10; THENCE S. 00°00'00" W., 633.82 FEET MORE OR LESS ALONG THE EAST LINE OF LOTS TO THE POINT OF BEGINNING. CONTAINING 1.82 ACRES MORE ORE LESS. SUBJECT TO ALL LEGAL HIGHWAYS, EASEMENTS AND RESTRICTIONS OF RECORD.

COMMON ADDRESS: 230 Ireland Road

which real estate is now classified as S-2 Planned Unit Development District shall hereafter be amended to allow the continued use of single-family residential along with the construction of an oversized (3,072 sqft) 20' tall accessory structure.

Section 2. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

Proposed Ordinance No: 2021-50

Ordinance No: \_\_\_\_\_

1. Existing Conditions – The property is currently a residential structure and will continue to be used as such.
2. Character of Buildings in Area – There are other residential properties in the immediate area south and west of the subject property.
3. The Most Desirable/Highest and Best Use – Due to the property's location near other residential properties its continued use as a single-family residence will be compatible with the existing adjacent land uses.
4. Conservation of Property Values – The proposed amendment will not be injurious to property values in the surrounding area because the use remains the same and the construction of the accessory structure represents an improvement in the area.
5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, identified this area for low density residential as currently exists to the south and west.

Section 3. This Ordinance shall be in full force and effect from and after its passage, due attestation and legal publication.

PASSED by the Common Council of the City of Mishawaka, Indiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_\_ o'clock \_\_\_\_\_.M.

\_\_\_\_\_  
Presiding Officer

ATTEST:

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

PRESENTED by me to the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_\_ o'clock \_\_\_\_\_.M.

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

APPROVED by me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_\_ o'clock \_\_\_\_\_.M.

\_\_\_\_\_  
David A. Wood, Mayor



**STAFF REPORT**

Location: 230 Ireland Road

Date: December 14, 2021

Petition: 21- 18

Prepared By: KM

**GENERAL INFORMATION**

Applicant: William Sinkovics

Status: Property Owner

Request: Amend the Bremen Highway North Planned Unit Development (PUD) to allow continuation of residential use and oversize accessory structure

Zoning Classification: S-2 Planned Unit Development (Permitted Uses include C-1 General Commercial uses)

Lot Size: 1.63 acres

Applicable Regulations: Section 137-671 to 137-679 / S-2 Planned Unit Development District & Section 137-41 / Amendment to Zoning Ordinance & Zoning Map

**SPECIAL INFORMATION**

Area Development Pattern: North: S-2 Planned Unit Development  
South: Unincorporated St. Joseph County  
East: S-2 Planned Unit Development (Tractor Supply Company)  
West: Unincorporated St. Joseph County

Thoroughfare: Ireland Road west of Bremen Highway

School District: Penn-Harris-Madison

Township: Penn

Public Utilities: All utilities are available and currently serve the site

Comprehensive Plan: Low Density Residential

**ANALYSIS**

The Petitioner is requesting to amend the Bremen Highway North Planned Unit Development, approved in 2008 (Ordinance 5185), to allow the continued use of single-family residential along with the construction of an oversized (3,072 sqft) accessory structure.

The parcel is part of the PUD established in 2008 and is located immediately west of the Tractor Supply Company on Ireland Road. When established, this parcel called for C-1 general uses but this site, built as a single-family home, has been continuously used as such. The Petitioner recently purchased the property and intends to continue its residential use. Without the PUD Amendment, the petitioner would not be allowed to expand or make improvements to his property as the use was identified as commercial in the original PUD Ordinance.

Also part of the amendment, Petitioner is requesting to construct a 3,072 sqft (48' X 64'), 20' tall accessory structure to store his personal items. The Zoning Ordinance restricts the size of accessory structures to 720 sqft, 15' in height. Given the large size of the property, the petitioner could build several 720 sqft accessory structures, but it is more practical to build one large structure to accommodate his items. It should also be noted that the property directly to the west (county property) is currently constructing an oversized accessory structure.

All pertinent City Departments have reviewed and approved the PUD amendment request.

### RECOMMENDATION

Staff recommends **approval** of Petition #21-18 to amend the Bremen Highway North Planned Unit Development (PUD), approved in 2008, to allow the continued residential use of the property and construct an oversized accessory structure. The recommendation is based on the following findings of fact:

1. Existing Conditions – The property is currently a residential structure and will continue to be used as such.
2. Character of Buildings in Area – There are other residential properties in the immediate area south and west of the subject property.
3. The Most Desirable/Highest and Best Use – Due to the property's location near other residential properties its continued use as a single-family residence will be compatible with the existing adjacent land uses.
4. Conservation of Property Values – The proposed amendment will not be injurious to property values in the surrounding area because the use remains the same and the construction of the accessory structure represents an improvement in the area.
5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, identified this area for low density residential as currently exists to the south and west.

### ATTACHMENTS

Photographs, Petition, Site Plan, Aerial, Location Map





230 Ireland Road



Adjacent property accessory structure construction





View of property from Tractor Supply Company

Deborah S. Block, IAMC, MMC

October 27, 2021

DEC 02 2021

City Clerk  
Mishawaka, IN



*Pet 21-18*

Honorable Members of the  
Common Council  
City of Mishawaka, Indiana  
and  
Mishawaka City Plan Commission  
City of Mishawaka, Indiana

**RE: PETITION FOR PUD AMENDMENT**

The undersigned William Sinkovics respectfully show he is the owner of the following described real estate located in the City of Mishawaka, County of St. Joseph, State of Indiana, to-wit:

THAT PART OF THE NORTHEAST QUARTER AND SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, BEING DESCRIBED AS: BEGINNING AT THE SOUTHEAST CORNER OF LOT #9 OF "HECKATHORN'S 1<sup>ST</sup> SUBDIVISION" AS RECORDED IN THE RECORDS OF THE ST. JOSEPH COUNTY, INDIANA RECORDER'S OFFICE; THENCE S. 00°00'00" E., 60.00 FEET MORE OR LESS TO THE SOUTH LINE OF IRELAND ROAD; THENCE S. 90°00'00" W. ALONG SAID SOUTH LINE, 114.53 FEET MORE OR LESS; THENCE N. 00°00'00" E., 693.82 FEET MORE OR LESS ALONG THE WEST LINE OF LOTS #9 AND 10 IN SAID SUBDIVISION AND SAID WEST LINE'S SOUTHERLY EXTENSION TO A POINT

ON THE NORTH LINE OF SAID SUBDIVISION; THENCE N. 90°00'00" E. ALONG THE NORTH LINE OF SAID SUBDIVISION 114.53 FEET TO THE NORTHEAST CORNER OF SAID LOT #10; THENCE S. 00°00'00" W., 633.82 FEET MORE OR LESS ALONG THE EAST LINE OF LOTS TO THE POINT OF BEGINNING. CONTAINING 1.82 ACRES MORE OR LESS. SUBJECT TO ALL LEGAL HIGHWAYS, EASEMENTS AND RESTRICTIONS OF RECORD.

COMMON ADDRESS: 230 IRELAND ROAD, MISHAWAKA, IN 46544

Petitioner(s) own one hundred (100%) percent of the above-described parcel of land which carries a zoning classification of S-2 Planned Unit Development specifically for C-1 general uses, low volume restaurant uses with drive-up windows (non-fast food), financial institutions with drive-up windows, and multi-tenant retail buildings.

Petitioner desires said real estate to be amended to allow for continued single family residential use with a new accessory structure not to exceed 3,072 sq. ft. The accessory structure will be a pole barn that will be 48 ft. X 64 ft., 20 ft. in height.

Wherefore, the petitioner prays and respectfully requests that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted amending the PUD of the above-described parcel of land located in the City of Mishawaka.

*Signature(s) of Property Owner(s)*



---

William Sinkovics

**CONTACT PERSON:**

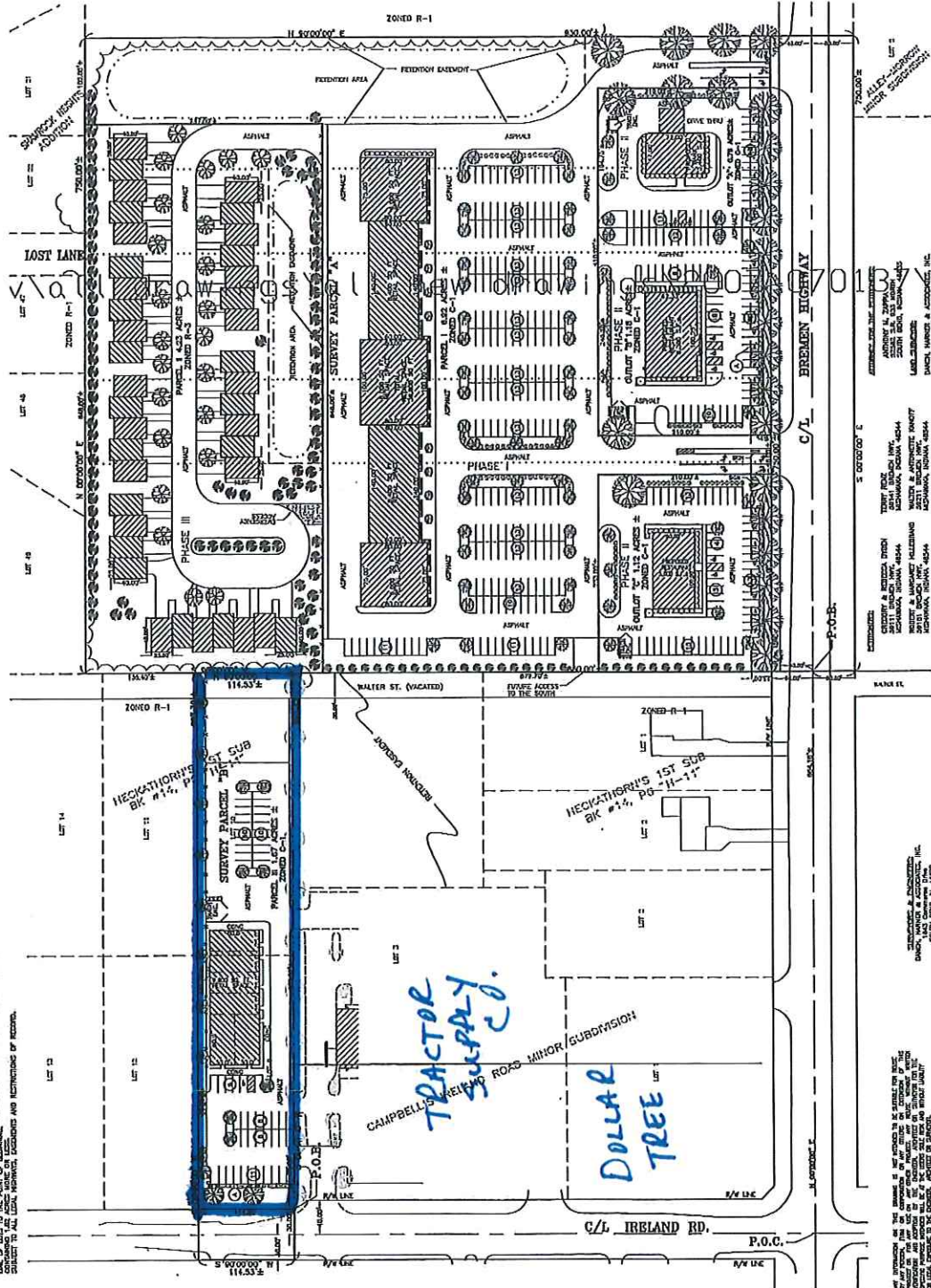
William Sinkovics  
230 Ireland Rd.  
Mishawaka, IN. 46544  
Cell-574-532-7005  
E-mail: ssb52@yahoo.com



A PART OF THE NORTHEAST QUARTER OF SECTION 28, T. 37 N., R. 3 E.  
PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA

A REPORT OF THE SENATE COMMITTEE ON COMMERCE AND MANUFACTURES  
IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE MAY 10, 1906,  
RELATIVE TO THE INVESTIGATION OF THE CAUSES OF THE COLLAPSE OF  
THE MONUMENTAL COLUMN IN NEW YORK CITY, APRIL 19, 1906.  
COMMISSIONER OF THE BUREAU OF MINES.

WASHINGTON:  
GOVERNMENT PRINTING OFFICE:  
1907.

[illegible][illegible][illegible]

TRANSLATED DATA

| DATE     | DESCRIPTION | AMOUNT | BALANCE |
|----------|-------------|--------|---------|
| 12-1-78  | DEPOSIT     | 100.00 | 100.00  |
| 12-5-78  | WITHDRAWAL  | 25.00  | 75.00   |
| 12-10-78 | DEPOSIT     | 50.00  | 125.00  |
| 12-15-78 | WITHDRAWAL  | 10.00  | 115.00  |
| 12-20-78 | DEPOSIT     | 75.00  | 190.00  |
| 12-25-78 | WITHDRAWAL  | 30.00  | 160.00  |
| 12-30-78 | DEPOSIT     | 40.00  | 200.00  |
| 1-5-79   | WITHDRAWAL  | 15.00  | 185.00  |
| 1-10-79  | DEPOSIT     | 60.00  | 245.00  |
| 1-15-79  | WITHDRAWAL  | 20.00  | 225.00  |
| 1-20-79  | DEPOSIT     | 80.00  | 305.00  |
| 1-25-79  | WITHDRAWAL  | 40.00  | 265.00  |
| 1-30-79  | DEPOSIT     | 90.00  | 355.00  |
| 2-5-79   | WITHDRAWAL  | 50.00  | 305.00  |
| 2-10-79  | DEPOSIT     | 110.00 | 415.00  |
| 2-15-79  | WITHDRAWAL  | 60.00  | 355.00  |
| 2-20-79  | DEPOSIT     | 120.00 | 475.00  |
| 2-25-79  | WITHDRAWAL  | 70.00  | 405.00  |
| 2-30-79  | DEPOSIT     | 130.00 | 535.00  |
| 3-5-79   | WITHDRAWAL  | 80.00  | 455.00  |
| 3-10-79  | DEPOSIT     | 140.00 | 595.00  |
| 3-15-79  | WITHDRAWAL  | 90.00  | 505.00  |
| 3-20-79  | DEPOSIT     | 150.00 | 655.00  |
| 3-25-79  | WITHDRAWAL  | 100.00 | 555.00  |
| 3-30-79  | DEPOSIT     | 160.00 | 715.00  |
| 4-5-79   | WITHDRAWAL  | 110.00 | 605.00  |
| 4-10-79  | DEPOSIT     | 170.00 | 775.00  |
| 4-15-79  | WITHDRAWAL  | 120.00 | 655.00  |
| 4-20-79  | DEPOSIT     | 180.00 | 835.00  |
| 4-25-79  | WITHDRAWAL  | 130.00 | 705.00  |
| 4-30-79  | DEPOSIT     | 190.00 | 895.00  |
| 5-5-79   | WITHDRAWAL  | 140.00 | 755.00  |
| 5-10-79  | DEPOSIT     | 200.00 | 955.00  |
| 5-15-79  | WITHDRAWAL  | 150.00 | 805.00  |
| 5-20-79  | DEPOSIT     | 210.00 | 1015.00 |
| 5-25-79  | WITHDRAWAL  | 160.00 | 855.00  |
| 5-30-79  | DEPOSIT     | 220.00 | 1075.00 |
| 6-5-79   | WITHDRAWAL  | 170.00 | 905.00  |
| 6-10-79  | DEPOSIT     | 230.00 | 1135.00 |
| 6-15-79  | WITHDRAWAL  | 180.00 | 955.00  |
| 6-20-79  | DEPOSIT     | 240.00 | 1195.00 |
| 6-25-79  | WITHDRAWAL  | 190.00 | 1005.00 |
| 6-30-79  | DEPOSIT     | 250.00 | 1255.00 |
| 7-5-79   | WITHDRAWAL  | 200.00 | 1055.00 |
| 7-10-79  | DEPOSIT     | 260.00 | 1315.00 |
| 7-15-79  | WITHDRAWAL  | 210.00 | 1105.00 |
| 7-20-79  | DEPOSIT     | 270.00 | 1375.00 |
| 7-25-79  | WITHDRAWAL  | 220.00 | 1155.00 |
| 7-30-79  | DEPOSIT     | 280.00 | 1435.00 |
| 8-5-79   | WITHDRAWAL  | 230.00 | 1205.00 |
| 8-10-79  | DEPOSIT     | 290.00 | 1495.00 |
| 8-15-79  | WITHDRAWAL  | 240.00 | 1255.00 |
| 8-20-79  | DEPOSIT     | 300.00 | 1555.00 |
| 8-25-79  | WITHDRAWAL  | 250.00 | 1305.00 |
| 8-30-79  | DEPOSIT     | 310.00 | 1615.00 |
| 9-5-79   | WITHDRAWAL  | 260.00 | 1355.00 |
| 9-10-79  | DEPOSIT     | 320.00 | 1675.00 |
| 9-15-79  | WITHDRAWAL  | 270.00 | 1405.00 |
| 9-20-79  | DEPOSIT     | 330.00 | 1735.00 |
| 9-25-79  | WITHDRAWAL  | 280.00 | 1455.00 |
| 9-30-79  | DEPOSIT     | 340.00 | 1795.00 |
| 10-5-79  | WITHDRAWAL  | 290.00 | 1505.00 |
| 10-10-79 | DEPOSIT     | 350.00 | 1855.00 |
| 10-15-79 | WITHDRAWAL  | 300.00 | 1555.00 |
| 10-20-79 | DEPOSIT     | 360.00 | 1915.00 |
| 10-25-79 | WITHDRAWAL  | 310.00 | 1605.00 |
| 10-30-79 | DEPOSIT     | 370.00 | 1975.00 |
| 11-5-79  | WITHDRAWAL  | 320.00 | 1655.00 |
| 11-10-79 | DEPOSIT     | 380.00 | 2035.00 |
| 11-15-79 | WITHDRAWAL  | 330.00 | 1705.00 |
| 11-20-79 | DEPOSIT     | 390.00 | 2095.00 |
| 11-25-79 | WITHDRAWAL  | 340.00 | 1755.00 |
| 11-30-79 | DEPOSIT     | 400.00 | 2155.00 |
| 12-1-79  | WITHDRAWAL  | 350.00 | 1805.00 |
| 12-2-79  | DEPOSIT     | 410.00 | 2215.00 |
| 12-3-79  | WITHDRAWAL  | 360.00 | 1855.00 |
| 12-4-79  | DEPOSIT     |        |         |

|    |                                         |                |
|----|-----------------------------------------|----------------|
| D. | PROJECT LAND USED                       |                |
|    | A) RETAIL USE                           | 45,400 sq. ft. |
|    | B) RESTAURANT USE                       | 11,200 sq. ft. |
|    | C) FINANCIAL USE                        | 2,400 sq. ft.  |
|    | D) RESIDENTIAL SELLING OFFICE 1ST FLOOR | 29,000 sq. ft. |
|    | E) RESIDENTIAL SELLING OFFICE 2ND FLOOR | 29,000 sq. ft. |

