



AGENDA

January 23, 2023

**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:1-408-418-9388
Meeting Number (access code) : 2344 911 2822
Meeting password:peP2djsgf44**

**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: 23449112822@mishawaka.webex.com

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Approval of the Minutes of the Regular Meeting of January 09, 2023
5. Petitions, Communications, Remonstrance and Memorial

A letter from the City Plan Commission regarding their recommendations from their January 10th meeting.

6. Report of Special Committee

7. Ordinances on First Reading

- P.O No. 2023-01 Rezone outlot from C-1 General Commercial to
C-7 Automobile oriented restaurant commercial -
NE corner of 12th St. & Merrifield
- P.O. No. 2023-02 Amending Agreement between the City of Mishawaka
& Fraternal Order of Police Lodge 91

8. Resolutions

9. Ordinances on Second Reading

10. Privilege of the Floor - Non-Agenda Items

11. Unfinished Business

12. New Business

Appointment to Transpo Board

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An archived version of the livestream video can be viewed on the city of Mishawaka's Facebook page, 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

If technology is needed to present, please advise the Clerk's Office by 4:00pm the Friday before the meeting by emailing: dblock@mishawaka.in.gov or calling 574-258-1616.

Council Packet Link:

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

January 9, 2023

Be it remembered that the Common Council of the City of Mishawaka, Indiana met in the Council Chambers of the New Mishawaka City Hall and via telephone on Monday, January 9, 2023 at 7:00PM. The meeting was called to order by City Clerk Debbie Ladyga-Block. All were asked to stand for the Pledge of Allegiance.

Chief Deputy Clerk Raven Boston called the roll.

Roll Call.

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

Others Present: Clerk Block and Mike Trippel, Council Attorney.

Clerk Block opened the floor for nominations for President of the Council for the year 2023. Mr. Mammolenti made the motion that Mr. Hixenbaugh remain and serve as Council President for 2023, with a second from Mr. Hazen. There were no other nominations made, thus Clerk Block entertained a motion to close nominations, with a second from Mrs. Voelker. A voice vote was held and the motion carried.

Mr. Hixenbaugh thanked the Council and looked forward to continuing to serve with them in the coming year.

The chair entertained a motion to appoint their Council Vice President for 2023. Mr. Mammolenti made a motion to nominate Mr. Banicki to serve as Council Vice President for 2023, with a second from Mr. Compton. Mr. Hixenbaugh entertained a motion to close nominations, with a second from Mrs. Voelker. A voice vote was held, the motion passed and nominations were closed. Mr. Hixenbaugh entertained a motion to appoint Mr. Banicki for Council Vice President for 2023, with a second from Mr. Compton. A voice vote was held and the motion passed. Mr. Hixenbaugh congratulated Mr. Banicki. Mr. Banicki thanked Mr. Hixenbaugh and the rest of the council.

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 Meetings of December 19, 2022 and December 27, 2022 were approved as received from the Clerk's Office.

ARPA Awards Presentation

Mr. Mammolenti approached the podium and welcomed their award recipient that evening. Mr. Hixenbaugh stated that evening's recipient were representatives of United Way on behalf of the One Roof Project. Mr. Mammolenti stated on behalf of the Council and Mishawaka, it was his honor to award them with the check for their continued service within their community and he looked forward to the future and what this would do for the community and he thought it would last for years and years to come. Mr. Mammolenti thanked them for their efforts and presented them with the check.

One of the representatives stated on behalf of United Way St. Joseph County and One Roof, they were truly grateful for the investment and they were excited to get to work. On Wednesday, they had their first community meeting that hopefully went well for City Hall and they were excited to support the neighborhood, the residents and the schools in Mishawaka as well as the city and bring childcare, healthcare, youth programming and programs for the seniors to benefit the city of Mishawaka. They thanked the council once again.

Clerk Block read a letter from the City Plan Commission regarding their recommendations from their December 13th meeting.

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 No. 2022-20	A request submitted by Ann Witkowski and Mark Kosanovich, as Tenants in Common, requesting to amend the Gateway Plaza – Bremen Highway PUD to allow a second restaurant with drive-thru restaurant, an automobile use, and reduced parking.
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The Commission, with a vote of 7-0, recommended approval.

Petition No. 2022-21	A request submitted by Gumwood Acquisitions, LLC, requesting to amend the Grandview Planned Unit Development to increase the building height to 65’.
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The Commission, with a vote of 4-3, forwarded no recommendation.

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

Petition No. 2022-22

Rezone outlot from C-1 General Commercial to C-7 Automobile oriented restaurant commercial – NE corner of 12th St. & Merrifield

Mr. Hixenbaugh opened the floor for comments from his colleagues on the Council with respect to the One Roof Project as he did not do so at the conclusion of the ARPA awards presentation.

Mrs. Voelker stated she was excited to have United Way and One Roof come to Mishawaka and bring all of the tools that they were working on pulling together including the Boys and Girls Club, rural services, mental health services and a playground and there would be so many neat things that were going to put new life into the old City Hall building and provide wonderful services for the community. Mrs. Voelker stated she was happy to have been a part of it and it was right by her home so she would be paying very close attention. Mrs. Voelker thanked them again.

Mr. Mammolenti thanked the partners on the committee, Kate Voelker, Mike Compton and President Hixenbaugh. Mr. Mammolenti stated this process had taken several meetings and presentations and they did not take this lightly. Mr. Mammolenti stated he could not think of a better recipient than One Roof in United Way with the program and it really encompassed everything as the committee first started to discuss and they even took it a step further from infant to end of life. Mr. Mammolenti stated everything was all inclusive and he thought they really hit the mark with this and just to repurpose the old City Hall potentially and he believed great things were going to come and the city of Mishawaka was going to be in great hands and would be receiving great services from them. Mr. Mammolenti appreciated their efforts and as he said before, looked forward to seeing how this thing would grow and pan out.

Mr. Hixenbaugh thanked them and wished them good luck as they embarked on this new venture.

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

PROPOSED ORDINANCE NO. 2022-49

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.

PUD Amendment to allow Second Restaurant with Drive-Thru, Automobile Use, and Reduced Parking – South of 3615 Bremen Highway

Mr. Bellovich reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. This was signed by a majority of the committee and upon a second by Mr. Banicki, the motion carried.

Jeffery Schaffer, Abonmarche, spoke in favor of **PROPOSED ORDINANCE NO. 2022-49**. Mr. Schaffer stated he was representing the property developer as well as the petitioner. Mr.

Schaffer stated they appreciated the recommendation of approval from the Plan Commission and the committee and he would answer any questions they may have.

Mrs. Voelker asked about some terminology and specifically why the company was asking to allow the changes to the PUD without having to get approval from any of the other neighbors. Mr. Schaffer stated he believed when this PUD got approved, it had multiple property owners involved. Mr. Schaffer stated since that time, a lot of the ownership had turned over and most of the property was now owned by various developers, so there was less of a need at that point to have all of the other property owners coming in as a group, as the properties now had been developed individually. Mrs. Voelker asked if all of the neighbors were notified. Mr. Schaffer stated it was his understanding that they would have been notified on the part of the Plan Commission. Mrs. Voelker asked if they had heard anything from anybody. Mr. Schaffer stated no and he did not recall anyone being in attendance at the Plan Commission meeting.

Question was called for at 7:15PM for **PROPOSED ORDINANCE NO. 2022-49 Motion carried by unanimous roll call vote (summary: Yes = 8).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Mammolenti, Mr. Banicki, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 8-0, thus it became **ORDINANCE NO. 5825.**

PROPOSED ORDINANCE NO. 2022-50

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.

PUD Amendment to increase Building Height to 65’ – NW corner of Cleveland Rd. (S.R. 23) & Gumwood Rd.

(Petitioner requesting postponement until February 6th meeting)

Mr. Compton made a motion that they honor the petitioner’s request and postpone the matter to their first regularly scheduled council meeting in February, which was seconded by Mr. Banicki. A voice vote was held and the motion passed. The matter was postponed until the February 6, 2023 meeting.

NEW BUSINESS

Mr. Hixenbaugh announced the annual appointment of their council committees and other appointments as well as appointments to various boards and commissions. Mr. Hixenbaugh stated a list had been prepared with input by the council and distributed by the Clerk’s Office. The chair entertained a motion to approve their Council committees and appointments as reflected on the list that had been distributed. Mr. Compton made the motion and it was seconded by Mrs. Voelker. A voice vote was held and the motion passed unanimously.

Clerk Block read the names of the council members who submitted Conflict of Interest forms for approval. Dale “Woody” Emmons, Anthony “Tony” Hazen, Gregg A. Hixenbaugh and Matt Mammolenti all submitted Conflict of Interest Forms. The chair entertained a motion to accept the Conflict of Interest forms for those council members. Mr. Banicki made the motion and it was seconded by Mrs. Voelker. A voice vote was held and the motion passed unanimously.

Mr. Mammolenti reminded everyone viewing online and in person that they would be having a Twin Branch Neighborhood Watch meeting January 18th at 7PM held at Fire Station #4 on Harrison Road with Officer Faltynski being the guest speaker and doing meet and greets since, unfortunately, Lieutenant Reppert had moved on to further his career elsewhere. Mr. Mammolenti stated Officer Faltynski would be stepping in. Mr. Mammolenti again stated the meeting would be held on January 18th at 7PM at Fire Station #4.

Mr. Hixenbaugh reminded folks that on Wednesday January 11 at 6:30PM in the Council Chambers, there would be a neighborhood meeting to discuss the proposed plans for the disposition of the former City Hall and invited members of the public to attend that meeting.

ADJOURNMENT 7:22PM

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 PLANNING AND COMMUNITY DEVELOPMENT
Kenneth B. Prince, ASLA, AICP, Executive Director

January 11, 2023

Deborah S. Block, AMC, MMC

JAN 11 2023

City Clerk
Mishawaka, IN

Honorable Members of the Common Council
City of Mishawaka, Indiana

RE: Plan Commission Recommendation
January 10, 2023, Public Hearing
Certification of Proposed Ordinance

Honorable Members:

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

PETITION #22-22 A petition submitted by MCC Self Storage LLC and Morris Sales, Inc. requesting to rezone property at the **northeast corner of Merrifield Avenue and Twelfth Street** from C-1 General Commercial District to C-7 Automobile Oriented Restaurant Commercial to allow the outlot to be developed.

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

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

Respectfully,

Kari Myers, Administrative Planner
Secretary, Mishawaka Plan Commission

cc: Austin Blomeke

STAFF REPORT

Location: Northeast Corner of S. Merrifield Avenue & E. 12th Street
Proposed Lot 1 of "MMC Self Storage Minor Subdivision" (PLAT 22-12)

Date: January 10, 2023

Petition: 22- 22

Prepared By: DJS

GENERAL INFORMATION

Applicant: MCC Self Storage LLC & Morris Sales, Inc. / Jones Petrie Rafinski

Status: Property Owners / Consulting Representative

Request: To rezone from C-1 General Commercial District to C-7 Auto Oriented Restaurant Commercial District for a speculative commercial outlot

Zoning Classification: C-1 General Commercial District

Lot Size: 2.16 acres being a part of an approximate 4.75 acre parent parcel – Area to be rezoned is not currently a separate parcel or subdivided lot, but is proposed to be subdivided per Plat 22-12

Applicable Regulations: Section 137-455 thru 137-457 / C-7 Auto Oriented Restaurant Commercial District & Section 137-41 / Amendments to the Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: C-1 General Commercial (Common Access Drive for proposed Lots 1 & 2 of the "MMC Self Storage Minor Subdivision") & C-7 Auto Oriented Restaurant Commercial District (Retail / Dollar General)

South: C-2 Shopping Center Commercial (Vacant)

East: C-1 General Commercial (Common Access Drive for proposed Lots 1 & 2 of the "MMC Self Storage Minor Subdivision", Pawn Shop, Proposed Indoor Self-Storage Unit Facility, Fireworks Retailer)

West: R-1 Single Family Residential (Residential)

Thoroughfare: S. Merrifield Avenue & E. 12th Street

School District: School City of Mishawaka

Township: Penn

Public Utilities: All utilities are available and will be connected to/throughout the site at the expense of the developer

Comprehensive Plan: General Commercial

ANALYSIS

The Petitioners, MCC Self Storage LLC & Morris Sales, Inc., are requesting to rezone property located at the northeast corner of S. Merrifield Avenue and E. 12th Street from C-1 General Commercial District to

C-7 Auto Oriented Restaurant Commercial District for a speculative commercial outlot. The rezoning will allow the owner to market the future outlot for any permitted use in the C-7 District. Adjacent land uses include a common access drive and discount retail store to the north; single family homes to the west; vacant property zoned for commercial use to the south; and a common access drive, pawn shop, proposed indoor self-storage unit facility, and fireworks retailer to the east.

The 2.16 acre area to be rezoned, which includes the adjacent existing and proposed public right-of-way, is part of an approximate 4.75 acre parent parcel (Tax Parcel #016-1125-4937.10). The parent parcel is developed with common access drives and a large parking area serving the existing multi-tenant commercial building. The area to be rezoned is proposed to be subdivided as Lot 1 of the proposed "MCC Self Storage Minor Subdivision" (PLAT 22-12). There are no immediate development plans for this lot. A copy of the proposed subdivision plat, which was submitted concurrent with the rezoning petition, is attached.

In May 2022, the Common Council approved a use variance (AP 22-10 / Resolution 2022-12) to allow a proposed indoor storage unit facility in the adjacent existing multi-tenant building to the east since it is not a permitted use in the C-1 General Commercial District. The Staff Report for the use variance indicated that Planning Staff would only support the proposed use if a commercial outlot (proposed Lot 1) was subdivided within the western part of existing parking area, and rezoned, based upon future anticipated use. Development of an outlot will establish a more active commercial use likely resulting in increased vehicular traffic in a presently underutilized commercial property. The proposed indoor storage facility will have minimal use on a daily basis.