20. PARKING REQUIRED BY ORDINANCE

A. FINANCIAL USE FOR 8-10 CONCRETE DISTRICT OUTLET "A")  
4 SPACES FOR 1,000 SQ. FT. OF CRUISE FLIES AREA  
NUMBER OF SPACES REQUIRED FOR 2,400 SQ. FT. .... 14 SPACES  
NUMBER OF SPACES PROVIDED ..... 20 SPACES

D. RESTAURANT USE FOR "C-1" COMMERCIAL DISTRICT (OUTLET "C")  
 10 SPACES FOR 1,000 SQ. FT. OF GROSS FLOOR AREA  
 NUMBER OF SPACES REQUIRED FOR 4,500 SQ. FT. ... 45 SPACES  
 NUMBER OF SPACES PROVIDED ..... 45 SPACES

D. RESTAURANT USE FOR "C-1" COMMERCIAL DISTRICT (OUTLET "C")  
 10 SPACES FOR 1,000 SQ. FT. OF GROSS FLOOR AREA

[illegible]

D. RESIDENTIAL USES FOR "R-3" RESIDENTIAL DISTRICT (PARCEL 1D):  
 2 SPACES FOR CYCLING PATH;  
 NUMBER OF SPACES REQUIRED FOR 30 INCLINING..... 75 SPACES  
 NUMBER OF SPACES PROVIDED..... 160 SPACES

F. RETAIL USES FOR "C-3" COMMERCIAL DISTRICT (PARCEL 11D):  
 4 SPACES FOR 1,000 SF OF OFFICE FLOOR AREA

| 47. PROPOSED LANE CONVOYED                        | 100 FT.  | Z OF SITE |
|---------------------------------------------------|----------|-----------|
| A. BUILDING                                       | 100, 160 | 14, 40    |
| B. PARKING DRIVE                                  | 100, 767 | 41, 96    |
| NUMBER OF SPACES REQUIRED FOR 9, 600 SQ. FT. .... |          | 23 SPACES |
| NUMBER OF SPACES PROVIDED .....                   |          | 23 SPACES |

|                         |         |        |
|-------------------------|---------|--------|
| D. OPEN SPACE . . . . . | 259,330 | 30.74  |
| TOTAL . . . . .         | 673,517 | 303.00 |

E. NETO ALL PARKING SPACES PROVIDED ARE TO BE 9 FT. x 30 FT. AND PROPOSED DRIVEWAYS SHALL MEET ALL REQUIRED ADA STANDARDS.

F. ALL DRIVEWAYS SHALL BE TO BE MAINTAINED BY THE PROPERTY OWNER.

66. THE BUILDING SHALL MEET THE LATEST CITY OF KIDMANVA WATER STANDARDS
67. THE BUILDINGS ARE TO BE CONNECTED TO CITY WATER AND SEWAGE FACILITIES
68. ALL BEYONDAVE SHALL MEET THE LATEST CITY OF KIDMANVA STREET

STANDARDS

7D. ALL STANDARDS SHALL MEET THE LATEST CITY OF MIDWAYNA ZONING STANDARDS DURING AS APPROVED FOR THE PUE.

3D. ALL REQUIRED SECTIONS SHALL MEET THE LATEST CITY OF MIDWAYNA ZONING STANDARDS DURING AS APPROVED FOR THE PUE.

④ 25' FRONT YARD SETBACK LINE

CHANEL J. JAVIER SLA # 005

| DATE      | REVISIONS |
|-----------|-----------|
| 4/17/2008 |           |

|         |     |                              |
|---------|-----|------------------------------|
| DATE    | BY  |                              |
| 1/17/78 | CP  | ACCD. 25107 PARCEL "J"       |
| 1/17/78 | DAU | REMOVED FOR PLAIN CONNECTION |
|         |     |                              |
|         |     |                              |

|   |   |   |   |   |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |     |
|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 | 32 | 33 | 34 | 35 | 36 | 37 | 38 | 39 | 40 | 41 | 42 | 43 | 44 | 45 | 46 | 47 | 48 | 49 | 50 | 51 | 52 | 53 | 54 | 55 | 56 | 57 | 58 | 59 | 60 | 61 | 62 | 63 | 64 | 65 | 66 | 67 | 68 | 69 | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 | 91 | 92 | 93 | 94 | 95 | 96 | 97 | 98 | 99 | 100 |
|---|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|-----|

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**Daniel, Mann & Associates, Inc.**  
Land Surveyors • Professional Engineers  
Landscape Architects • Land Planners  
One (702)-732-1021 / 702-732-1001 • Fax (702)-732-1111  
1111 Fremont Pkwy. • Las Vegas, NV 89105

REVISIONS

1111

TO JUNE 1962

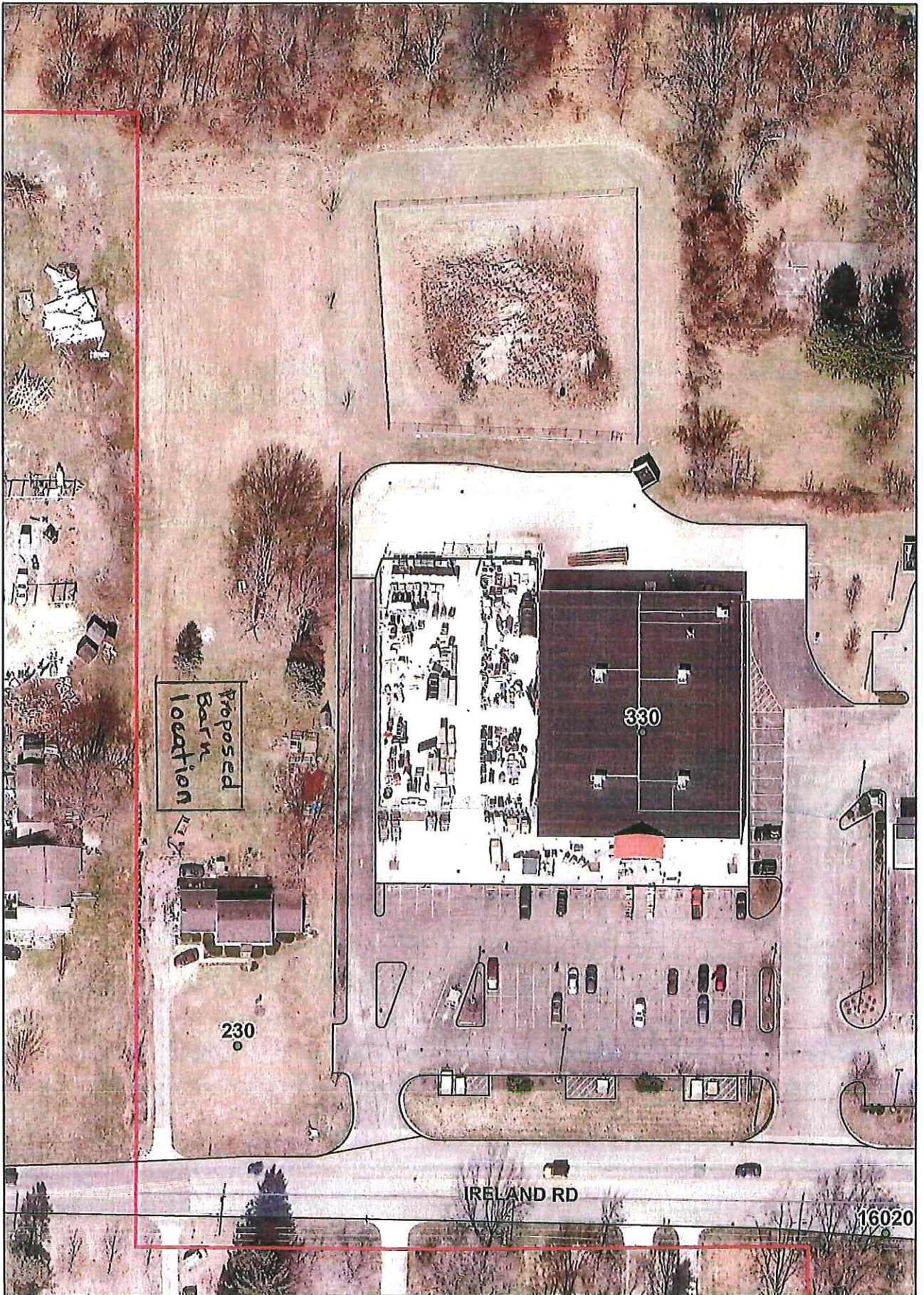
SEE FOR FULL COMMENT

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1

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Proposed  
Barn  
location

330

230

IRELAND RD

16020





S-2

PART OF BREMEN  
HWY. NORTH PUD

PET 21-18

R-1

S-2

S-2

S-2

S-2

S-2

IRELAND RD

## Location Map

**PET 21-18**

WILLIAM SINKOVICS (OWNER)

230 IRELAND ROAD

PUD AMENDMENT TO ALLOW FOR  
CONTINUED SINGLE FAMILY  
RESIDENTIAL USE WITH NEW  
3,072 SF/20' HIGH ACCESSORY BLDG.

C-4

C-2

C-1

C-2

C-7

C-7

C-7

DEC 15 2021

City Clerk  
Mishawaka, IN

PETITION 21-19

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2021-51

ORDINANCE NO. \_\_\_\_\_

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 ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA.

WHEREAS, the Plan Commission of the City of Mishawaka, Indiana, has made a favorable recommendation regarding the reclassification of the zoning as herein set forth of the real estate hereinafter described.

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

Section 1. Chapter 137, of the Municipal Code of the City of Mishawaka, commonly known as "The Zoning Ordinance of 1966", be, and the same is hereby amended as follows:

The following described real estate in the City of Mishawaka, Clay Township, St. Joseph County, State of Indiana, to-wit:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 38 NORTH, RANGE 3 EAST, ST. JOSEPH COUNTY, INDIANA; THENCE NORTH 89 DEGREES 44 MINUTES 40 SECONDS WEST, ALONG THE SOUTH LINE THEREOF, 662.56 FEET TO THE TRUE PLACE OF BEGINNING; THENCE NORTH 00 DEGREES 10 MINUTES 31 SECONDS EAST, 413.00 FEET; THENCE SOUTH 89 DEGREES 44 MINUTES 40 SECONDS EAST, 334.30 FEET TO THE PC OF A 130.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG SAID 130.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 28 DEGREES 00 MINUTES 18 SECONDS, A CHORD LENGTH OF 62.91 FEET, AN ARC DISTANCE OF 63.54 FEET TO THE PC OF A 75.00 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG SAID 75.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 28 DEGREES 00 MINUTES 18 SECONDS, A CHORD LENGTH OF 36.29 FEET; AN ARC DISTANCE OF 36.66 FEET; THENCE SOUTH 89 DEGREES 44 MINUTES 40 SECONDS EAST, 230.85 FEET TO THE EAST LINE OF SAID SOUTHWEST QUARTER; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST ALONG SAID EAST LINE, 24.00 FEET; THENCE NORTH 89 DEGREES 44 MINUTES 40 SECONDS WEST, 230.96 FEET TO THE PC OF A 99.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG SAID 99.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 28 DEGREES 00 MINUTES 18 SECONDS, A CHORD LENGTH OF 47.90 FEET, AN ARC DISTANCE OF 48.38 FEET TO THE PC OF A 106.00 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG SAID 106.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 28 DEGREES 00' MINUTES 18 SECONDS, A CHORD LENGTH OF 51.29 FEET, AN ARC DISTANCE OF 51.80 FEET; THENCE NORTH 89 DEGREES 44 MINUTES 40 SECONDS WEST, 279.95 FEET; THENCE SOUTH 00 DEGREES 10 MINUTES 32



Proposed Ordinance No: 2021-51

Ordinance No: \_\_\_\_\_

SECONDS WEST, 389.00 FEET TO THE SOUTH LINE OF SAID SOUTHWEST QUARTER;  
THENCE NORTH 89 DEGREES 44 MINUTES 40 SECONDS WEST, ALONG THE SOUTH  
LINE THEREOF, 54.31 FEET TO THE PLACE OF BEGINNING.

COMMON ADDRESS: 512 West Cleveland Road

which real estate is now classified as S-2 Planned Unit Development District shall hereafter be amended to allow a three-story self-storage facility within the northern part of the property and restaurant with drive-thru facilities within the southern part of the property fronting Cleveland Road, subject to the following conditions:

**Uses:**

1. Permitted uses on Parcel A shall include a three-story self-storage facility.
2. Permitted uses on Parcel B shall include a restaurant with drive-thru facilities and all C-1 General Commercial permitted uses.
3. Freestanding off-premise signs (i.e. billboards) shall not be permitted.

**Frontage:**

1. Parcel A shall have 0' of frontage on a public right-of-way.

**Building Setbacks:**

1. Parcel A shall conform to the setbacks per the attached site plan with a 15' side setback to the west, a 25' side setback to the east, a 25' rear setback to the north, and a 25' front setback to the south.
2. Parcel B shall conform to the setbacks per the attached site plan with 25' setbacks from all property lines.

**Dumpster Enclosure:**

1. Minimum 5' setback from any property line.
2. Enclosure must be located behind the building for Parcel A.
3. Enclosure for Parcel B shall be located to the side of the building and screened from Cleveland Road.
4. A 25' sight triangle shall be provided at internal drive and road/ingress-easement intersections.

**Parking:**

1. Parcel A shall have a minimum of 15 parking spaces.
2. Parcel B shall have a minimum of 10 parking spaces per 1,000 sq. ft. of gross floor area.

**Parking / Pavement Setbacks:**

1. Parcel A shall have minimum parking/pavement setbacks of 6' from the ingress/egress easement or edge of pavement to the west and north, 5' to the east, and 0' to the south along the common access drive between Parcel A and B.
2. Parcel B shall have minimum parking/pavement setbacks of 6' from the ingress/egress easement or edge of pavement to the west, 5' to the east, 10' to the

Proposed Ordinance No: 2021-51

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south from the additional right-of-way to be dedicated along Cleveland Road, and 0' to the north.

**Landscaping and Screening:**

1. Landscaping shall be provided as required per the C-1 General Commercial District for Parcel A and per the C-7 Auto-Oriented Restaurant Commercial District for Parcel B.
2. Landscaping may be eliminated along the common lot line between Parcel A and B to accommodate a shared access drive within an ingress/egress easement.

**Utilities:**

1. The developer shall connect to the City of Mishawaka sanitary sewer and water, as directed by applicable codes, the City Director of Engineering, and the Manager of the Water Division. The costs associated with the extension/connection shall be the responsibility of the applicant/developer.
2. The extension of all other utilities to and throughout all parcels shall be applicant/developer's cost and expense.

**Stormwater Management Infrastructure:**

1. The type of stormwater facilities proposed for each parcel and/or phase of the development shall be designed in accordance with applicable codes and as directed by the City Director of Engineering.

**Grease Interceptor:**

1. A grease interceptor shall not be required for the proposed self-storage facility on Parcel A.
2. A grease interceptor shall be required for the proposed restaurant with drive-thru facilities on Parcel B.

**Lighting:**

1. All site lighting shall be limited to 25' in height. 90 degree cut-off fixtures shall be required for both pole and wall mounted fixtures.
2. A photometric lighting plan shall be submitted as part of the final site plan for each parcel.

**Signage:**

1. One multi-tenant sign shall be permitted on Parcel B to accommodate signage for both Parcels A & B.

**Right-of-Way Dedication:**

1. Additional right-of-way shall be required along Cleveland Road as determined by review of the City Director of Engineering and City Planner. The right-of-way shall be dedicated as a part of the subdivision plat.

Proposed Ordinance No: 2021-51

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**Architectural Requirements:**

1. Building materials and colors shall comply with the C-1 General Commercial District for Parcel A and with the C-7 Auto-Oriented Commercial District for Parcel B. Fiber cement board siding and trim shall be considered an appropriate material for both Parcels A & B.

**Other:**

1. Parcel A shall conform to all other C-1 General Commercial District height, area, and development regulations unless otherwise noted above.
2. Parcel B shall conform to all other C-7 Auto-Oriented Restaurant Commercial District height, area, and development regulations unless otherwise noted above.

Section 2. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. Existing Conditions – The property is currently developed with a vacant restaurant, parking areas, and adjacent common access drives to W. Cleveland Road and Grape Road. Adjacent uses include a vacant retail building and design-build contractor to north, a common access drive serving the multiple parcels to the west, a bank and walk-in medical clinic to the south, and a multi-tenant commercial building and bank to the east. The property is located at the northern edge of the Grape Road commercial corridor.
2. Character of Buildings in Area – The buildings along the Grape Road and W. Cleveland Road corridors are primarily single and multi-tenant commercial/retail buildings including University Park Mall, a large regional shopping center. Low density single-family residential properties are located to the west.
3. The Most Desirable/Highest and Best Use – Due to the property's location at the northern edge of a highly travelled commercial corridor, the most desirable use of the property is for continued commercial use. The proposed uses are similar to the prior existing use of the property and those currently permitted which include all C-2 Shopping Center Commercial District uses.
4. Conservation of Property Values – The proposed zoning should not be injurious to property values in the surrounding area. Currently, commercial land uses, including similarly intensive uses than those proposed, are permitted within the portion of the PUD being amended.
5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, identified this area for general commercial development (retail sales and shopping centers).