Although there are no immediate development plans, a conceptual site plan, as attached, was previously provided with the use variance petition. The plan shows that proposed Lot 1 will likely comply with the required height, area, and development regulations of the C-7 Auto Oriented Restaurant Commercial District. If developmental variances or design review waivers are required for any future commercial development, the Board of Zoning Appeals and/or Plan Commission shall be petitioned when a final site plan is submitted.

With this petition, the property owners are only seeking to establish the proper zoning required for a yet to be determined commercial use. If approved, a detailed final site plan shall be submitted for Staff review and Plan Commission approval prior to construction. The final site plan shall address storm drainage, grading, utilities, landscaping, soil erosion control, and all other required improvements pertinent to the proposed development.

Since the property is currently zoned for a less intensive commercial use but located along a mixed use commercial and residential corridor, Staff supports the request for rezoning. C-7 District uses will not be out of character and will be compatible with the existing adjacent land uses and zoning. The property immediately north of the common access drive off of S. Merrifield Drive is also zoned to the C-7 District. Furthermore, commercial use is consistent with the recommended use per the comprehensive plan.

At the time of preparing this Staff Report, the Electric and Water Department have yet to complete their review. Comments, if any, will be forwarded as soon as they are received.

All other pertinent City Departments have reviewed and approved the request without comment.

RECOMMENDATION

Staff recommends in **favor** of Petition 22-22 to rezone property at the northeast corner of S. Merrifield Drive and E. 12th Street, more specifically being proposed Lot 1 of the MMC Self Storage Minor Subdivision, from C-1 General Commercial District to C-7 Auto Oriented Restaurant Commercial District for a speculative commercial outlot. This recommendation is based on the following findings of fact:

1. Existing Conditions – The subject property, which includes an underutilized parking area for an existing adjacent multi-tenant commercial building, is currently zoned for commercial use and located along a mixed use commercial and residential corridor. Adjacent land uses include a common access drive and discount retail store to the north; single family homes to the west; vacant property zoned for

commercial use to the south; and a common access drive, pawn shop, proposed indoor self-storage unit facility, and fireworks retailer to the east.

2. Character of Buildings – The character of the buildings vary greatly and include single and multi-tenant commercial buildings, industrial buildings, a senior living apartment complex, and single family residential homes.
3. The most desirable/highest and best use – Because of the property's current commercial zoning and being adjacent to existing similar commercial zoning and development, the most desirable use of the property is commercial. The property is currently an underutilized parking lot serving an adjacent multi-tenant commercial building.
4. Conservation of property values – The proposed rezoning should not be injurious to property values in the area. Permitted C-7 Auto Oriented Restaurant Commercial uses should be compatible with the adjacent existing uses.
5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, guided general commercial development within this property. The proposal is consistent with the Comprehensive Plan.

ATTACHMENTS

Aerial Photograph, Site Photographs & Google Street Views, Petition with Exhibits A (Legal Description) and B (Rezoning Sketch), Subdivision Plat (Plat 22-12), Conceptual Site Plan per prior Use Variance (AP 22-10), Location Map



Aerial Photograph
Proposed Lot 1 of the MCC Self Storage Minor Subdivision
NE Corner of S. Merrifield Ave. & E. 12th St.



P1. Looking easterly from the parking lot toward the existing multi-tenant commercial building.



P2. Looking northeasterly from the existing parking lot toward the multi-tenant commercial building.



P3. Looking northeasterly from the interior parking area west of the building toward Merrifield Plaza.



P4. Looking northerly from E. 12th Street toward Mishawaka Fireworks in the southeast corner of the building.



P5. September 2022 Google Street View Looking toward the property from S. Merrifield Avenue.



P6. September 2022 Google Street View Looking toward proposed Lot 1 frontage and the existing access drive on S. Merrifield Avenue.



P7. September 2022 Google Street View Looking toward proposed Lot 1 from the S. Merrifield Avenue and E. 12th Street intersection.

JAN 11 2023

City Clerk
Mishawaka, IN

PETITION 22-22

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2023-01

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 recommended 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:

A parcel of land located in the Southeast Quarter of Section 15, Township 37 North, Range 3 East, Penn Township, St. Joseph County, Indiana, and being more particularly described as follows: Beginning at the South Quarter corner of said Section; thence North 0 degrees 01 minute 12 seconds West, said bearing being the basis of bearing of the description with all other bearings herein relative thereto, 404.13 feet along the north-south centerline of said Section; thence South 89 degrees 55 minutes 53 seconds East 232.95 feet; thence South 0 degrees 01 minute 12 seconds East 404.13 feet to the south line of said Section; thence North 89 degrees 55 minutes 53 seconds West 232.95 feet to the point of beginning and containing 2.16 acres, more or less.

COMMON ADDRESS: Northeast Corner of Merrifield Avenue and Twelfth Street

which real estate is now classified as C-1 General Commercial District shall hereafter be within and a part of that District known as C-7 Automobile Oriented Restaurant Commercial District designated in "The Zoning Ordinance of 1966" as amended.

Section 2. The Common Council of the City of Mishawaka, Indiana, hereby finds that:

1. Existing Conditions – The subject property, which includes an underutilized parking area for an existing adjacent multi-tenant commercial building, is currently zoned for commercial use and located along a mixed use commercial and residential corridor. Adjacent land uses include a common access drive and discount retail store to the north; single family homes to the west; vacant property zoned for commercial use to

Proposed Ordinance No: 2023-01

Ordinance No: _____

the south; and a common access drive, pawn shop, proposed indoor self-storage unit facility, and fireworks retailer to the east.

2. Character of Buildings – The character of the buildings vary greatly and include single and multi-tenant commercial buildings, industrial buildings, a senior living apartment complex, and single family residential homes.
3. The Most Desirable/Highest and Best Use – Because of the property's current commercial zoning and being adjacent to existing similar commercial zoning and development, the most desirable use of the property is commercial. The property is currently an underutilized parking lot serving an adjacent multi-tenant commercial building.
4. Conservation of Property Values – The proposed rezoning should not be injurious to property values in the area. Permitted C-7 Auto Oriented Restaurant Commercial uses should be compatible with the adjacent existing uses.
5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, guided general commercial development within this property. The proposal is consistent with the Comprehensive Plan.

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 _____, 2023, at _____ o'clock ____M.

Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____, 2023, at _____ o'clock ____M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2023, at _____ o'clock ____M.

David A. Wood, Mayor

STAFF REPORT

Location: Northeast Corner of S. Merrifield Avenue & E. 12th Street
Proposed Lot 1 of "MMC Self Storage Minor Subdivision" (PLAT 22-12)

Date: January 10, 2023

Petition: 22- 22

Prepared By: DJS

GENERAL INFORMATION

Applicant: MCC Self Storage LLC & Morris Sales, Inc. / Jones Petrie Rafinski

Status: Property Owners / Consulting Representative

Request: To rezone from C-1 General Commercial District to C-7 Auto Oriented Restaurant Commercial District for a speculative commercial outlot

Zoning Classification: C-1 General Commercial District

Lot Size: 2.16 acres being a part of an approximate 4.75 acre parent parcel – Area to be rezoned is not currently a separate parcel or subdivided lot, but is proposed to be subdivided per Plat 22-12

Applicable Regulations: Section 137-455 thru 137-457 / C-7 Auto Oriented Restaurant Commercial District & Section 137-41 / Amendments to the Zoning Map

SPECIAL INFORMATION

Area Development Pattern: North: C-1 General Commercial (Common Access Drive for proposed Lots 1 & 2 of the "MMC Self Storage Minor Subdivision") & C-7 Auto Oriented Restaurant Commercial District (Retail / Dollar General)

South: C-2 Shopping Center Commercial (Vacant)

East: C-1 General Commercial (Common Access Drive for proposed Lots 1 & 2 of the "MMC Self Storage Minor Subdivision", Pawn Shop, Proposed Indoor Self-Storage Unit Facility, Fireworks Retailer)

West: R-1 Single Family Residential (Residential)

Thoroughfare: S. Merrifield Avenue & E. 12th Street

School District: School City of Mishawaka

Township: Penn

Public Utilities: All utilities are available and will be connected to/throughout the site at the expense of the developer

Comprehensive Plan: General Commercial

ANALYSIS

The Petitioners, MCC Self Storage LLC & Morris Sales, Inc., are requesting to rezone property located at the northeast corner of S. Merrifield Avenue and E. 12th Street from C-1 General Commercial District to

C-7 Auto Oriented Restaurant Commercial District for a speculative commercial outlot. The rezoning will allow the owner to market the future outlot for any permitted use in the C-7 District. Adjacent land uses include a common access drive and discount retail store to the north; single family homes to the west; vacant property zoned for commercial use to the south; and a common access drive, pawn shop, proposed indoor self-storage unit facility, and fireworks retailer to the east.

The 2.16 acre area to be rezoned, which includes the adjacent existing and proposed public right-of-way, is part of an approximate 4.75 acre parent parcel (Tax Parcel #016-1125-4937.10). The parent parcel is developed with common access drives and a large parking area serving the existing multi-tenant commercial building. The area to be rezoned is proposed to be subdivided as Lot 1 of the proposed "MCC Self Storage Minor Subdivision" (PLAT 22-12). There are no immediate development plans for this lot. A copy of the proposed subdivision plat, which was submitted concurrent with the rezoning petition, is attached.

In May 2022, the Common Council approved a use variance (AP 22-10 / Resolution 2022-12) to allow a proposed indoor storage unit facility in the adjacent existing multi-tenant building to the east since it is not a permitted use in the C-1 General Commercial District. The Staff Report for the use variance indicated that Planning Staff would only support the proposed use if a commercial outlot (proposed Lot 1) was subdivided within the western part of existing parking area, and rezoned, based upon future anticipated use. Development of an outlot will establish a more active commercial use likely resulting in increased vehicular traffic in a presently underutilized commercial property. The proposed indoor storage facility will have minimal use on a daily basis.

Although there are no immediate development plans, a conceptual site plan, as attached, was previously provided with the use variance petition. The plan shows that proposed Lot 1 will likely comply with the required height, area, and development regulations of the C-7 Auto Oriented Restaurant Commercial District. If developmental variances or design review waivers are required for any future commercial development, the Board of Zoning Appeals and/or Plan Commission shall be petitioned when a final site plan is submitted.

With this petition, the property owners are only seeking to establish the proper zoning required for a yet to be determined commercial use. If approved, a detailed final site plan shall be submitted for Staff review and Plan Commission approval prior to construction. The final site plan shall address storm drainage, grading, utilities, landscaping, soil erosion control, and all other required improvements pertinent to the proposed development.

Since the property is currently zoned for a less intensive commercial use but located along a mixed use commercial and residential corridor, Staff supports the request for rezoning. C-7 District uses will not be out of character and will be compatible with the existing adjacent land uses and zoning. The property immediately north of the common access drive off of S. Merrifield Drive is also zoned to the C-7 District. Furthermore, commercial use is consistent with the recommended use per the comprehensive plan.

At the time of preparing this Staff Report, the Electric and Water Department have yet to complete their review. Comments, if any, will be forwarded as soon as they are received.

All other pertinent City Departments have reviewed and approved the request without comment.

RECOMMENDATION

Staff recommends in **favor** of Petition 22-22 to rezone property at the northeast corner of S. Merrifield Drive and E. 12th Street, more specifically being proposed Lot 1 of the MMC Self Storage Minor Subdivision, from C-1 General Commercial District to C-7 Auto Oriented Restaurant Commercial District for a speculative commercial outlot. This recommendation is based on the following findings of fact:

1. Existing Conditions – The subject property, which includes an underutilized parking area for an existing adjacent multi-tenant commercial building, is currently zoned for commercial use and located along a mixed use commercial and residential corridor. Adjacent land uses include a common access drive and discount retail store to the north; single family homes to the west; vacant property zoned for

commercial use to the south; and a common access drive, pawn shop, proposed indoor self-storage unit facility, and fireworks retailer to the east.

2. Character of Buildings – The character of the buildings vary greatly and include single and multi-tenant commercial buildings, industrial buildings, a senior living apartment complex, and single family residential homes.
3. The most desirable/highest and best use – Because of the property's current commercial zoning and being adjacent to existing similar commercial zoning and development, the most desirable use of the property is commercial. The property is currently an underutilized parking lot serving an adjacent multi-tenant commercial building.
4. Conservation of property values – The proposed rezoning should not be injurious to property values in the area. Permitted C-7 Auto Oriented Restaurant Commercial uses should be compatible with the adjacent existing uses.
5. Comprehensive Plan – The 2000 Mishawaka Comprehensive Plan, created in 1990, guided general commercial development within this property. The proposal is consistent with the Comprehensive Plan.

ATTACHMENTS

Aerial Photograph, Site Photographs & Google Street Views, Petition with Exhibits A (Legal Description) and B (Rezoning Sketch), Subdivision Plat (Plat 22-12), Conceptual Site Plan per prior Use Variance (AP 22-10), Location Map



Aerial Photograph
Proposed Lot 1 of the MCC Self Storage Minor Subdivision
NE Corner of S. Merrifield Ave. & E. 12th St.



P1. Looking easterly from the parking lot toward the existing multi-tenant commercial building.



P2. Looking northeasterly from the existing parking lot toward the multi-tenant commercial building.



P3. Looking northeasterly from the interior parking area west of the building toward Merrifield Plaza.



P4. Looking northerly from E. 12th Street toward Mishawaka Fireworks in the southeast corner of the building.



P5. September 2022 Google Street View Looking toward the property from S. Merrifield Avenue.