Section 3. This Ordinance shall be in full force and effect from and after its passage, due attestation and legal publication.



Proposed Ordinance No: 2021-51

Ordinance No: \_\_\_\_\_

PASSED by the Common Council of the City of Mishawaka, Indiana, this  
\_\_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_\_ o'clock \_\_\_\_M.

\_\_\_\_\_  
Presiding Officer

ATTEST:

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

PRESENTED by me to the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2021,  
at \_\_\_\_\_ o'clock \_\_\_\_M.

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

APPROVED by me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, at  
\_\_\_\_\_ o'clock \_\_\_\_M.

\_\_\_\_\_  
David A. Wood, Mayor

**PETITION #21-19  
UNIVERSITY MARKETPLACE PUD AMEND  
CONDITIONS OF APPROVAL**

**Uses:**

1. Permitted uses on Parcel A shall include a three-story self-storage facility.
2. Permitted uses on Parcel B shall include a restaurant with drive-thru facilities and all C-1 General Commercial permitted uses.
3. Freestanding off-premise signs (i.e. billboards) shall not be permitted.

**Frontage:**

1. Parcel A shall have 0' of frontage on a public right-of-way.

**Building Setbacks:**

1. Parcel A shall conform to the setbacks per the attached site plan with a 15' side setback to the west, a 25' side setback to the east, a 25' rear setback to the north, and a 25' front setback to the south.
2. Parcel B shall conform to the setbacks per the attached site plan with 25' setbacks from all property lines.

**Dumpster Enclosure:**

1. Minimum 5' setback from any property line.
2. Enclosure must be located behind the building for Parcel A.
3. Enclosure for Parcel B shall be located to the side of the building and screened from Cleveland Road.
4. A 25' sight triangle shall be provided at internal drive and road/ingress-easement intersections.

**Parking:**

1. Parcel A shall have a minimum of 15 parking spaces.
2. Parcel B shall have a minimum of 10 parking spaces per 1,000 sq. ft. of gross floor area.

**Parking / Pavement Setbacks:**

1. Parcel A shall have minimum parking/pavement setbacks of 6' from the ingress/egress easement or edge of pavement to the west and north, 5' to the east, and 0' to the south along the common access drive between Parcel A and B.
2. Parcel B shall have minimum parking/pavement setbacks of 6' from the ingress/egress easement or edge of pavement to the west, 5' to the east, 10' to the south from the additional right-of-way to be dedicated along Cleveland Road, and 0' to the north.

**Landscaping and Screening:**

1. Landscaping shall be provided as required per the C-1 General Commercial District for Parcel A and per the C-7 Auto-Oriented Restaurant Commercial District for Parcel B.
2. Landscaping may be eliminated along the common lot line between Parcel A and B to accommodate a shared access drive within an ingress/egress easement.

**Utilities:**

1. The developer shall connect to the City of Mishawaka sanitary sewer and water, as directed by applicable codes, the City Director of Engineering, and the Manager of the Water Division. The costs associated with the extension/connection shall be the responsibility of the applicant/developer.
2. The extension of all other utilities to and throughout all parcels shall be applicant/developer's cost and expense.

**Stormwater Management Infrastructure:**

1. The type of stormwater facilities proposed for each parcel and/or phase of the development shall be designed in accordance with applicable codes and as directed by the City Director of Engineering.

**Grease Interceptor:**

1. A grease interceptor shall not be required for the proposed self-storage facility on Parcel A.
2. A grease interceptor shall be required for the proposed restaurant with drive-thru facilities on Parcel B.

**Lighting:**

1. All site lighting shall be limited to 25' in height. 90 degree cut-off fixtures shall be required for both pole and wall mounted fixtures.
2. A photometric lighting plan shall be submitted as part of the final site plan for each parcel.

**Signage:**

1. One multi-tenant sign shall be permitted on Parcel B to accommodate signage for both Parcels A & B.

**Right-of-Way Dedication:**

1. Additional right-of-way shall be required along Cleveland Road as determined by review of the City Director of Engineering and City Planner. The right-of-way shall be dedicated as a part of the subdivision plat.

**Architectural Requirements:**

1. Building materials and colors shall comply with the C-1 General Commercial District for Parcel A and with the C-7 Auto-Oriented Commercial District for Parcel B. Fiber cement board siding and trim shall be considered an appropriate material for both Parcels A & B.

**Other:**

1. Parcel A shall conform to all other C-1 General Commercial District height, area, and development regulations unless otherwise noted above.
2. Parcel B shall conform to all other C-7 Auto-Oriented Restaurant Commercial District height, area, and development regulations unless otherwise noted above.



**STAFF REPORT**

Location: 512 W. Cleveland Road – Northeast Corner of  
W. Cleveland Road and State Road 23

Date: December 14, 2021

Petition: 21- 19

Prepared By: DJS

**GENERAL INFORMATION**

Applicant: Sorce USA Realty Inc. / Centennial American Properties

Status: Property Owner / Contingent Owner & Developer

Request: Amend part of the University Marketplace Planned Unit Development (PUD) to allow a three-story self-storage facility and restaurant with drive-thru

Zoning Classification: S-2 Planned Unit Development (Permitted Uses on the portion of the PUD to be amended include all C-2 Shopping Center Commercial uses)

Lot Size: Approximately 2.25 acres excluding the existing right-of-way

Applicable Regulations: Section 137-671 to 137-679 / S-2 Planned Unit Development District & Section 137-41 / Amendment to Zoning Ordinance & Zoning Map

**SPECIAL INFORMATION**

Area Development Pattern: North: S-2 Planned Unit Development (Part of University Marketplace PUD / Vacant Retail Building formerly J.C. Penney Home Store & Anchor Construction)

South: C-1 General Commercial (Bank / KeyBank & Medical Clinic / Physicians Urgent Care)

East: C-1 General Commercial (Multi-Tenant Commercial / Vacant Bar & Restaurant formerly The Pub, Fyzical Therapy, and The Tribe Salon) & C-7 Auto-Oriented Restaurant Commercial / C-1 General Commercial (Bank / Northwest Bank)

West: S-2 Planned Unit Development (Part of University Marketplace PUD / Common Access Drive) & Unincorporated St. Joseph County – R Residential (Residential)

Thoroughfare: W. Cleveland Road (S.R. 23)

School District: South Bend Community School Corporation

Township: Clay

Public Utilities: All utilities are available and currently serve the site

Comprehensive Plan: General Commercial (Retail Sales & Shopping Centers)

**ANALYSIS**

The petitioner, Centennial American Properties, is requesting to amend part of the University Marketplace Planned Unit Development (PUD) to allow a three-story self-storage facility within the northern part of the

property and restaurant with drive thru facilities within the southern part of the property fronting Cleveland Road.

Prior to filing the amendment, Planning Staff instructed that the petitioner review all required C-1 General Commercial District height, area, and development regulations which will be applicable for the self-storage facility on the future north lot (Parcel A), and all required C-7 Auto-Oriented Restaurant Commercial District height, area, and development regulations which will be applicable for the restaurant with drive-thru facility on the future south lot (Parcel B). The petition was only to include deviations from these regulations. The petition and conceptual site plan, as provided, includes several proposed developmental regulations for each of the future individual lots. After reviewing the petition, it appears that a thorough review of the required development regulations was not completed. A majority of proposed regulations, as requested, are included in the staff recommendation with modifications, deletions, and additions as deemed necessary.

The portion of the PUD to be amended is an approximate 2.25 acre parcel located just northeast of the Cleveland Road and State Road 23 intersection. The property is currently occupied by a vacant restaurant, most recently being Tequilas Jalisco, and is bound by a vacant retail building and design-build contractor to the north, a common access drive serving the multiple parcels to the west, a bank and walk-in medical clinic to the south, and a multi-tenant commercial building and bank to the east. The vacant restaurant and all existing improvements will be razed with the proposed redevelopment.

The current PUD regulations applicable to the property, which were approved in 2015 (Petition 15-13/Ord. 5484), permitted all C-2 Shopping Center District uses. The property was proposed for redevelopment with a two building multi-tenant commercial strip center. The redevelopment plans never materialized.

Per the conceptual site plan, a 105,753 sq. ft. three-story self-storage facility is proposed on the approximate 1.45 acre northern lot (Parcel A). The first floor will cover 35,251 sq. ft. The future lot will have no frontage on a public right-of-way. An approximate 2,500 sq. ft. restaurant with drive thru facilities is proposed on the approximate 1.08 acre southern lot (Parcel B) fronting Cleveland Road.

Access to the site will be maintained as is with primary access provided via an existing common drive to the west at the Cleveland Road and State Road 23 intersection. Additional access will be from the north of Parcel A off of an existing access drive and parking area associated with the former J.C. Penney Home Store property. Cross access (ingress/egress) easements to include the adjacent drives shall be dedicated on the future subdivision plat or a reciprocal easement agreement recorded if not currently in place. No new access points are proposed onto the public right-of-way.

Based on 4 parking spaces per 1,000 sq. ft. of gross floor area, which is the applicable ratio for the self-storage facility, a total of 423 parking spaces are required for the 105,753 sq. ft. building on Parcel A. Due to the minimal parking demand for this use, a total of 15 parking spaces are proposed. Based on 15 parking spaces per 1,000 sq. ft. of gross floor area, which is the applicable ratio for the restaurant with drive-thru, a total 38 parking spaces are required to the approximate 2,500 sq. ft. building on Parcel B. A total of 27 parking spaces are proposed due to the limited size of the property and anticipated future use. Staff will support a minimum parking ratio of 10 spaces per 1,000 sq. ft. of gross floor area for this lot.

The C-1 and C-7 development regulations require a 10' minimum parking setback from the public right-of-way, private access easement, or internal vehicular collector drives, and 5' minimum parking setback from any adjacent property line. A minimum 10' parking/pavement setback will be required for Parcel B from the additional right-of-way to be dedicated along Cleveland Road. A minimum 5' or 6' parking/pavement setback will be required from all other lot lines excluding a 0' setback along the common lot line between the future lots (Parcels A & B).

For the landscaping and screening, no landscaping will be required along the common lot line between Parcels A & B due to the shared common access drive. Landscaping compliant with the commercial landscaping regulations will be required along all other property lines and interior to the parking areas.

The architectural materials and colors of the building shall comply with the commercial design regulations with the exception of allowing fiber cement board siding and trim on all buildings.



All development regulations and conditions, as established per this PUD amendment, will be applicable when final site plans are submitted for each lot. Planning Staff recommended that a survey be prepared prior to filing the PUD amendment petition to establish more accurate development regulations especially those relating to setbacks. The conceptual site plan appears to have been designed without the benefit of a survey. If a future survey reveals that the site design will have to be altered which would not comply with the established regulations, an additional PUD amendment or developmental variances may be required.

Similar to when the prior Planned Unit Development amendment was approved, the petitioner is only proposing to establish, or in this case, amend the permitted uses and basic development requirements of the planned unit development. If approved, a detailed final site plan must be submitted for each future lot to address all the applicable zoning (height, area, and development regulations), utility (sanitary sewer, water, storm drainage, electric, gas, etc.), landscaping/screening, grading, erosion control, and any other required improvements. A subdivision plat will be required to establish legal lots of record for proposed Parcels A & B.

All pertinent City Departments have reviewed and approved the PUD amendment request.

The Engineering Department provided the following comments that shall be addressed with the final site plan:

1. Additional right-of-way shall be dedicated along the Cleveland Road frontage to encompass a new dedicated right-turn lane into the site.
2. Right turn lane into the site shall be designed per Engineering Department standards.
3. Extend the sidewalk at the northwest corner of the Cleveland Road and State Road 23 intersection and add crosswalk with ADA accessible ramps across existing access drive to the site.
4. Coordinate all construction activities on Cleveland Road (S.R. 23) with the INDOT Traffic Division since it is a state maintained road.
5. All utility connections are off the rear of the existing building and shall be located as such for the new proposed buildings.

The Electric Department commented that the property is not within the city's electric service territory.

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| <b>RECOMMENDATION</b> |
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Staff recommends **approval** of Petition 21-19 to amend part of the University Marketplace Planned Unit Development (PUD) to allow a three-story self-storage facility and restaurant with drive-thru subject to the following conditions:

**Uses:**

1. Permitted uses on Parcel A shall include a three-story self-storage facility.
2. Permitted uses on Parcel B shall include a restaurant with drive-thru facilities and all C-1 General Commercial permitted uses.
3. Freestanding off-premise signs (i.e. billboards) shall not be permitted.

**Frontage:**

1. Parcel A shall have 0' of frontage on a public right-of-way.

**Building Setbacks:**

1. Parcel A shall conform to the setbacks per the attached site plan with a 15' side setback to the west, a 25' side setback to the east, a 25' rear setback to the north, and a 25' front setback to the south.
2. Parcel B shall conform to the setbacks per the attached site plan with 25' setbacks from all property lines.

**Dumpster Enclosure:**

1. Minimum 5' setback from any property line.
2. Enclosure must be located behind the building for Parcel A.
3. Enclosure for Parcel B shall be located to the side of the building and screened from Cleveland Road.
4. A 25' sight triangle shall be provided at internal drive and road/ingress-easement intersections.

**Parking:**

1. Parcel A shall have a minimum of 15 parking spaces.
2. Parcel B shall have a minimum of 10 parking spaces per 1,000 sq. ft. of gross floor area.

**Parking / Pavement Setbacks:**

1. Parcel A shall have minimum parking/pavement setbacks of 6' from the ingress/egress easement or edge of pavement to the west and north, 5' to the east, and 0' to the south along the common access drive between Parcel A and B.
2. Parcel B shall have minimum parking/pavement setbacks of 6' from the ingress/egress easement or edge of pavement to the west, 5' to the east, 10' to the south from the additional right-of-way to be dedicated along Cleveland Road, and 0' to the north.

**Landscaping and Screening:**

1. Landscaping shall be provided as required per the C-1 General Commercial District for Parcel A and per the C-7 Auto-Oriented Restaurant Commercial District for Parcel B.
2. Landscaping may be eliminated along the common lot line between Parcel A and B to accommodate a shared access drive within an ingress/egress easement.

**Utilities:**

1. The developer shall connect to the City of Mishawaka sanitary sewer and water, as directed by applicable codes, the City Director of Engineering, and the Manager of the Water Division. The costs associated with the extension/connection shall be the responsibility of the applicant/developer.
2. The extension of all other utilities to and throughout all parcels shall be applicant/developer's cost and expense.

**Stormwater Management Infrastructure:**

1. The type of stormwater facilities proposed for each parcel and/or phase of the development shall be designed in accordance with applicable codes and as directed by the City Director of Engineering.

**Grease Interceptor:**

1. A grease interceptor shall not be required for the proposed self-storage facility on Parcel A.
2. A grease interceptor shall be required for the proposed restaurant with drive-thru facilities on Parcel B.

**Lighting:**

1. All site lighting shall be limited to 25' in height. 90 degree cut-off fixtures shall be required for both pole and wall mounted fixtures.
2. A photometric lighting plan shall be submitted as part of the final site plan for each parcel.

**Signage:**

1. One multi-tenant sign shall be permitted on Parcel B to accommodate signage for both Parcels A & B.

**Right-of-Way Dedication:**

1. Additional right-of-way shall be required along Cleveland Road as determined by review of the City Director of Engineering and City Planner. The right-of-way shall be dedicated as a part of the subdivision plat.

**Architectural Requirements:**

1. Building materials and colors shall comply with the C-1 General Commercial District for Parcel A and with the C-7 Auto-Oriented Commercial District for Parcel B. Fiber cement board siding and trim shall be considered an appropriate material for both Parcels A & B.

**Other:**

1. Parcel A shall conform to all other C-1 General Commercial District height, area, and development regulations unless otherwise noted above.
2. Parcel B shall conform to all other C-7 Auto-Oriented Restaurant Commercial District height, area, and development regulations unless otherwise noted above.

The recommendation is based on the following findings of fact:

1. Existing Conditions – The property is currently developed with a vacant restaurant, parking areas, and adjacent common access drives to W. Cleveland Road and Grape Road. Adjacent uses include a vacant retail building and design-build contractor to north, a common access drive serving the multiple parcels to the west, a bank and walk-in medical clinic to the south, and a multi-tenant commercial building and bank to the east. The property is located at the northern edge of the Grape Road commercial corridor.
2. Character of Buildings in Area – The buildings along the Grape Road and W. Cleveland Road corridors are primarily single and multi-tenant commercial/retail buildings including University Park Mall, a large regional shopping center. Low density single-family residential properties are located to the west.
3. The Most Desirable/Highest and Best Use – Due to the property's location at the northern edge of a highly travelled commercial corridor, the most desirable use of the property is for continued commercial use. The proposed uses are similar to the prior existing use of the property and those currently permitted which include all C-2 Shopping Center Commercial District uses.
4. Conservation of Property Values – The proposed zoning should not be injurious to property values in the surrounding area. Currently, commercial land uses, including similarly intensive uses than those proposed, are permitted within the portion of the PUD being amended.
5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, identified this area for general commercial development (retail sales and shopping centers).

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| <b>ATTACHMENTS</b> |
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Photographs, Petition, Conceptual Site Plan, Location Map





Aerial Photograph  
Existing Vacant Restaurant – 512 W. Cleveland Road  
Part of the University Marketplace PUD



P1. Looking northeasterly toward the existing restaurant from the Cleveland Rd. (S.R. 23) access.





P2. Looking northerly along the existing common access drive to the west.



P3. Looking southeasterly toward the property from the adjacent access drives.





P4. Looking easterly along the north property line of Parcel B and adjacent access drive.



P5. Looking southwesterly toward the property from the adjacent access drive to the north.