P6. September 2022 Google Street View Looking toward proposed Lot 1 frontage and the existing access drive on S. Merrifield Avenue.



P7. September 2022 Google Street View Looking toward proposed Lot 1 from the S. Merrifield Avenue and E. 12th Street intersection.

Date: December 1, 2022

Honorable Members of the Common Council
City of Mishawaka, Indiana
and
Mishawaka City Plan Commission
City of Mishawaka, Indiana

Deborah S. Block, MMC, MMC

DEC 29 2022

City Clerk
Mishawaka, IN

RE: PETITION TO REZONE

The undersigned, MCC Self Storage LLC and Morris Sales, Inc., are the owners of the following described real estate located in the City of Mishawaka, County of St. Joseph, State of Indiana, to wit:

Please refer to Exhibit A which includes the Parcel ID number, property address, property owner, and legal description of the area Petitioners seek to rezone. Exhibit B depicts the area Petitioners seek to rezone with hatching.

Petitioners own one hundred (100%) percent of the above-described parcel of land which carries a zoning classification of Commercial C-1 District. Said properties consists of an existing parking lot for an indoor self-storage facility and existing fireworks store.

Petitioners desire said real estate to be rezoned to Commercial C-7 District. Petitioners further state that they intend to utilize said land for the development of a drive-thru restaurant, to be decided at a future time. All existing curb cuts and existing commercial developments will remain, and no new curb cuts are proposed along 12th Street or South Merrifield Avenue. Furthermore, the proposed future development will meet the parking and building setbacks based on the Capital Improvement project for 12th Street.

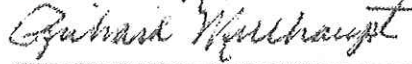
Wherefore, the petitioner respectfully requests that the Common Council of the City Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted rezoning the above-described parcel of land located in the City of Mishawaka.

MCC SELF STORAGE, LLC.



Brad Beer, Member

MORRIS SALES, INC.



Richard Mulhaupt, President

Contact Person:

Austin Blomeke, PLA
Jones Petrie Rafinski
325 South Lafayette Blvd.
South Bend, Indiana, 46601
Phone: 574-232-4388
Email: ablomeke@jpr1source.com

^B
EXHIBIT "A"

Project: MCC Self Storage Rezone

Sheet 1 of 1

Key No: Part of 71-09-15-451-008.000-023

Owners: 79% MCC Self Storage, LLC and 21% Morris Sales, Inc.

Address: 940 East 12th Street, Mishawaka, IN 46544

A parcel of land located in the Southeast Quarter of Section 15, Township 37 North, Range 3 East, Penn Township, St. Joseph County, Indiana, and being more particularly described as follows: Beginning at the South Quarter corner of said Section; thence North 0 degrees 01 minute 12 seconds West, said bearing being the basis of bearing of the description with all other bearings herein relative thereto, 404.13 feet along the north-south centerline of said Section; thence South 89 degrees 55 minutes 53 seconds East 232.95 feet; thence South 0 degrees 01 minute 12 seconds East 404.13 feet to the south line of said Section; thence North 89 degrees 55 minutes 53 seconds West 232.95 feet to the point of beginning and containing 2.16 acres, more or less.

This description was written from the information obtained from the recorder's office and other sources that were not necessarily checked by a field survey.

Reference document: #2022-07873

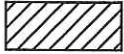
Prepared for: City of Mishawaka
By: Jeffrey S. Barnes, PS
Firm: Jones Petrie Rafinski
Date: December 1, 2022
Job Number: 2022-0058

C:\Users\chill2\AppData\Local\Microsoft\Windows\INetCache\Content.Outlook\LMQ6T7SJ\2022-12-01
REVISED Rezone Exhibit A.doc

Parcel No: na
Road: 12th Street
Sec: 15 Town: T37N Range: R3E

Rezone Sketch Exhibit "B"

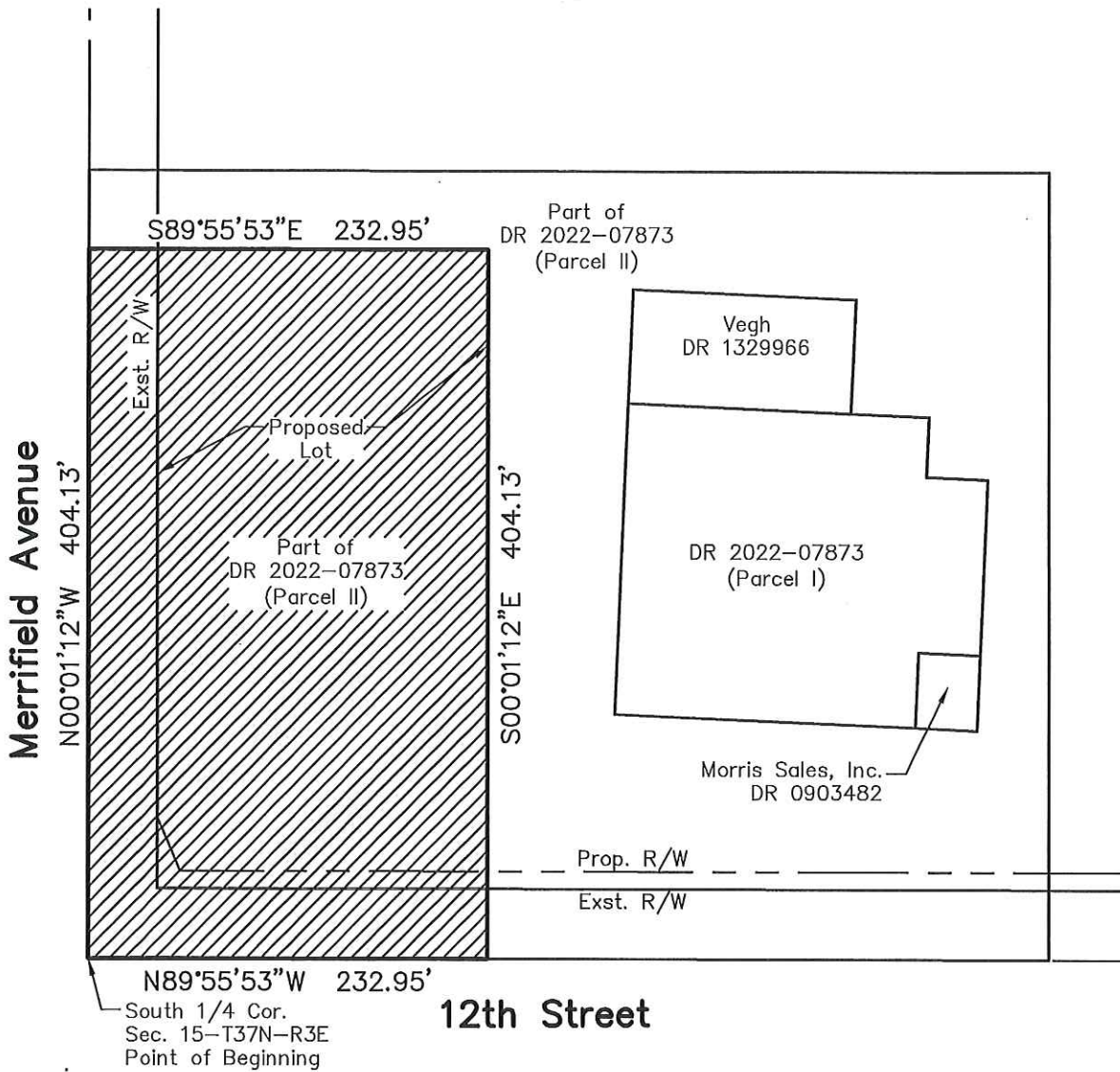
Job No: 2022-0058
Drawn: jsb
Checked: mdc
County: St. Joseph