P6. Looking northwesterly toward of the existing building from the east.



P7. Looking northerly toward the property and existing building from south of S.R. 23.



November 9, 2021

Honorable Members of the  
Common Council  
City of Mishawaka, Indiana  
and  
Mishawaka City Plan Commission  
City of Mishawaka, Indiana



**RE: PETITION FOR PUD AMENDMENT FOR ORDINANCE 5484**

The undersigned Sorce USA Realty, Inc. and King's Buffet of Granger Inc. respectfully show they are the owners of the following described real estate located in the City of Mishawaka, County of St. Joseph, State of Indiana, to-wit:

COMMENCING AT THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 21, TOWNSHIP 38 NORTH, RANGE 3 EAST, ST. JOSEPH COUNTY, INDIANA; THENCE NORTH 89 DEGREES 44 MINUTES 40 SECONDS WEST, ALONG THE SOUTH LINE THEREOF, 662.56 FEET TO THE TRUE PLACE OF BEGINNING; THENCE NORTH 00 DEGREES 10 MINUTES 31 SECONDS EAST, 413.00 FEET; THENCE SOUTH 89 DEGREES 44 MINUTES 40 SECONDS EAST, 334.30 FEET TO THE PC OF A 130.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG SAID 130.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 28 DEGREES 00 MINUTES 18 SECONDS, A CHORD LENGTH OF 62.91 FEET, AN ARC DISTANCE OF 63.54 FEET TO THE PC OF A 75.00 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG SAID 75.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 28 DEGREES 00 MINUTES 18 SECONDS, A CHORD LENGTH OF 36.29 FEET; AN ARC DISTANCE OF 36.66 FEET; THENCE SOUTH 89 DEGREES 44 MINUTES 40 SECONDS EAST, 230.85 FEET TO THE EAST LINE OF SAID SOUTHWEST QUARTER; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS WEST ALONG SAID EAST LINE, 24.00 FEET; THENCE NORTH 89 DEGREES 44 MINUTES 40 SECONDS WEST, 230.96 FEET TO THE PC OF A 99.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE ALONG SAID 99.00 FOOT RADIUS CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 28 DEGREES 00 MINUTES 18 SECONDS, A CHORD LENGTH OF 47.90 FEET, AN ARC DISTANCE OF 48.38 FEET TO THE PC OF A 106.00 FOOT RADIUS CURVE TO THE LEFT; THENCE ALONG SAID 106.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 28 DEGREES 00' MINUTES 18 SECONDS, A CHORD LENGTH OF 51.29 FEET, AN ARC DISTANCE OF 51.80 FEET; THENCE NORTH 89 DEGREES 44 MINUTES 40 SECONDS WEST, 279.95 FEET; THENCE SOUTH 00 DEGREES 10 MINUTES 32 SECONDS WEST, 389.00 FEET TO THE SOUTH LINE OF SAID SOUTHWEST QUARTER; THENCE NORTH 89 DEGREES 44 MINUTES 40 SECONDS WEST, ALONG THE SOUTH LINE THEREOF, 54.31 FEET TO THE PLACE OF BEGINNING.

Deborah S. Block, IAMC, MMC

DEC 02 2021

City Clerk  
Mishawaka, IN

Petitioner(s) own one hundred (100%) percent of the above-described parcel of land which carries a zoning classification of S-2 Planned Unit Development specifically for a now closed Asian Restaurant.

Petitioner desires said real estate to be amended to allow for

1. Ordinance 5484 is to be amended for Parcel A to allow for a Self-Contained, Climate Controlled Self-Storage Facility. Additionally, to be amended to allow for a three (3) story building gross square footage to be 106,000 sq ft with a height of forty-eight (48) feet. As shown on the attached site plan.

2. Ordinance 5484 is to be amended for Parcel B to allow for retail in the configuration as shown on the attached site plan. As shown on the attached site plan.

SEE ATTACHED PROPOSED USES &  
DEVELOPMENT REGULATIONS

Wherefore, the petitioner(s) pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted amending the PUD of the above-described parcel of land located in the City of Mishawaka.

*Signature(s) of Property Owner(s)*

DocuSigned by:  


\_\_\_\_\_  
Typewritten name also

Wei Zheng

**CONTACT PERSON:**

Name C Brody Glenn

Address PO Box 10588 Greenville, SC 29603

Phone Number/ Fax 864-271-3894

Email jasont@capllc.com



~~ANGLE OF 28 DEGREES 00 MINUTES 18 SECONDS, A CHORD LENGTH OF 47.90 FEET, AN ARC DISTANCE OF 48.38 FEET TO THE PC OF A 106.00 FOOT RADIUS CURVE TO THE LEFT, THENCE ALONG SAID 106.00 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 28 DEGREES 00' MINUTES 18 SECONDS, A CHORD LENGTH OF 51.29 FEET, AN ARC DISTANCE OF 51.80 FEET; THENCE NORTH 89 DEGREES 44 MINUTES 40 SECONDS WEST, 279.95 FEET; THENCE SOUTH 00 DEGREES 10 MINUTES 32 SECONDS WEST, 389.00 FEET TO THE SOUTH LINE OF SAID SOUTHWEST QUARTER; THENCE NORTH 89 DEGREES 44 MINUTES 40 SECONDS WEST, ALONG THE SOUTH LINE THEREOF, 54.31 FEET TO THE PLACE OF BEGINNING.~~

Commonly known as: 512 West Cleveland Road, Granger, Indiana, which real estate is now classified as S-2 Planned Unit Development District and shall hereafter be amended to allow the subdivision in to Parcel A and Parcel B. Parcel A is to be designated the "Storage Facility"; Parcel B is to be designated as "Retail Parcel", subject to the following:

USES:

1. Ordinance 5484 is to be amended for Parcel A to allow for a Self-Contained, Climate Controlled Self-Storage Facility. Additionally, to be amended to allow for a three (3) story building gross square footage to be 106,000 sq ft with a height of forty-eight (48) feet. As shown on the attached site plan.
2. Ordinance 5484 is to be amended for Parcel B to allow for retail to include all uses permitted in C-1 and a drive-thru restaurant in the configuration as shown on the attached site plan.

FRONTAGE

1. 0' of public road frontage is requested for Parcel A.

BUILDING SETBACKS:

1. Parcel A will conform to the setbacks set forth in the attached site plan, with a 15' side setback on the Western side, 25' side setback from the Eastern side and a 25' setback from the Northern side and a minimum of a 10' setback from the Southern property line.
2. Parcel B will conform to the setbacks set forth in the attached site plan with setbacks of 25' from the North, West and East. The South setback

DUMPSTER ENCLOSURE:

1. Minimum 5 ft. setback from any property line.
2. Enclosure must be located behind the buildings for Parcel A
3. Enclosure for Parcel B will be located to the side of the building and screened from Cleveland Road
4. A 25-ft sight triangle shall be provided at internal drive and road/ingress- egress easement intersection.

**PARKING:**

1. Parcel A will conform to the site plan provided and will only require 15 parking stalls along the common access drive.
2. Parcel B will conform to C-7 District, 15 spaces per 1000 sq. ft. of gross floor area is required for the south lot (QSR with drive-thru).

**PARKING SETBACKS:**

1. Parcel A will conform to the setbacks set forth in the attached site plan, 13' from center property line.
2. Parcel B will conform to the setbacks set forth in the attached site plan, 16' from Cleveland Road.

**LANDSCAPE/SCREENING:**

1. Landscaping shall generally comply with the Commercial C-1 General Commercial Landscape Ordinance.
2. Required landscaping may be eliminated along the center property line to provide for parking areas off of the ingress/egress easement.

**GREASE INTERCEPTOR:**

1. For Parcel A no grease interceptor is not required.
2. For Parcel B a grease interceptor shall be installed per the City Department of Engineering.

**SIGNAGE:**

1. One Multi-tenant sign will be permitted: no separate monument sign for Parcel B.
2. Appropriate C-2 Shopping Center Commercial building signage will be permitted.

**OTHER:**

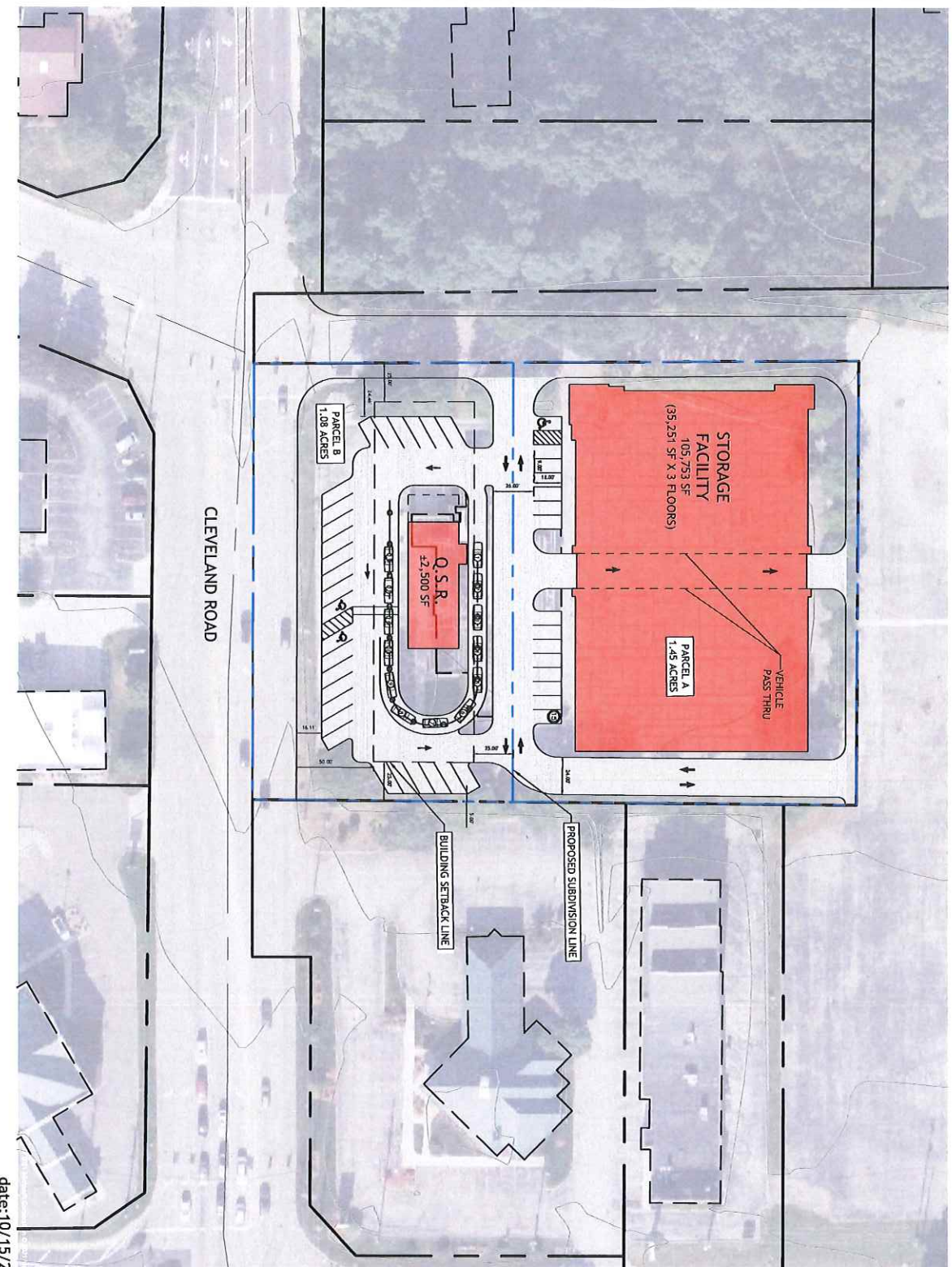
1. Parcel A will conform C-1 General Commercial District Standards.
2. Parcel B will conform C-7 Auto Oriented Restaurant Commercial District Standards.

**Section 2. finds that:**

~~The Common Council of the City of Mishawaka, Indiana, hereby~~

- ~~1. Existing Conditions - The proposal is in keeping with the existing area by maintaining commercial uses.~~
- ~~2. Character of Buildings in Area - The character of the buildings located in the area is commercial. The proposed facility will be commercial in nature.~~
- ~~3. The most desirable/highest and best use - Due to the presence of the commercial activity in the surrounding area, the most desirable/highest use is the proposed commercial use.~~



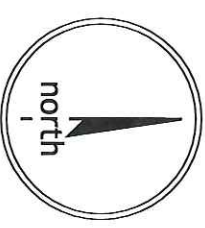


date:10/15/21

**blueWATER**  
civil design  
Bluewater Civil design, LLC  
718 Lander Hill Road • Greenville, SC 29607  
www.bluewatercivil.com • info@bluewatercivil.com

## site data

jurisdiction: City of Mishawaka  
tax map no.: 029-1003-020001  
zoning: PUD  
parcel area: 2.25 Ac (Total)  
setback: Varies (See PUD)  
building area: ±105,753 sf (Storage)  
±2,500 sf (QSR)  
parking: 15 spaces (Storage)  
27 spaces (QSR)



scale: 1" = 60'

CAP SOUTH BEND  
MISHAKAWA,  
INDIANA

## STUDY PLAN

# SP-1



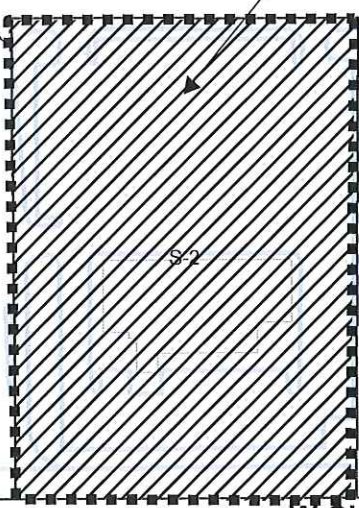
S-2

S-2

**PET 21-19**

PART OF UNIVERSITY  
MARKETPLACE PUD

TIMBERLAND DR



C-1

C-5

C-1

C-7

C-1

C-1

C-1

W CLEVELAND RD

S.R. 23

C-1

C-1

C-1

GRAPE RD

S-1

C-2

## Location Map

### PET 21-19

SORCE USA REALTY INC. (OWNER)/  
CENTENNIAL AMERICAN PROPERTIES  
(CONTINGENT DEVELOPER)

512 W. CLEVELAND ROAD

PUD AMENDMENT TO ALLOW FOR  
A STORAGE FACILITY



PETITION 21-20

Deborah S. Block, IAMC, MMC

CITY OF MISHAWAKA, INDIANA

DEC 15 2021

PROPOSED ORDINANCE NO. 2021-52

City Clerk  
Mishawaka, IN

ORDINANCE NO. \_\_\_\_\_

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 ORDINANCE OF 1966" OF THE CITY OF MISHAWAKA, INDIANA.

WHEREAS, the Plan Commission of the City of Mishawaka, Indiana, has made a favorable recommendation regarding the reclassification of the zoning as herein set forth of the real estate hereinafter described.

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

Section 1. Chapter 137, of the Municipal Code of the City of Mishawaka, commonly known as "The Zoning Ordinance of 1966", be, and the same is hereby amended as follows:

The following described real estate in the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to-wit:

Part of the Northeast Quarter of Section 24, Township 37 North, Range 3 East, City of Mishawaka, Penn Township, St. Joseph County, Indiana and being that 0.59 acre parcel surveyed by Lang, Feeney & Associates, Inc. Terrance D. Lang, Indiana Professional Surveyor No. 80040523 and shown on a site plan of that survey certified on November 2, 2021 as 143-63 (all monuments referenced herein are set or found on the aforesaid Lang survey), being more particularly described as follows:

Commencing at the northwest corner of Lot 3 as shown on the Recorded plat of The Villages at Harrison Creek in the Office of the Recorder of St. Joseph County, Indiana as Instrument No. 0108192; thence for the next two courses along the west line of said plat; the first being South 00°10'30" East, a distance of 155.04 feet to a 5/8" rebar iron set with Lang Feeney S0309 S0523 cap; thence South 88°21'27" West, a distance of 165.06 feet to a point on the east right of way line of Beacon Drive said point being a 5/8" rebar iron set with Lang Feeney S0309 S0523 cap; thence North 00°10'30" West along said east line, a distance of 155.11 feet to the south line of 12th Street, said point being a 5/8" rebar iron set with Lang Feeney S0309 S0523 cap; thence North 88°22'55" East along said south line, a distance of 165.06 feet to the point of beginning. Subject to the legal rights of a public highway, any easements, covenants or restrictions of record.

COMMON ADDRESS: Southeast Corner of Harrison Road and Beacon Drive

which real estate is now classified as S-2 Planned Unit Development District shall hereafter be amended to allow the addition of two (2) additional single-family homes with R-1 Single Family Residential standards with the lot frontage reduced to 50' for Lot 2.

Proposed Ordinance No: 2021-52

Ordinance No: \_\_\_\_\_

Section 2. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. Existing Conditions – The property is currently adjacent to other single-family developments in the area.
2. Character of Buildings in Area – The development south of Harrison Road is exclusively residential. Some of the neighboring developments have smaller lots and villa style homes.
3. The Most Desirable/Highest and Best Use – Due to the property's location in a single-family area, the addition of two more homes would be compatible with the existing adjacent land uses.
4. Conservation of Property Values – The proposed zoning should not be injurious to property values in the surrounding area because the use is very similar.
5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, identified this area for multi-family residential (apartment complexes and nursing facilities) which, even though these are single family homes, is reflected by the density of the smaller homes and lots.

Section 3. This Ordinance shall be in full force and effect from and after its passage, due attestation and legal publication.

PASSED by the Common Council of the City of Mishawaka, Indiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_\_ o'clock \_\_\_\_M.

\_\_\_\_\_  
Presiding Officer

ATTEST:

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

PRESENTED by me to the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_\_ o'clock \_\_\_\_M.

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

APPROVED by me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_\_ o'clock \_\_\_\_M.

\_\_\_\_\_  
David A. Wood, Mayor

**STAFF REPORT**

Location: The Village at Harrison Creek  
Southeast corner of Harrison Rd & Beacon Drive

Date: December 14, 2021

Petition: 21- 20

Prepared By: CH

**GENERAL INFORMATION**

Applicant: Barak Group LLC/Lang, Feeney & Associates, Inc.

Status: Property Owner / Surveyor

Request: Amend the Village at Harrison Creek Planned Unit Development to allow two additional single family homes with R-1 standards in an area previously reserved for water retention.

Zoning Classification: S-2 Planned Unit Development (Permitted Uses include 54 single family homes)

Lot Size: 0.59 acres

Applicable Regulations: Section 137-671 to 137-679 / S-2 Planned Unit Development District & Section 137-41 / Amendment to Zoning Ordinance & Zoning Map

**SPECIAL INFORMATION**

Area Development Pattern: North: R-3 Multi-Family Residential (Epic Church)  
South: S-2 Planned Unit Development (Village at Harrison Creek)  
East: S-2 Planned Unit Development (Villas at Reverewood)  
West: S-2 Planned Unit Development (Village at Harrison Creek)

Thoroughfare: Harrison Road

School District: School City of Mishawaka

Township: Penn

Public Utilities: All utilities are available to serve the site

Comprehensive Plan: Medium Density Residential (apartment complexes and nursing facilities)

**ANALYSIS**

The petitioner, Barak Group LLC is requesting to amend the Village at Harrison Creek Planned Unit Development (PUD), approved in 2000, to add two additional single family homes with R-1 standards in an area previously reserved for water retention. The original PUD was approved for 54 homes, and all 54 homes have been developed. Staff has been in discussion with the owner and the owner's surveyor for over two years to bring about a functional PUD amendment. The proposed use is permitted in the R-1 Single-Family Residential District, thus the height, area, and developmental regulations for this district will be applicable to the property unless otherwise noted. The frontage on Lot 2 will be reduced to 50'. The R-1 standards require 60' of frontage.



The area being affected by this PUD amendment is the southeast corner of Harrison Road and Beacon Dr, which was previously reserved for water retention. This PUD is bounded by The Cove at Harrison Creek on the west; Epic Church to the north; the Villas at Reverewood on the east; and Reverewood subdivision to the south.

The current PUD regulations applicable to the property, which were approved in 2000 (Petition 00-24/Ord. 4516), permit 54 single family houses. The property was subsequently subdivided into 54 lots in 2000 as Village at Harrison Creek (Recording No. 0108192).

A preliminary site plan shows two lots with building envelopes for two single family homes, but maintains the retention easement where the existing retention basin is. Access to both lots will be from Beacon Drive. Access cannot be from Cedarwood Ln because there is a landscape easement the current developer does not own between this parcel and the road. A subdivision will be required to officially divide the lots and establish any easements.

All pertinent City Departments have reviewed and approved the PUD amendment request.

### RECOMMENDATION

Staff recommends **approval** of Petition 21-20 to amend the Village at Harrison Creek Planned Unit Development, to allow two additional single family homes with the lot frontage reduced to 50' for Lot 2.

The recommendation is based on the following findings of fact:

1. Existing Conditions – The property is currently adjacent to other single family developments in the area.
2. Character of Buildings in Area – The development south of Harrison Road is exclusively residential. Some of the neighboring developments have smaller lots and villa style homes.
3. The Most Desirable/Highest and Best Use – Due to the property's location in a single family area, the addition of two more homes would be compatible with the existing adjacent land uses.
4. Conservation of Property Values – The proposed zoning should not be injurious to property values in the surrounding area because the use is very similar.
5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, identified this area for multi-family residential (apartment complexes and nursing facilities) which, even though these are single family homes, is reflected by the density of the smaller homes and lots.

### ATTACHMENTS

Aerial, Photographs, Petition, Location Map





A view from the intersection of Harrison Road and Beacon Dr





A view northeast from the intersection of Beacon Dr and Cedarwood Ln



A view north from Cedarwood Ln from the eastern edge of the affected area



PET 21-20

Deborah S. Block, IAMC, MMC

DEC 02 2021

City Clerk  
Mishawaka, IN

DATE: November 3, 2021

Honorable Members of the  
Common Council  
City of Mishawaka, Indiana  
and  
Mishawaka City Plan Commission  
City of Mishawaka, Indiana

**RE: PETITION FOR PUD AMENDMENT**

The undersigned, Barak Group, LLC respectfully show they are the owners of the following described real estate located in the City of Mishawaka, County of St. Joseph, State of Indiana, to-wit: Part of the Northeast Quarter of Section 24, Township 37 North, Range 3 East, City of Mishawaka, Penn Township, St. Joseph County, Indiana and being that 0.59 acre parcel surveyed by Lang, Feeney & Associates, Inc. Terance D. Lang, Indiana Professional Surveyor No. 80040523 and shown on a site plan of that survey certified on November 2, 2021 as 143-63 (all monuments referenced herein are set or found on the aforesaid Lang survey), being more particularly described as follows: Commencing at the northwest corner of Lot 3 as shown on the Recorded plat of The Villages at Harrison Creek in the Office of the Recorder of St. Joseph County, Indiana as Instrument No. 0108192; thence for the next two courses along the west line of said plat; the first being South 00°10'30" East, a distance of 155.04 feet to a 5/8" rebar iron set with Lang Feeney S0309 S0523 cap; thence South 88°21'27" West, a distance of 165.06 feet to a point on the east right of way line of Beacon Drive said point being a 5/8" rebar iron set with Lang Feeney S0309 S0523 cap; thence North 00°10'30" West along said east line, a distance of 155.11 feet to the south line of 12th Street, said point being a 5/8" rebar iron set with Lang Feeney S0309 S0523 cap; thence North 88°22'55" East along said south line, a distance of 165.06 feet to the point of beginning. Subject to the legal rights of a public highway, any easements, covenants or restrictions of record.

Petitioner(s) own one hundred (100%) percent of the above described parcel of land which carries a zoning classification of S-2 Planned Unit Development specifically for reserved off-site storm water retention area for future use for The Village at Harrison Creek.

Petitioner(s) desire said real estate to be amended to allow for R-1 Planned Unit Development containing two single family lots and to continue the retention basin area.  
And allow for Lot 2 to have 50' frontage instead of the required 60'.

Wherefore, the petitioner(s) pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted amending the PUD of the above described parcel of land located in the City of Mishawaka.



Nir Davison, Member  
(Print Name)

Barak Group, LLC  
300 S. St. Louis Blvd, Ste. 103  
South Bend, Indiana 46634

**CONTACT PERSON:**

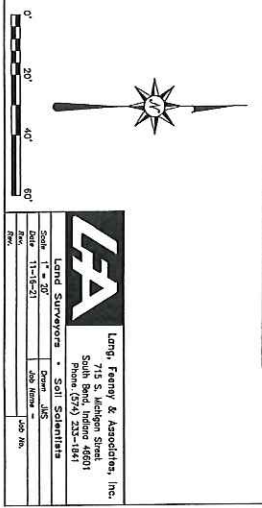
Lang, Feeney & Associates, Inc. c/o Terry Lang  
715 S. Michigan Street  
South Bend, Indiana 46601  
574-233-1841  
Terry@LangFeeney.com

PART OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 37 NORTH,  
RANGE 3 EAST, CITY OF MISHAWAKA, PENN TOWNSHIP, ST. JOSEPH COUNTY, INDIANA.

NORTHEAST CORNER  
NORTHWEST QUARTER,  
NORTHEAST QUARTER  
SECTION 24, TWP. 37  
NORTH, RANGE 3 EAST.



|           | SE       | ACREAGE | $\Sigma$ |
|-----------|----------|---------|----------|
| HOUSE     | 36.56    | 0.08    | 13.56    |
| CONCRETE  | 1475     | 0.03    | 5.08     |
| OPEN AREA | 20427.98 | 0.47    | -79.66   |
| TOTAL     | 25598.98 | 0.59    | 100.00   |

[illegible]



P.O.B.  
Rm. 1-147, 800  
0108192



[illegible]

OWEN'S CERTIFICATION:  
THIS IS TO CERTIFY THAT THE UNDERSIGNED, LAMON, ROSS, LEE, IS  
THE OWNER OF THE LAND DESCRIBED HEREIN, AND THAT THEY HAVE  
CAUSED THE SAME TO BE SURVEYED AND SUBDIVIDED AS HEREIN  
HEREON, FOR THE USES AND PURPOSES THEREIN SET FORTH, AND  
DO HEREBY ADMIT, CONFIRM AND ADOPT THE PLAN UNDER THE TITLE  
AND TITLE HEREON SUBMITTED.

LARSON-RODZ, LLC  
828 E. JEFFERSON BLVD.  
SOUTH SEVI, OREGON 97137

*David Rodz*  
DAVID RODZ  
PARTNER

*William A. Larson*  
WILLIAM A. LARSON  
PARTNER

PLATED THIS 12 DAY OF NOV 2000.

[illegible]

RECORDS DOCUMENTS USED FOR THE SURVEY WERE AS FOLLOWS:

[illegible][illegible]

1. A comparison and discussion of the results of the two experiments is given in Section 4. The results of the first experiment are discussed in Section 5, and the results of the second experiment are discussed in Section 6. The conclusions are given in Section 7.

[illegible][illegible][illegible]

0108192  
RECORDED ON  
02-27-2001 3:14:28  
TERRI J. REYNOLDS  
ST. JOSEPH COUNTY  
RECORDER.  
REC. FEE: 23.00  
PAGES:

THE VILLAGE AT  
HARRISON CREEK

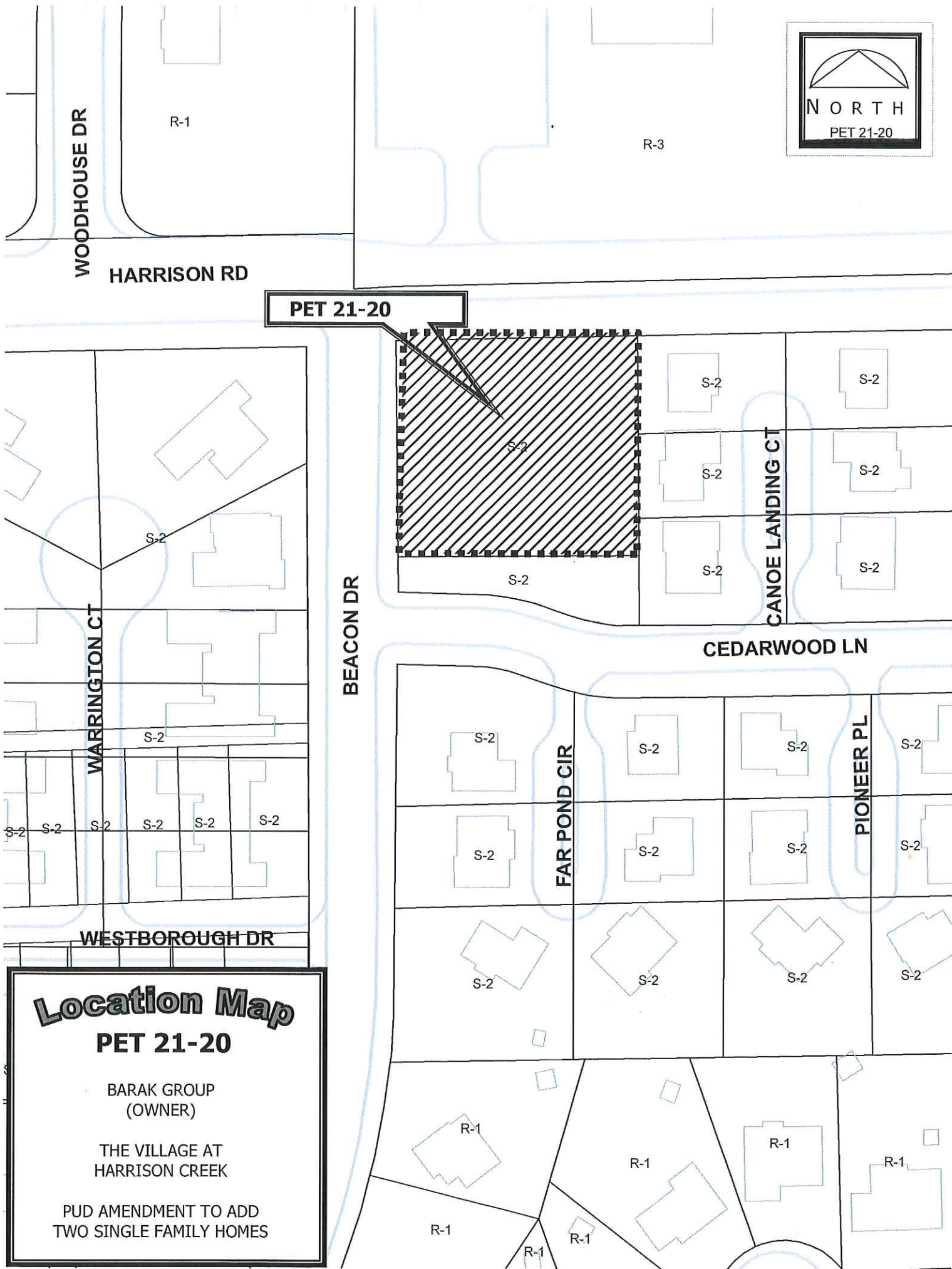
LAKEWOOD, 371  
LAWSON-KIRK DEVELOPMENT, LLC  
631 E. SPRINGFIELD AVE.  
SOUTH BEND, INDIANA 46817

ADDENDUM CONTRACTORS, INC.  
3711 E. UNIVERSITY AVENUE  
MICHIGAN, BOWEN 46815

PART OF THE NORTHEAST QUARTER OF  
THE NORTHEAST QUARTER, SECTION 24,  
TOWNSHIP 37 NORTH, RANGE 3 EAST,  
PENN TOWNSHIP, ST. JOSEPH COUNTY, INDIANA

**ABONMARCHE CONSULTANTS, INC.**  
 1711 LEXINGTON AVENUE  
 10017 NEW YORK, N.Y. 10036  
 (212) 512-0000  
 FAX (212) 512-0007  
 AGENCY: / ADVERTISING: / SALES: /  
 CONSULTING: / CREATIVE SERVICES: / PLANNING

|                        |  |                                                                                 |  |
|------------------------|--|---------------------------------------------------------------------------------|--|
|                        |  | FINAL SITE PLAN<br>THE VILLAGE AT HARRISON CREEK<br>CITY OF MISPAWANKA, INDIANA |  |
| PROJECT:<br>REVISIONS: |  | SHEET<br>3                                                                      |  |
| DATE: 10/18/00         |  | DRAWN BY:                                                                       |  |
| CHECKED BY:            |  | PROJECT NO.:                                                                    |  |
| APPROVED BY:           |  | CITY OF INDIANAPOLIS:                                                           |  |
| DATE: 10/18/00         |  | CITY OF MISPAWANKA:                                                             |  |



## Location Map

### PET 21-20

BARAK GROUP  
(OWNER)

THE VILLAGE AT  
HARRISON CREEK

PUD AMENDMENT TO ADD  
TWO SINGLE FAMILY HOMES



DATE: November 3, 2021

Honorable Members of the  
Common Council  
City of Mishawaka, Indiana  
and  
Mishawaka City Plan Commission  
City of Mishawaka, Indiana

Deborah S. Block, IAMC, MMC

DEC 02 2021

City Clerk  
Mishawaka, IN



**RE: PETITION FOR PUD AMENDMENT**

The undersigned, Barak Group, LLC respectfully show they are the owners of the following described real estate located in the City of Mishawaka, County of St. Joseph, State of Indiana, to-wit: Part of the Northeast Quarter of Section 24, Township 37 North, Range 3 East, City of Mishawaka, Penn Township, St. Joseph County, Indiana and being that 0.59 acre parcel surveyed by Lang, Feeney & Associates, Inc. Terance D. Lang, Indiana Professional Surveyor No. 80040523 and shown on a site plan of that survey certified on November 2, 2021 as 143-63 (all monuments referenced herein are set or found on the aforesaid Lang survey), being more particularly described as follows: Commencing at the northwest corner of Lot 3 as shown on the Recorded plat of The Villages at Harrison Creek in the Office of the Recorder of St. Joseph County, Indiana as Instrument No. 0108192; thence for the next two courses along the west line of said plat; the first being South 00°10'30" East, a distance of 155.04 feet to a 5/8" rebar iron set with Lang Feeney S0309 S0523 cap; thence South 88°21'27" West, a distance of 165.06 feet to a point on the east right of way line of Beacon Drive said point being a 5/8" rebar iron set with Lang Feeney S0309 S0523 cap; thence North 00°10'30" West along said east line, a distance of 155.11 feet to the south line of 12th Street, said point being a 5/8" rebar iron set with Lang Feeney S0309 S0523 cap; thence North 88°22'55" East along said south line, a distance of 165.06 feet to the point of beginning. Subject to the legal rights of a public highway, any easements, covenants or restrictions of record.

Petitioner(s) own one hundred (100%) percent of the above described parcel of land which carries a zoning classification of S-2 Planned Unit Development specifically for reserved off-site storm water retention area for future use for The Village at Harrison Creek.

Petitioner(s) desire said real estate to be amended to allow for R-1 Planned Unit Development containing two single family lots and to continue the retention basin area.

Wherefore, the petitioner(s) pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted amending the PUD of the above described parcel of land located in the City of Mishawaka.