Hatched area is
approximate rezone

Prepared for: City of Miskawaka
Owner: 79% MCC Self Storage, LLC and
21% Morris Sales, Inc.
Deed Rec.: 2022-07873
Key Number: part of 71-09-15-451-008.000-023

This plat was prepared from information obtained from the recorder's office and other sources which were not necessarily checked by a field survey. Dimensions shown are from listed record documents.

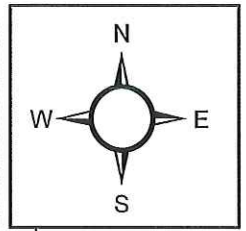


JONES
PETRIE
RAFINSKI

Elkhart, IN
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South Bend, IN
p: 574.232.4388
Fort Wayne, IN
p: 260.422.2522



1" = 100'



PET 22-22

E TWELFTH ST

Location Map

PET 22-22

MCC SELF STORAGE &
MORRIS SALES, INC.

NE CORNER OF 12TH & MERRIFIELD

REZONE OUTLOT FROM
C-1 GENERAL COMMERCIAL TO
C-7 AUTOMOBILE ORIENTED
RESTAURANT COMMERCIAL

1st Reading
2nd Reading
Passed
Failed
Continued To

PROPOSED ORDINANCE NO. 2023-02
ORDINANCE NO. _____

Deborah S. Block, AMC, MMC

JAN 18 2023

City Clerk
Mishawaka, IN

**AN ORDINANCE APPROVING AN AMENDED AGREEMENT BETWEEN
THE CITY OF MISHAWAKA AND THE MISHAWAKA FRATERNAL ORDER OF
POLICE, LODGE 91**

WHEREAS, the contract negotiating committees for the City of Mishawaka, Indiana and the Mishawaka Fraternal Order of Police, Lodge 91, mutually reached an agreement to amend the Collective Bargaining Agreement expiring on December 31, 2023; and

WHEREAS, the members of the Mishawaka Fraternal Order of Police, Lodge 91, ratified the amended Collective Bargaining Agreement and on January 16, 2023, the President of the Mishawaka Fraternal Order of Police Lodge 91, executed the Agreement on their behalf; and

WHEREAS, on January 17, 2023, the City of Mishawaka, Indiana, acting by and through its Board of Public Works & Safety, approved the amended Collective Bargaining Agreement with the Mishawaka Fraternal Order of Police, Lodge 91, by passing Resolution 2023-01; and

WHEREAS, a copy of the amended Collective Bargaining Agreement is attached hereto; and

WHEREAS, Ordinance No. 5249 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 amended Collective Bargaining Agreement executed on January 16, 2023, effective January 1, 2023, to December 31, 2024, between the Board of Public Works & Safety of the City of Mishawaka, Indiana and the Mishawaka Fraternal Order of Police, Lodge 91, 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 _____, 2023, at _____ o'clock, P.M.

Presiding Officer

ATTEST:

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 _____, 2023 at __.m.

David A. Wood, Mayor
City of Mishawaka, Indiana



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF LAW

January 17, 2023

Mishawaka Common Council
100 Lincolnway West
Mishawaka, Indiana 46544

Re: City of Mishawaka and the Mishawaka Fraternal Order of Police, Lodge 91 Collective Bargaining Agreement for the period of January 1, 2023 to December 31, 2024

President and Honorable Council Members:

On January 16, 2023, the City of Mishawaka and the Mishawaka Fraternal Order of Police, Lodge 91 executed to a Collective Bargaining Agreement for the period of January 1, 2023 to December 31, 2024. ("CBA")

On January 17, 2023, the City of Mishawaka, acting by and through its Board of Public Works & Safety, approved the CBA by passing the Board of Public Works & Safety Resolution No. 2023-01.

Approval of the CBA by the Mishawaka Common Council is also required. Attached is a proposed ordinance for your review and consideration.

The text of the CBA was amended as follows:

1. Article VII, Section 2(C)(3) Emergency Extra Duty is amended to add the following language:

Emergency Overtime is to be paid at double time rate (2.0) but this does not include training. The mandatory rate is to be paid at two and one-half times (2.5) on holidays.

Officers exercising vacation time off will be offered overtime after the preceding shift, uniform overtime list, and combined overtime list have refused the overtime.

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CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF LAW

2. Article VII, Section 2(E) is amended to read as follows:

- E. **The City will post on the board those officers assigned to Special Weapons and Tactics (SWAT), evidence technician, Field Training Officer (FTO), DRE (Drug Recognition Expert), motorcycle officer, breath test operator, traffic technician, Major Crimes Detective, Major Crimes Evidence Technician, Instructors, Emergency Response Team (ERT) and SVU Detectives. The posting shall be kept current showing the number of extra duty hours worked by each police officer within their respective specialty or specialties. All extra duty hours worked by the above listed officers shall be logged on both the appropriate specialty list and the appropriate extra duty roster. Any officer accepting an emergency extra duty assignment within a specialty area shall receive hour-for-hour extra duty pay at twice the officer's prevailing hourly rate of pay.**

Current number of instructors to be maintained, with additional instructor positions to be added at the discretion of the City.

Specialty pay will be granted for officers on a yearly basis with officers being paid for the top three (3) highest specialties that they are qualified to receive. Qualification for a specialty stipend is dependent upon officer completion of any required training and continued assignment to that specialty.

3. Article VII, Section 10 - Sub-Sergeant Officer in Charge of Shift is amended to read as follows:

Section 10 – Sub-Sergeant Officer in Charge of Shift

A. When an officer holding a rank below Sergeant is placed in charge of a shift, that officer will be paid an additional \$25.00 for that shift. If the officer is in charge less than 2 hours, their time will be pro-rated minute for minute. If an officer is in charge for 2 hours or more, they will be paid twenty-five dollars (\$25.00).

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CITY OF MISHAWAKA

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DEPARTMENT OF LAW

B. Prior to placing an officer holding a rank below Sergeant in charge of a shift, the City shall be entitled to initiate the following procedure. When a need arises on any of the uniform patrol shifts for the presence of at least one (1) supervisor with the rank of Sergeant or higher, an overtime alert would be sent out to Supervisors of the Mishawaka Police Department for a 2.0 payrate open shift slot. If a supervisor accepts the overtime slot on the shift, the need for that supervisor would then be fulfilled. No supervisors shall be ordered in if the open shift slot for a supervisor goes unfilled.