Nir Davison, Member

Barak Group, LLC  
300 S. St. Louis Blvd, Ste. 103  
South Bend, Indiana 46634

(Print Name)

**CONTACT PERSON:**

Lang, Feeney & Associates, Inc. c/o Terry Lang  
715 S. Michigan Street  
South Bend, Indiana 46601  
574-233-1841  
Terry@LangFeeney.com

## **RESOLUTION NO. 2021 - 30**

### **A Resolution of the Common Council of the City of Mishawaka Adopting a Plan for Distribution of the Proceeds of the City of Mishawaka's Grant from the American Rescue Plan Act of 2021**

WHEREAS, the federal government enacted the American Rescue Plan Act of 2021 (ARPA) on or about March 11, 2021; and

WHEREAS, on or about May 17, 2021, the Common Council of the City of Mishawaka adopted Ordinance 2021-16, thereby establishing the ARPA Coronavirus Local Fiscal Grant Fund #180 in order to hold and receive ARPA monies allocated to the City in 2021 and 2022; and

WHEREAS, the terms of Ordinance 2021-16 and the relevant requirements of the ARPA require the Common Council to adopt a plan that details the use of ARPA funds.

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

#### **Section I – General Terms**

- A. The City's distribution of the ARPA funds detailed in this Plan and any future amendments to this Plan shall be limited to the following uses of the funds authorized by the ARPA statute:
  - 1. To respond to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality;
  - 2. To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers of the City that are performing such essential work, or by providing grants to eligible employers that have eligible workers who perform essential work;
  - 3. For the provision of government services to the extent of the reduction in revenue of the City due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year of the City prior to the emergency, that being 2019; or
  - 4. To make necessary investments in water, sewer, or broadband infrastructure.
- B. The Common Council may amend this Plan to comply with ARPA, any subsequent amendments to ARPA, and the rules adopted by the United States Treasury Department to implement ARPA, including the Interim Final Rule (31 CFR Part 35).

- C. Prior to the disbursement of any ARPA funds, the Common Council, as the fiscal body, must appropriate said funds for a use that is consistent with the statutory purposes set out above.
- D. The Plan's procedures and designated uses for distribution of ARPA funds are stated in the following sections below, as from time to time may be amended.

## **Section II – Premium Pay to Eligible Employees**

- A. The Common Council finds that all employees of the City of Mishawaka, including employees of the Mishawaka Municipal Utilities, who worked for the City of Mishawaka from the start of the COVID-19 public health emergency through November 30, 2021, performed duties that were critical to protecting the health and wellbeing of the community. These City employees put their physical wellbeing at risk to meet the daily needs of the community and to provide care for others. To the extent necessary under the terms of Section 603(g)(2) of the ARPA, the Mayor of Mishawaka has also deemed each employee described above to have performed essential work critical to protect the health and well-being of residents. Therefore, all of the above-described employees who are employed by the City as of November 30, 2021, are hereby designated as "eligible employees" pursuant to Section 603(g)(2) of the ARPA and so shall be eligible to receive premium pay pursuant to the ARPA.
- B. The City will issue "premium pay" to all "eligible employees", including department heads, for all hours worked during the relevant time period that constituted "essential work", which is defined by the Interim Final Rule as "work involving regular in-person interactions or regular physical handling of items that were also handled by others." An employee will be deemed to not have engaged in essential work, and accordingly may not receive premium pay, for telework performed from a residence. The term "hours worked", as used in this subsection, does not include vacation time, sick time, COVID-19 time, holiday time, or any other non-worked time. The hours and time records of each "eligible employee" have been reviewed and determined to accurately demonstrate the number of "hours worked" at "essential work" performed by each "eligible employee". All such reviews and any "premium pay" payments to "eligible employees" will be subject to the Internal Controls policy previously adopted by the City of Mishawaka in Ordinance No. 5532, amended by Ordinance No. 5639.
- C. The Common Council finds that the "premium pay" that is established in this Plan responds to the "essential work" performed by "eligible employees" by addressing the heightened risk to essential workers who were required, and continue to be required, to be physically present at their assigned work location during the COVID-19 public health emergency.
- D. Eligible employees shall receive premium pay calculated at an hourly rate not to exceed Thirteen and 00/100 Dollars (\$13.00) per hour and further capped at the gross amounts set out below:
  - 1. Lead Medic \$3,000.00



|                                       |            |
|---------------------------------------|------------|
| 2. Sworn Fire and Police              | \$2,500.00 |
| 3. Non-Lead Medic and Advanced EMT    | \$1,000.00 |
| 4. Teamsters and Certain IT Employees | \$2,000.00 |
| 5. Civil City Full Time Employees     | \$1,570.00 |

- E. To the extent that the “premium pay” established by this Plan increases total compensation for certain employees during the relevant time period above One Hundred Fifty Percent (150%) of Indiana’s average annual wage for all occupations, as defined by the Bureau of Labor Statistic’s Occupational Employment and Wage Statistics, or the employee’s residing county’s average annual wage, as defined by the Bureau of Labor Statistics’ Occupational Employment and Wage Statistics, whichever is higher, on an annual basis, the Common Council finds that the employee’s receipt of “premium pay” is justified and responsive to the needs of employees performing essential work during the public health emergency as required by the Interim Final Rule. Specifically, the Common Council has determined that the “premium pay” calculation set forth above is appropriate given the known and potential risks that all eligible employees faced while performing essential work on behalf of the citizens of Mishawaka, given that City services have continued without interruption during the public health emergency. Furthermore, the Common Council has determined that the receipt of “premium pay” by all “eligible employees” serves the best interests of the community by promoting the retention of the highly qualified essential employees that Mishawaka is dependent upon to continue to provide essential services as the public health emergency remains ongoing. Finally, the Common Council finds the receipt of premium pay by all eligible workers serves the best interests of the community by facilitating the maintenance of employee morale and equity between various employee work groups. The Common Council also finds that the varying levels of maximum “premium pay” set forth in Section II.D. are justified and have been set in light of unique risks and duties the applicable employees faced and carried out during the public health emergency.
- F. The “premium pay” established by this Plan and received by “eligible employees” shall be reduced by appropriate deductions for any applicable federal, state, or local taxes. Furthermore, the City will use ARPA funds in order to satisfy related social security, Medicare, and mandatory retirement plan contributions that are attributable to “premium pay”, as required by Indiana law.

### **Section III – Conclusion**

- A. This Plan is subject to amendments as more permitted uses are determined by the ARPA, U.S. Treasury Department guidance, and as priorities for the City develop.
- B. This Resolution and the Plan contained shall be in full force and effect upon passage by the Common Council.

PASSED by the Common Council of the City of Mishawaka, Indiana, this \_\_\_\_ day of December, 2021, at \_\_\_\_\_ o'clock \_\_\_\_ .m.

---

Presiding Officer

ATTEST:

---

Deborah S. Block, IAMC, MMC, City Clerk

APPEAL #21-41

DEC 15 2021

RESOLUTION NO. 2021-31

City Clerk  
Mishawaka, IN

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT:

**420 West Cleveland Road, Granger, Indiana**

WHEREAS, the Indiana Code requires the Common Council to give notice of its intention to consider Petitions from the Board of Zoning Appeals for approval or disapproval; and

WHEREAS, the Common Council must take action within sixty (60) days after the Board of Zoning Appeals makes its recommendation to the Council; and

WHEREAS, the Common Council is required to make a determination in writing on such requests; and

WHEREAS, the Mishawaka Board of Zoning Appeals has made a favorable recommendation, pursuant to applicable state law, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, as follows:

Section I. The Common Council has provided notice of the hearing on the Petition from the Board of Zoning Appeals pursuant to Indiana Code requesting that a Use Variance for property located at **420 West Cleveland Road, Granger, Indiana**, more particularly known and described as follows:

Lot 2 M F S & L Minor Subdivision, City of Mishawaka, Clay Township, St. Joseph County, State of Indiana

The Use Variance will allow tattoo/microblading services in C-1 General Commercial Zoning.

Section II. Following a presentation by the Petitioner, and after proper public hearing, the Common Council hereby approves the Petition as recommended by the Mishawaka Board of Zoning Appeals, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning, a copy of which is on file in the Office of the City Clerk.

Section III. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the existing business provides similar personal services/salon uses;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because it is included in a commercial development;

3. The need for the variance arises from some condition peculiar to the property involved in that the C-1 zoning does not permit a tattoo establishment, but does allow the salon where the process is taking place, thus requiring the Use Variance for the proposed use;
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the nature of the business is similar to that of a salon and should not generate more traffic than any of the existing businesses within the development; and
5. The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the plan identifies this area for general commercial and is in close proximity to one of the largest consolidated retail areas in the State of Indiana.

Section IV. This Resolution shall be in full force and effect from and after its adoption by the Common Council and approval by the Mayor.

PASSED by the Common Council of the City of Mishawaka, Indiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_\_ o'clock \_\_\_\_ .m.

\_\_\_\_\_  
Presiding Officer

ATTEST:

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

PRESENTED by me to the Mayor this \_\_\_\_\_ day of \_\_\_\_\_ 2021,  
at \_\_\_\_\_ o'clock \_\_\_\_ m.

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

APPROVED by me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, at  
\_\_\_\_\_ o'clock \_\_\_\_ .m.

\_\_\_\_\_  
David A. Wood, Mayor



**STAFF REPORT**

Location: 420 W. Cleveland Rd., Granger

Date: Dec. 14, 2021

Appeal: 21 41

Prepared By: KM

**GENERAL INFORMATION**

Applicant: Baugo Creek Realty/Tribe Salon  
Status: Property Owner/Tenant  
Request: Use Variance to allow microblading services  
Zoning Classification: C-1 General Commercial District  
Lot Size: 100' X 287'  
Applicable Regulations: 137.42 Board of Zoning Appeals (4) Variance of Use

**SPECIAL INFORMATION**

Area Development Pattern: North: S-2 Planned Unit Development  
South: C-1 General Commercial  
East: C-5 Neighborhood Commercial and C-1 General Commercial  
West: S-2 Planned Unit Development

Thoroughfare: Cleveland Road west of Grape Road

School District: South Bend Community School District

Public Utilities: All utilities are available

Comprehensive Plan: General Commercial

**ANALYSIS**

The Appellants are requesting a Use Variance to allow for microblading services within Tribe Salon. Microblading is a form of semi-permanent makeup that provides a means to partially or fully camouflage missing eyebrow hair with the appearance of simulated hair using fine deposits of cosmetic tattoo pigments.

In the past year, we have received several requests for microblading. The latest request was located inside an existing salon at Centennial Place east on Cleveland Road.

It should be noted that while microblading is a service that can be found in a spa or beauty salon, it is a form of tattoo and not specifically permitted within the zoning district. The need for a Use Variance arises from the fact that a tattoo establishment is not an approved use within the C-1 zoning district.

All pertinent City departments have reviewed and approved of the request.



## RECOMMENDATION (S)

Staff recommends in **favor** of Appeal #21-41 to allow microblading services at Tribe Salon, 420 W. Cleveland Road, Granger. This recommendation is based upon the following findings of fact:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the existing business provides similar personal services/salon uses;
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because it is included in a commercial development;
3. The need for the variance arises from some condition peculiar to the property involved in that the C-1 zoning does not permit a tattoo establishment, but does allow the salon where the process is taking place, thus requiring the Use Variance for the proposed use;
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because the nature of the business is similar to that of a salon and should not generate more traffic than any of the existing businesses within the development; and
5. The approval will not interfere substantially with the Mishawaka 2000 Comprehensive Plan because the plan identifies this area for general commercial and is in close proximity to one of the largest consolidated retail areas in the State of Indiana.

## ATTACHMENTS

Photographs, Appeal, Aerial, Location Map







Deborah S. Block, IAMC, MMC

DEC 02 2021

City Clerk  
Mishawaka, IN



DATE: 11/16/21

TO: Board of Zoning Appeals

City of Mishawaka, Indiana

The undersigned appellant respectfully shows the Board:

(owner of salon)

1. I, Beth Clark, am the owner of the following described real estate

BAUGOCREEK REALTY

located within the City of Mishawaka, Clay Township, St. Joseph County, State of Indiana, to-

wit: Tribe Salon at 420 Cleveland Rhode, Granger, Indiana 46530.

2. The above-described real estate presently has a zoning classification of C-1 general comer commercial District under the Zoning Ordinance of the City of Mishawaka.

3. Appellant presently occupies (or proposes to occupy) the above-described property in the following manner: salon

4. Appellant desires to provide tattoo/microblading services.

5. The Zoning Ordinance of the City of Mishawaka requires C-1 zoning does not permit tattoo/microblading services.

6. Explain why strict adherence to the Ordinance requirements would create an unusual hardship. Less income

7. (1) Will approval be injurious to the public health, safety, morals or general welfare of the community? No, service provider has taken the proper training needed to perform services.

(2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? No because the salon is just simply adding a service that many other salons offer already.

(3) Does the need for the variance arise from some condition peculiar to the property involved? Yes, C-1 zoning does not permit tattoo/microblading services.

(4) Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought? Yes, these services are similar to what would be found in a salon.

(5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan?

No this won't interfere with the Mishawaka Comprehensive plan because this is a service that is commonly found in many salons.

WHEREFORE, Appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.

Signature of Property Owner/Title Holder

*Beth A Clark*

Print Name Here Print Name Here

*Beth A. Clark*

CONTACT PERSON:

Name: Amanda Fansler-Johnson

Address: 305 Pepper Ridge Drive South North Liberty, Indiana 46554

Day Phone Number: (574)383-2005

Fax Number:

Email: <sup>S</sup><sub>A</sub>mandijohnon422@gmail.com

# BAUGO CREEK REALTY

O C CENTER CLEVELAND CENTER MINT LEAF PLAZA  
NORTH LAKE CENTER HICKORY CROSSING  
AIRPORT MINI STORAGE CHARLIES DEVELOPMENTS

AP 21-41

October 26, 2021

Board of Zoning Appeals  
City of Mishawaka, Indiana

I, Dennis W. Rhodes, d/b/a Baugo Creek Realty, LLC, am the owner of the following described real estate located with the city of Mishawaka, Clay Township, St. Joseph County, State of Indiana, to-wit:

16533 Cleveland Road  
Suite 420  
Granger, IN 46530

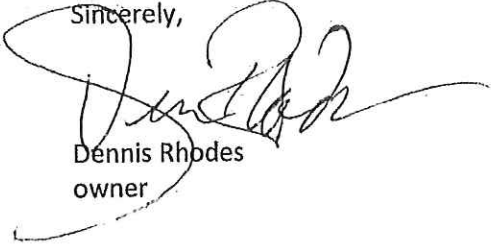
The above-described real estate property has a zoning classification of C-1 General Commercial District under the Zoning Ordinance of the City of Mishawaka.

Appellant presently occupies the above-described property in the following manner: The Tribe Salon.

Appellant desires to offer microblading services.

As the property owner, I am requesting that Beth Clark, The Tribe, appear on my behalf to pursue the Use Variance Procedure.