4. Article VIII, Section 3 Random Days is amended by adding subsections D, E and F

Section 3 - Random Days

D. At the end of the calendar year, officers may voluntarily sell back to the City up to a total of six (6) of their unused random days valued at their then applicable daily rate of pay.

E. Officers may voluntarily choose to exchange up to six (6) random days for an equivalent bank of compensation time owed on an annual basis. However, the total amount of compensation time owed that is accumulated by officer cannot exceed the maximum established under federal law of four hundred eighty (480) hours.

F. Effective January 1, 2023, any officer hired by the City shall not be entitled to receive random days. Instead, the officer will receive personal days in an amount equivalent to the number of random days set out in Article VIII, Section 1 above. At no time may the City grant a personal day request if the resulting shift strength would drop below the minimum set by this Agreement. Otherwise, the City shall administer an officer's use of a personal day in the same manner as an officer's use of a random day is administered under the terms of this Agreement.

5. Article XVII Department Strength is amended as follows by adding Section 2(F) as follows:

F. Effective January 1, 2024, the City shall have the right to establish a minimum shift strength for each shift within the Uniform Division of eleven (11) officers on motorized patrol. However, in the event

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CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF LAW

that the number of officers assigned to the Uniformed Division falls below seventy (70), minimum shift strength for each shift shall revert to ten (10) officers on motorized patrol within ninety (90) days.

6. Article XXII Duration is amended as follows:

Section 1 - Effective Date

This Agreement shall be in effect from the 1st day of January, 2023 providing that it is approved by the Lodge and by Resolution of the Board of Public Works and Safety and the Common Council of the City of Mishawaka and shall remain in force and effect to and including the 31st day of December, 2024.

Section 2 - Future Negotiations

The parties agree that, commencing no later than the 31st day of August, 2024, they will undertake negotiations for a new Agreement.

The parties agree to form a separate working group made up of representatives from both bargaining teams to discuss alternative staffing models for the Mishawaka Police Department, including but not limited to the implementation of a twelve (12) hour shift staffing model. The work group is to report recommendations to both bargaining teams by no later than April 1, 2023. At the time that the parties tentatively agree to an alternate staffing model for the MPD, the parties will also immediately begin negotiations for an additional across the board wage increase, which will be made effective retroactive to January 1, 2023.

Sincerely

/s/ Patrick J. Hinkle

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COLLECTIVE BARGAINING AGREEMENT

Between

CITY OF MISHAWAKA, INDIANA

And

**MISHAWAKA FRATERNAL ORDER OF POLICE,
LODGE 91**

Dated January 1, 2023 - December 31, 2024

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COLLECTIVE BARGAINING AGREEMENT

This Agreement is entered into between the City of Mishawaka, Indiana, hereinafter called "City", and the Mishawaka Fraternal Order of Police, Lodge No. 91, hereinafter called "Lodge".

WITNESSETH THAT:

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

ARTICLE I **PURPOSE AND DEFINITIONS**

Section 1 - Purpose

The parties hereto have entered into this Agreement pursuant to the authority of Ordinance Number 1666 passed by the Common Council of the City of Mishawaka on the 6th day of December, 1971, to incorporate understandings previously reached and other matters into a formal contract; to promote harmonious relations between the City and the Lodge, in the best interests of the community; to improve the public police protection; and to provide an orderly and equitable means of resolving future differences between parties.

Section 2 - Definitions

- A. "City" shall include the elected or appointed representatives of the City of Mishawaka, Indiana, including the Police Chief and Division Chiefs, but there shall be no more than three (3) Division Chiefs.
- B. "Lodge" shall include the officers or representative of the Lodge
- C. When the singular number is used, it shall include the plural.
- D. All reference to policeman or policemen or police officer (s) in this Agreement shall designate both sexes, and whenever the male gender is used, it shall be construed to include both male and female.
- E. Any reference to police officers being "called in" will mean officers will be notified by means of the current scheduling program.

ARTICLE II COVERAGE

This Agreement shall be applicable to all police officers of the Police Department of the City of Mishawaka except the Police Chief and Division Chiefs, unless noted otherwise.

ARTICLE III RECOGNITION

The City recognizes the Lodge as the sole and exclusive bargaining representative of the employees of the Police Department.

The City shall not enter into any agreements with its employees individually or collectively or with any other organization which in any way conflicts with the provisions hereof.

ARTICLE IV RIGHTS OF MANAGEMENT

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 Police Department; and to determine the hours of work, the right to hire, discharge, suspend, discipline, promote, demote, and transfer police officers; 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 abdicate the police officer's rights to the grievance procedure.

ARTICLE V LODGE ACTIVITIES

Section 1 - General

Employees and their Lodge representatives shall have the right to join the Lodge, 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 Lodge shall be afforded reasonable time during working hours without loss of pay to fulfill their Lodge responsibilities, including negotiations with the City, processing grievances, and administration and enforcement of this Agreement; provided, however, that such absences will not cause shift strength to fall below the minimum strength requirements for a shift as required by this Agreement.

Section 3 - Bulletin Boards

The Lodge shall retain the bulletin board rights it now has, including the right to post Lodge notices or other materials. Such boards shall be identified with the name of the Lodge and the Lodge may designate persons responsible therefore.

Section 4 - Meetings

The Lodge may schedule meetings on Police Department property, insofar as such meetings are not disruptive of the duties of the employees or the efficient operation of the Police Department.

Section 5 - Lodge Activities

The President and respective representatives of the Lodge and any members who are elected to a State or National Lodge office shall be allowed time off with pay to attend State and National conventions, seminars and meetings as long as the minimum strength requirements on their respective shifts are met. If a representative's shift is below minimum strength, then the representative shall nonetheless be allowed the time off but without pay.

Section 6 - Dues and Representation Check-Off

The City shall collect Lodge dues from Lodge members and representation fees levied by the Lodge for non-Lodge members on a monthly basis from all police officers within the bargaining unit who have executed the proper authorization for dues or representation fee check-off. The City shall deduct from the first pay check of each month the authorized Lodge dues for such month and promptly remit the same to the Secretary of the Lodge. The City shall continue to deduct monthly Lodge dues and representation fees at the rate in force on the date of the signing of this Agreement, until officially notified in writing of a change by the Lodge President, who shall be the sole authorized representative of the Lodge for the purpose of certifying the amount of such change.

Section 7 - Representation Fee

Non-members of the Lodge shall pay a representation fee for the services of the Lodge in acting as the bargaining representative. Such representation fee shall be in an amount equal to the membership dues of the Lodge less the cost of any benefits provided solely for Lodge members. Non-Lodge police officers who refuse to sign an authorization form for the deduction of such representation fee or who revoke an executed authorization form shall have a continuing enforceable obligation to pay the representation fee directly to the Lodge. The City shall have no obligation to collect such representation fee except as set forth in Section 6 of this Article and the Lodge shall indemnify the City for any costs or expenses arising out of any suit or claim brought by a non-member of the Lodge relating to this Article.