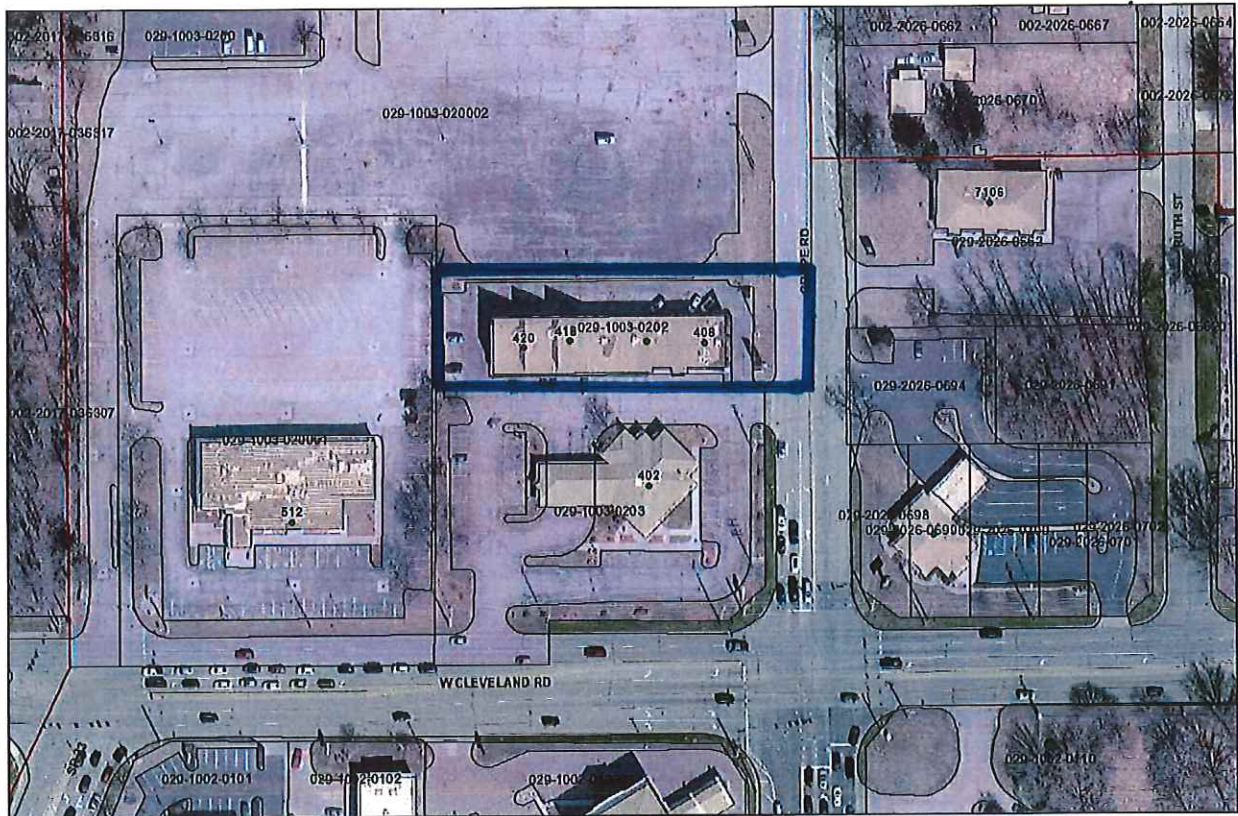
Sincerely,

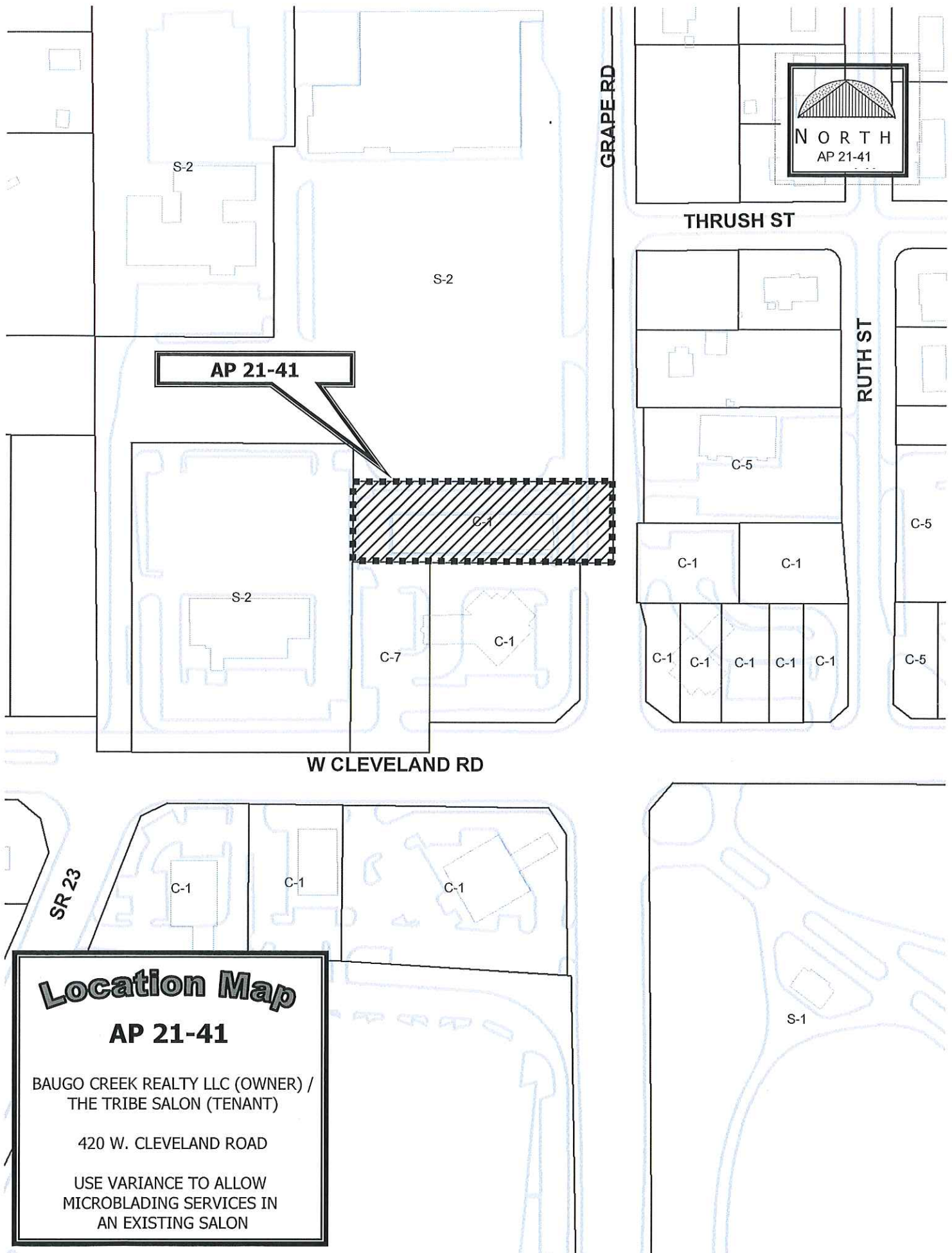
  
Dennis Rhodes  
owner





**APPEAL #21-41**  
**420 W. Cleveland Road**







APPEAL #21-42

DEC 15 2021

RESOLUTION NO. 2021- 32

City Clerk  
Mishawaka, IN

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, APPROVING A PETITION OF THE MISHAWAKA BOARD OF ZONING APPEALS FOR THE PROPERTY LOCATED AT:

**2572 Miracle Lane, Mishawaka, Indiana**

WHEREAS, the Indiana Code requires the Common Council to give notice of its intention to consider Petitions from the Board of Zoning Appeals for approval or disapproval; and

WHEREAS, the Common Council must take action within sixty (60) days after the Board of Zoning Appeals makes its recommendation to the Council; and

WHEREAS, the Common Council is required to make a determination in writing on such requests; and

WHEREAS, the Mishawaka Board of Zoning Appeals has made a favorable recommendation, pursuant to applicable state law, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning.

NOW THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF MISHAWAKA, INDIANA, as follows:

Section I. The Common Council has provided notice of the hearing on the Petition from the Board of Zoning Appeals pursuant to Indiana Code requesting that a Use Variance for property located at **2572 Miracle Lane, Mishawaka, Indiana**, more particularly known and described as follows:

Part of the West Half of the Southwest Quarter of Section 4, Township 37 North, Range 3 East, Mishawaka, Indiana, described as follows:

Commencing at the Southwest corner of Section 4; thence North on the West line of Section 4, a distance of 210.00 feet; thence right (Easterly) 89°28'21", parallel with the South line of Section 4, a distance of 40.00 feet to the East line of Hickory Road and the point of beginning; thence left (Northerly) 89°28'21", parallel with the West line of Section 4 and on the East line of Hickory Road, a distance of 1110.87 feet; thence right (Easterly) 89°28'36", a distance of 1279.31 feet to the Southwest corner of Imus Addition in Penn Township, St. Joseph County, Indiana; thence right (Southerly) 90°11'20" on the East line of the West Half of the Southwest Quarter of Section 4, a distance of 1280.76 feet to the North line of McKinley Avenue; thence right (Westerly) 89°48'25" on the North line of McKinley Avenue, a distance of 526.50 feet; thence right (Northerly) 90°11'35", parallel with the East line of the West Half of the Southwest Quarter of Section 4, a distance of 170.00 feet; thence left (Westerly) 90°11'35", parallel with the North line of McKinley Avenue, a distance of 129.60 feet; thence left (Southerly) 89°12'29", a distance of 170.02 feet to the North line of McKinley Avenue; thence right (Westerly) 89°12'29" on the North line of McKinley Avenue, being 40.00 feet North of and parallel with the South line of Section 4, a distance of 402.84 feet; thence right (Northerly) 90°31'39", parallel with

the West line of Section 4, a distance of 170.00 feet; thence left (Westerly) 90°31'39", parallel with the South line of Section 4, a distance of 225.70 feet to the point of beginning.

The Use Variance will allow an outdoor storage container screened by a 7' solid fence in C-2 Shopping Center Commercial District.

Section II. Following a presentation by the Petitioner, and after proper public hearing, the Common Council hereby approves the Petition as recommended by the Mishawaka Board of Zoning Appeals, including the imposition of reasonable conditions, to wit, the recommendations of the Department of City Planning, a copy of which is on file in the Office of the City Clerk.

Section III. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the proposed use will have little to no additional impact on the adjacent commercial or residential uses.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because a fence is being added to help screen the view of the containers. The storage container is over 200' from McKinley Ave.
3. The need for a variance arises from the large-scale size of the merchandise sold at this location, specifically furniture, and the lack of storage space indoors.
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because although the use is allowed in the I-2 Heavy Industrial District, rezoning the property would not be the highest and best use for the shopping center by allowing the more intense uses of that district.
5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies this intersection as General Commercial. The approval is consistent with the goals and objectives of the Comprehensive Plan.

Section IV. This Resolution shall be in full force and effect from and after its adoption by the Common Council and approval by the Mayor.

PASSED by the Common Council of the City of Mishawaka, Indiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2021, at \_\_\_\_\_ o'clock \_\_\_\_\_ .m.

\_\_\_\_\_  
Presiding Officer

RESOLUTION #2021-32  
2572 Miracle Lane  
Page 3 of 3

ATTEST:

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

PRESENTED by me to the Mayor this \_\_\_\_\_ day of \_\_\_\_\_ 2021,  
at \_\_\_\_\_ o'clock \_\_\_\_m.

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

APPROVED by me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, at  
\_\_\_\_\_ o'clock \_\_\_\_m.

\_\_\_\_\_  
David A. Wood, Mayor



**STAFF REPORT**

General Location: 2572 Miracle Lane

Date: December 14,  
2021

Appeal: 21-42

Prepared By: CH

**GENERAL INFORMATION**

Applicants: McKinley Town and Country, LP/Dunham's Discount Sports

Status: Property Owner/Tenant

Request: Use Variance for outside storage

Zoning Classification: C-2 Shopping Center Commercial

Lot Size: 37.44 Acres

Applicable Regulations: Section 137-326 C-2 Uses  
Section 137-42 (4) Board of Zoning Appeals**SPECIAL INFORMATION**

|                              |        |                                                                                                              |
|------------------------------|--------|--------------------------------------------------------------------------------------------------------------|
| Area Development<br>Pattern: | North: | C-2 Shopping Center Commercial (Town & Country)                                                              |
|                              | South: | C-4 Automobile Oriented Commercial (Firestone) and C-7<br>Automobile Oriented Restaurant Commercial (Arby's) |
|                              | East:  | C-4 Automobile Oriented Commercial (Gates Chevy World)                                                       |
|                              | West:  | C-2 Shopping Center Commercial (Town & Country)                                                              |

Thoroughfare: McKinley Avenue and Hickory Road

School District: School City of Mishawaka

Public Utilities: All public utilities are available and existing.

Comprehensive Plan: The Mishawaka 2000 Comprehensive Plan identifies the north east corner of this intersection as General Commercial.

**ANALYSIS**

Town and Country Shopping Center occupies the northeast corner of McKinley Avenue and Hickory Road. Dunham's Discount Sports is located at the southern and eastern end.

Storage in accessory buildings is not allowed in commercial districts per Section 137-302 (5) c. Outside storage is only permitted as a conditional use in I-2 Heavy Industrial.

In October of 2017 a similar variance was approved for three storage containers behind Big Lots, which was located, at that time, at the western end, near Hickory. The Planning Department noticed an increase in the number of businesses using temporary storage containers as a permanent solution, and worked with businesses like Big Lots and Dick's Sporting Goods on a solution where they could keep their existing storage containers.

The Appellant is requesting to move the storage container in order to provide closer access for the Dunham's store. This storage container had previously been located in a fenced in area at the northeast corner of the shopping center behind the Comfort Sleep warehouse. In an attempt to lessen the impact on neighboring properties, the Appellant has agreed to install a 7' opaque fence to block the view from McKinley Highway.

If the variance is approved, an Improvement Location Permit will need to be issued before the installation of the fence.

All pertinent City departments have reviewed and approved the request.

### **RECOMMENDATION**

The Staff recommends in favor of Appeal 21-42, a Use Variance to allow outside storage in three existing containers for property located at 2572 Miracle Ln, subject to installing a 7' opaque fence on the south side of the container.

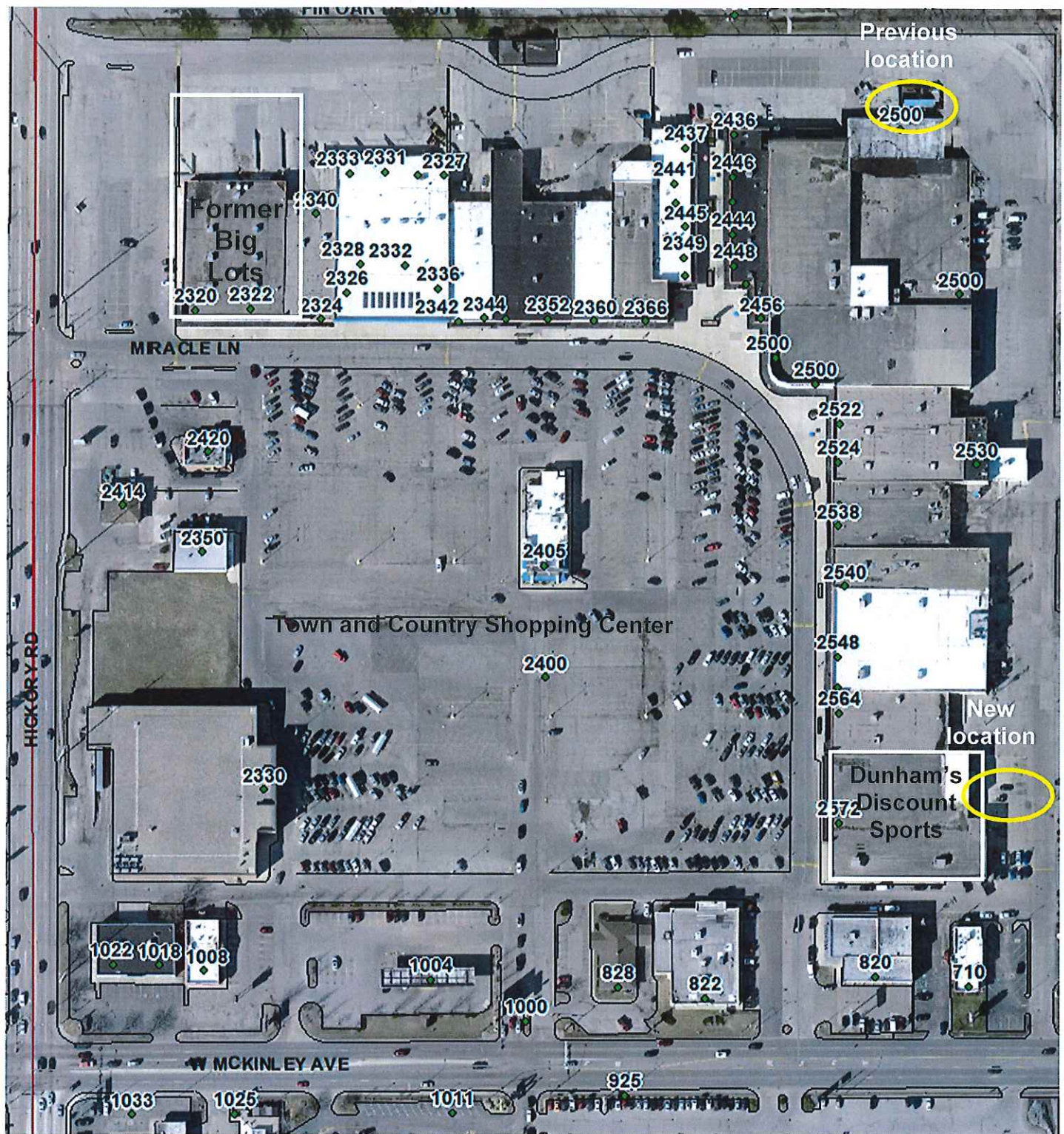
This recommendation is based on the following reasons:

1. The approval will not be injurious to the public health, safety, morals, and general welfare of the community because the proposed use will have little to no additional impact on the adjacent commercial or residential uses.
2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because a fence is being added to help screen the view of the containers. The storage container is over 200' from McKinley Ave.
3. The need for a variance arises from the large scale size of the merchandise sold at this location, specifically furniture, and the lack of storage space indoors.
4. The strict application of the terms of this chapter will result in practical difficulties in the use of the property because although the use is allowed in the I-2 Heavy Industrial District, rezoning the property would not be the highest and best use for the shopping center by allowing the more intense uses of that district.
5. The approval will not interfere substantially with the Mishawaka 2000 Plan because the plan identifies this intersection as General Commercial. The approval is consistent with the goals and objectives of the Comprehensive Plan.

### **ATTACHMENTS**

Aerial Photograph, Photographs of Site, Petition, Location Map









Close up from the east



Close up from the south





From Arby's Drive thru



From McKinley entrance drive between Arby's and Gates



November 17, 2021

DEC 02 2021

To: Board of Zoning Appeals  
City of Mishawaka, Indiana

City Clerk  
Mishawaka, IN



McKinley Town and Country LP shows the Board that it is the owner of the following described real estate located within the City of Mishawaka, Penn Township, St. Joseph County, Indiana, with an address of 2400 Miracle Lane, Mishawaka, Indiana 46545. Part of the West Half of the Southwest Quarter of Section 4, Township 37 North, Range 3 East, Mishawaka, Indiana, described as follows:

Commencing at the Southwest corner of Section 4; thence North on the West line of Section 4, a distance of 210.00 feet; thence right (Easterly) 89°28'21", parallel with the South line of Section 4, a distance of 40.00 feet to the East line of Hickory Road and the point of beginning; thence left (Northerly) 89°28'21", parallel with the West line of Section 4 and on the East line of Hickory Road, a distance of 1110.87 feet; thence right (Easterly) 89°28'36", a distance of 1279.31 feet to the Southwest corner of Imus Addition in Penn Township, St. Joseph County, Indiana; thence right (Southerly) 90°11'20' on the East line of the West Half of the Southwest Quarter of Section 4, a distance of 1280.76 feet to the North line of McKinley Avenue; thence right (Westerly) 89°48'25" on the North line of McKinley Avenue, a distance of 526.50 feet; thence right (Northerly) 90°11'35", parallel with the East line of the West Half of the Southwest Quarter of Section 4, a distance of 170.00 feet; thence left (Westerly) 90°11'35", parallel with the North line of McKinley Avenue, a distance of 129.60 feet; thence left (Southerly) 89°12'29", a distance of 170.02 feet to the North line of McKinley Avenue; thence right (Westerly) 89°12'29" on the North line of McKinley Avenue, being 40.00 feet North of and parallel with the South line of Section 4, a distance of 402.84 feet; thence right (Northerly) 90°31'39", parallel with the West line of Section 4, a distance of 170.00 feet; thence left (Westerly) 90°31'39", parallel with the South line of Section 4, a distance of 225.70 feet to the point of beginning.

The above described real estate has a current zoning classification of C-2 Shopping Center Commercial District under the zoning ordinance of the City of Mishawaka.

Appellant currently occupies the above described property in the following manner: Town and Country Shopping Center.

Appellant desires to place a permanent outside storage container (8' x 40') in the rear of Dunham's Discount Sports, located at 2572 Miracle Lane.

The Zoning Ordinance of the City of Mishawaka, Sec. 137-608 (a) and Sec. 137-610 (9)c, only permits outdoor storage in the I-2 Heavy Industrial District, therefore a use variance is required to allow outdoor storage in any other district.

Approval of this request will not be injurious to the public health, safety, morals or general welfare of the community as it will not change the business carried out on the property and introduces no health, safety, moral or welfare issues. The use and value of the area adjacent to this property, Gates Chevrolet and Arby's, will not be affected in a substantially adverse manner. Gates has outdoor storage in this area and Arby's view of the unit will be blocked by an 7' tall opaque fence to block the view from McKinley Highway.

The need for this variance arises from the seasonal changing of goods, storage of goods awaiting placement and currently the supply chain disruptions and the need to obtain goods when they are available. The strict application of the terms of this chapter will constitute an unnecessary hardship because the inability to store merchandise will affect sales and limit the stores ability to compete and succeed. Your approval of this request will not interfere substantially with the Mishawaka 2000 Comprehensive plan as it changes no designated uses in this and surrounding properties and continues their current zoning.

WHEREFORE, appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.

McKinley Town & Country, L.P.

  
John Becker, Manager

Contact person:

Edward M. Fisher  
Fisher Land Surveying Services Inc.  
303 East Third Street  
Mishawaka, Indiana 46544

(574) 255-8377

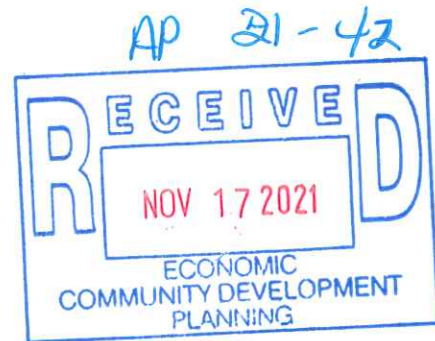
Date: November 4, 2021

To Whom It May Concern:

Edward M. Fisher has permission to represent McKinley Town & Country, L.P. in all matters concerning our property located at 2400 Miracle Lane, Mishawaka, Indiana 46545

McKinley Town & Country, L.P.

  
John Becker, Manager



# SITE PLAN

ASPHALT DRIVE

CITI TRENDS

78.98'

25.0'

78.0'

DUNHAM'S SPORTS

STORAGE UNIT

25.1'

FENCE (24' LONG X 6-7' HIGH)

ASPHALT DRIVE AND PARKING

PROPERTY LINE



200.0'

104.7'

ASPHALT DRIVE AND PARKING

FIRESTONE

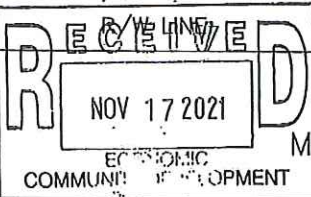
ARBY'S

240.0'

ASPHALT DRIVE AND PARKING

49.5'

AP 21-42



McKinley Highway 80' R/W

**FISHER**  
SURVEYING AND  
ENGINEERING INC.

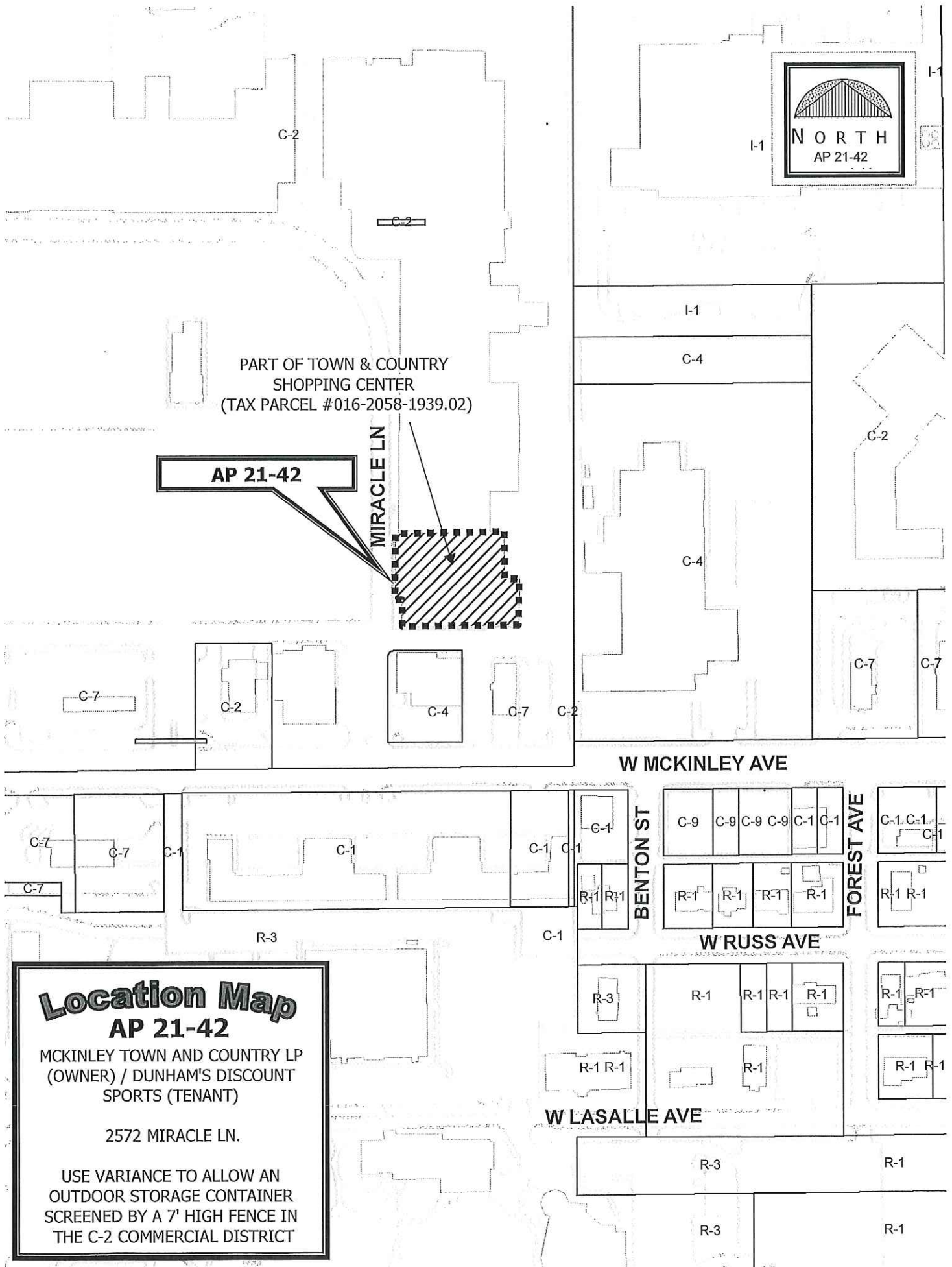
223 LINCOLN WAY EAST, SUITE 5  
P.O. BOX 23  
MISHAWAKA, INDIANA 46544  
219 / 255-8377

SCALE  
1"=50'

DATE  
NOV. 17, 2021

JOB NO.  
232-2021





PART OF TOWN & COUNTRY  
SHOPPING CENTER  
(TAX PARCEL #016-2058-1939.02)

AP 21-42

MIRACLE LN

W MCKINLEY AVE

BENTON ST

FOREST AVE

W RUSS AVE

W LASALLE AVE

## Location Map AP 21-42

MCKINLEY TOWN AND COUNTRY LP  
(OWNER) / DUNHAM'S DISCOUNT  
SPORTS (TENANT)

2572 MIRACLE LN.

USE VARIANCE TO ALLOW AN  
OUTDOOR STORAGE CONTAINER  
SCREENED BY A 7' HIGH FENCE IN  
THE C-2 COMMERCIAL DISTRICT



PROPOSED ORDINANCE NO. 2021-41

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE DECLARING AN EMERGENCY AND  
DETERMINING THE EXPENDITURE OF ADDITIONAL  
FUNDS FOR THE YEAR ENDING DECEMBER 31, 2021**

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

Section 1. An emergency exists which requires the appropriation of additional funds for the fiscal year ending December 31, 2021 in addition to that set out in detail in the published budget.

Section 2. There is hereby appropriated from the Local Road and Street and Motor Vehicle Highway Restricted funds of the City of Mishawaka the sum of \$1,000,000.00 for assignment as follows:

Street Paving

**Local Road and Street**

Capital Outlays

|               |                       |              |
|---------------|-----------------------|--------------|
| 202-50-442-01 | Summer Street Program | \$250,000.00 |
|---------------|-----------------------|--------------|

**Motor Vehicle Highway Restricted**

Capital Outlays

|               |                       |                     |
|---------------|-----------------------|---------------------|
| 203-50-442-01 | Summer Street Program | <u>\$750,000.00</u> |
|---------------|-----------------------|---------------------|

\$1,000,000.00

Section 5. 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

On this \_\_\_\_\_ day of \_\_\_\_\_, 2021 at \_\_\_\_\_ o'clock, \_\_\_\_\_. M.

\_\_\_\_\_  
Gregg Hixenbaugh, Presiding Officer

ATTEST:

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

PRESENTED BY ME to the Mayor of the City of Mishawaka, Indiana  
on this \_\_\_\_\_ day of \_\_\_\_\_, 2021 at \_\_\_\_\_ o'clock, \_\_\_\_\_. M.

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

APPROVED BY ME this \_\_\_\_\_ day of \_\_\_\_\_, 2021 at  
\_\_\_\_\_ o'clock, \_\_\_\_\_. M.

\_\_\_\_\_  
David A. Wood, Mayor

1st Reading  
2nd Reading  
Passed  
Failed  
Continued To

Deborah S. Block, IAMC, MMC

DEC 02 2021

City Clerk  
Mishawaka, IN

PROPOSED ORDINANCE NO. 2021-42

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE DECLARING AN EMERGENCY AND  
TRANSFERRING AND REAPPROPRIATING FUNDS  
WITHIN THE BUDGET ADOPTED FOR THE  
CALENDAR YEAR ENDING DECEMBER 31, 2021

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

Section 1. An emergency exists which requires the transfer and reappropriation of funds within the General Fund, Public Safety LIT, and the Cumulative Capital Development Fund for the budget adopted for the fiscal year ending December 31, 2021.

Section 2. There is hereby transferred and reappropriated the sum of \$276,000 as follows:

**General Fund**

|                                       |                           |              |
|---------------------------------------|---------------------------|--------------|
| From: <u>Personal Services</u>        |                           |              |
| 101-20-413-05                         | Employee Health Insurance | \$110,000.00 |
|                                       |                           |              |
| To: <u>Other Services and Charges</u> |                           |              |
| 101-20-431-09                         | Health Services           | \$110,000.00 |

**Public Safety LIT Fund**

|                              |             |              |
|------------------------------|-------------|--------------|
| From: <u>Capital Outlays</u> |             |              |
| 211-50-445-09                | Police Cars | \$ 96,000.00 |
|                              |             |              |
| To: <u>Debt Service</u>      |             |              |
| 211-50-438-01                | Principal   | \$ 96,000.00 |

**Cumulative Capital Development Fund**

From: Capital Outlays  
417-50-445-11 Computer Equip/Software \$ 70,000.00

To: Other Services and Charges  
417-50-431-04 Professional Services \$ 70,000.00

Section 3. 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, on this \_\_\_\_\_ day of \_\_\_\_\_, 2021 at \_\_\_\_\_ o'clock, \_\_\_\_\_. M.

\_\_\_\_\_  
Gregg Hixenbaugh, Presiding Officer

ATTEST:

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

PRESENTED BY ME to the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2021 at \_\_\_\_\_ o'clock, \_\_\_\_\_. M.

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

APPROVED BY ME this \_\_\_\_\_ day of \_\_\_\_\_, 2021 at \_\_\_\_\_ o'clock, \_\_\_\_\_. M.

\_\_\_\_\_  
David A. Wood, Mayor



# CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF FINANCE  
Rebecca S. Maguire, Controller  
Kurtis D. Vardaman, Deputy Controller

Deborah S. Block, IAMC, MMC

DEC 02 2021

City Clerk  
Mishawaka, IN

Date: December 2, 2021  
To: Honorable Members of the Common Council  
From: Rebecca Maguire  
Re: **Transfer of Funds – Police, Public Safety LIT, and Cumulative Capital Development (CCD)**

For first reading on December 6<sup>th</sup> I am requesting transfers for three items in the budget.

First, in the original budget the health services line for police was not set up correctly. This transfer funds those expenses spent this year.

Second, the 2020 police car lease payment was set up with one payment and not two as was needed for 2021. This transfer funds this shortage.

Lastly, in CCD I am transferring funds from the capital line to the contractual line. IT needs can vary from year to year, and in 2021 the contractual expenses were greater than usual due to service contracts and more work requiring outside vendors.

Please contact me with any questions.

c: David A. Wood – Mayor  
Patrick Stokes – IT Director



1st Reading  
2nd Reading  
Passed  
Failed  
Continued To

Deborah S. Block, IAMC, MMC

DEC 02 2021

City Clerk  
Mishawaka, IN

PROPOSED ORDINANCE NO. 2021-43

ORDINANCE NO. \_\_\_\_\_  
AS AMENDED

**AN ORDINANCE DECLARING AN EMERGENCY AND  
DETERMINING THE EXPENDITURE OF ADDITIONAL  
FUNDS FOR THE YEAR ENDING DECEMBER 31, 2021**

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

Section 1. An emergency exists which requires the appropriation of additional funds for the fiscal year ending December 31, 2021 in addition to that set out in detail in the published budget.

Section 2. There is hereby appropriated from the American Rescue Plan Coronavirus Local Fiscal Recovery Grant fund in the sum of \$1,190,000.00 for assignment as follows:

**ARP Coronavirus Local Fiscal Recovery Grant**

Personal Services

|               |                 |                    |
|---------------|-----------------|--------------------|
| 180-50-411-69 | Premium Pay     | \$1,105,000.00     |
| 180-50-413-01 | Social Security | \$30,000.00        |
| 180-50-413-02 | Medicare        | \$17,000.00        |
| 180-50-413-03 | INPRS           | <u>\$38,000.00</u> |
|               | Total           | \$1,190,000.00     |

Section 3. 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

on this \_\_\_\_\_ day of \_\_\_\_\_, 2021 at \_\_\_\_\_  
o'clock, \_\_\_\_\_. M.

\_\_\_\_\_  
Gregg Hixenbaugh, President

ATTEST:

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

PRESENTED BY ME to the Mayor of the City of Mishawaka, Indiana  
on this \_\_\_\_\_ day of \_\_\_\_\_, 2021 at \_\_\_\_\_  
o'clock, \_\_\_\_\_. M.

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

APPROVED BY ME this \_\_\_\_\_ day of \_\_\_\_\_, 2021 at  
\_\_\_\_\_ o'clock, \_\_\_\_\_. M.

\_\_\_\_\_  
David A. Wood, Mayor



# CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF FINANCE  
Rebecca S. Maguire, Controller  
Kurtis D. Vardaman, Deputy Controller

Deborah S. Block, IAMC, MMC

DEC 02 2021

City Clerk  
Mishawaka, IN

Date: December 2, 2021  
To: Honorable Members of the Common Council  
From: Rebecca Maguire  
Re: **Salary Ordinance amendment and corresponding Additional  
Appropriation for the ARP Coronavirus Local Fiscal Recovery Grant  
Fund**

For first reading on December 6<sup>th</sup> is a 2021 salary ordinance amendment and the corresponding additional appropriation from the ARP fund.

One use of the ARP funds desired by both the Mayor and Council is premium pay for full time employees.

Necessary to make this happen is amending the salary ordinance and appropriating the funds. The funds must come out of ARP fund #180 as no transfers to other funds are allowed.

This premium pay is allocated in tiers as was the additional compensation that was administered in 2020.

Please contact me with any questions.

c: David A. Wood – Mayor  
Council President Hixenbaugh

1st Reading  
2nd Reading  
Passed  
Failed  
Continued To

Deborah S. Block, IAMC, MMC

DEC 02 2021

City Clerk  
Mishawaka, IN

PROPOSED ORDINANCE NO. 2021-44

ORDINANCE NO. \_\_\_\_\_

AS AMENDED

AN ORDINANCE AMENDING ORDINANCE 5712 THE FIXING THE SALARIES OF ALL EMPLOYEES OF THE CITY OF MISHAWAKA EXCEPT, MISHAWAKA PARK DEPARTMENT, ELECTED OFFICIALS AND THE MISHAWAKA UTILITIES FOR THE CITY OF MISHAWAKA, INDIANA, FOR THE YEAR BEGINNING JANUARY 1, 2021.

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

Section 1. Ordinance number 5712 passed by the Common Council of the City of Mishawaka, Indiana, on the 5<sup>th</sup> of October, 2020 is hereby amended as follows:

|                                    | <u>ANNUAL/MISC<br/>PREMIUM PAY</u> |
|------------------------------------|------------------------------------|
| LEAD MEDIC                         | \$3,000                            |
| SWORN FIRE AND POLICE              | \$2,500                            |
| NON-LEAD MEDIC and A - EMT         | \$1,000                            |
| TEAMSTERS and CERTAIN IT EMPLOYEES | \$2,000                            |
| CIVIL CITY FULL TIME EMPLOYEES     | \$1,570                            |

Section 2. This ordinance shall be in full force and effect from and after its signing and attestation.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on

this \_\_\_\_\_ day of December 2021, at \_\_\_\_\_ o'clock, \_\_\_\_\_. m.

\_\_\_\_\_  
Gregg Hixenbaugh, Presiding Officer

ATTEST:

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

PRESENTED BY ME, to the Mayor on this \_\_\_\_\_ day of December 2021, at \_\_\_\_\_ o'clock, \_\_\_\_\_ m.

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

APPROVED BY ME this \_\_\_\_\_ day of December, 2021, at \_\_\_\_\_ o'clock, \_\_\_\_\_. m.

\_\_\_\_\_  
David A. Wood, Mayor