Section 8 - Use of City Equipment

The Lodge shall have the right to make reasonable use of the Police Department duplicating equipment, computing and office equipment, all in accordance with the City's procedures, provided, however, such use shall not be disruptive of department business. The Lodge agrees to pay the reasonable costs for such use.

Section 9 - Exercise Room

The City shall continue to make available to the Lodge facilities at least equal to those presently provided for use by the Lodge as weight and exercise rooms and for the Lodge's desk and file cabinets. The Lodge agrees to keep the equipment in working order and keep the area clean.

ARTICLE VI **DIVISIONS AND HOURS OF WORK**

Section 1 - Divisions

There shall be only the following divisions within the Police Department:

- A. Uniform Division
Traffic Bureau to consist of a minimum of one (1) officer. The head of the Traffic Bureau will hold the rank of Captain.
- B. Detective Division
- C. Services Division

Section 2 - Work Schedule

The regular work schedule of police officers shall be as follows:

- A. Uniform Division police officers shall work six (6) consecutive days with three (3) consecutive days off. Rotations within a shift shall not be changed without the consent of the affected police officer.
- B. The hours of the Traffic Bureau officers will be flexible to assure the orderly function of the Traffic Bureau. Accordingly, the daily working hours and weekly rotation of the Traffic Bureau officers shall be set by the mutual agreement of the Chief of Police and the Traffic Bureau Captain. No more Than Two Thousand Two (2,002) hours per year will be worked by the Traffic Bureau officers without reimbursement of overtime pay. The Traffic Bureau officers shall not be utilized in such a manner as to evade the paying of overtime to other police officers.
- C. The Detective Division and the Services Division shall work not more than 2,002 hours per year, consistent with division work schedules and the efficient operation of the Police Department. Such employees shall work an average of Thirty-Eight and One-Half (38.5) hours per week.
- D. A regular work day shall consist of Eight and One-Quarter (8.25) hours, which time shall include thirty (30) minutes for a meal subject to call. Coffee breaks shall also be allowed subject to call.
- E. During any time period when a minimum of twenty (20) officers are assigned to each of the three (3) existing shifts within the Uniform Division, the City may establish and maintain a fourth shift within the Uniform Division. No non-probationary police officer shall be assigned to the fourth shift against the officer's will, nor shall any officer be transferred from one of the three (3) existing shifts to the fourth shift if the transfer will cause any of the three (3) existing shifts to fall below twenty (20) assigned officers. Following the establishment of the fourth shift, officers shall be entitled to request assignment to said shift as part of the next regular Seniority Pick of Shift process established by this Agreement.

Section 3 - Trading Days

- A. Subject to the approval of the officer in charge of the shift or any captain in the absence of all of the officers in that shift, police officers shall be permitted to voluntarily trade work or leave days provided however no police officer may work more than sixteen (16) hours in a twenty-four (24) hour period and no police officer

may work more than two (2) sixteen (16) hour shifts consecutively, i.e., two (2) days of double shifts worked back-to-back. No police officer shall be permitted to trade for more than 60 (sixty) days in any one (1) calendar year but this limitation shall not apply if trading is for the purpose of participating in athletic events or FOP activities. It must be agreed that:

1. The trade is voluntary;
 2. The trade is for the employee's personal benefit and not the City's benefit;
 3. The time exchange slip will record the trade between the two (2) undersigned employees and will be signed by BOTH employees; and
 4. The time trades will have no effect on the hours of work regarding computation of overtime.
- B. To accomplish such a change, the requesting officer shall prepare a work exchange slip in duplicate, and the requesting officer will secure the other officer's signature or initials on the work exchange slip. The slip shall then be signed by the person in charge of the shift. One (1) copy of the slip will remain with the officer in charge of the shift, and one copy will be attached to the work schedule at the desk area.
- C. Police officers may work any of their off days, i.e. days off, vacation, random days, etc., with no restriction except that they may not work double shifts back-to-back.
- D. The City shall not be involved or responsible in any way to assure that a police officer is reimbursed time owed him/her as a result of trading days.

Section 4 - Working Hours

- A. The Uniform Division shall have three (3) shifts: day shift, afternoon, and midnight shift. The hours of each shift shall be as follows:

Day Shift	6:30 a.m. to 2:45 p.m.
Afternoon Shift	2:30 p.m. to 10:45 p.m.
Midnight Shift	10:30 p.m. to 6:45 a.m.

- B. The hours of the Detective Division and the Services Division shall be set by the City but the work shift shall be Eight and One-Quarter (8.25) consecutive hours.

ARTICLE VII
EXTRA DUTY AND EXTRA DUTY PAY

Section 1 - Call-In Authorization

Only the officers listed below shall have authority to call in personnel for extra duty pay:

- A. Mayor
- B. Chief of Police;
- C. Division Chief of Police;
- D. In the absence of the Chief of Police or the Division Chief, then the Officer in Charge of the Shift.

Section 2 - Extra Duty Pay

- A. Any police officer who works in excess of his/her regularly assigned work week or work day schedule shall receive extra duty pay in addition to any other benefits to which the officer may be entitled. Except as otherwise established by this Agreement, such extra duty pay shall be paid at the rate twice of the police officer's prevailing hourly rate. A police officer's prevailing hourly rate shall be determined by dividing the annual salary by Two Thousand Two (2,002).
- B. Extra duty shall be assigned to police officers as uniformly as possible. In no case shall the City be required to call the officer whose absence created the need for overtime, no matter where the officer's name is on the extra duty roster. The officer's name shall remain in the same order on the list.
- C. The City shall post two (2) extra duty rosters. One extra duty roster, which shall be known as the Uniform Division extra duty roster, shall list the names of all officers assigned to the Uniform Division, except the Traffic Bureau officers, DARE officers, and Community Relations officers, in order of seniority. The other extra duty roster, which shall be known as the Combined extra duty roster, shall list the names of all officers assigned to the Detective Division, as well as all officers assigned to the Services Division, the Traffic Bureau officers, DARE officers, and Community Relations officers, in order of seniority. These rosters shall be posted on January 1st of each calendar year and shall terminate on December 31st of that year. During the year, the number of extra duty hours worked by each officer shall be recorded after the police officer's name on each roster. Work "normally performed by Uniform officers" shall refer to events where officers are working on a public road and/or to control traffic, including, but not limited to, parades, running

ances, and Independence Day holiday park festivities. A minimum of one (1) officer from the Traffic Bureau will be represented at events that have been planned through the Traffic Bureau. Events that DO NOT require officers to be working on a public road to control traffic will also be offered to the Combined list of officers. These events include, but are not limited to, concerts and security details in City parks.

(1) Assigned Extra Duty

Whenever the City is aware more than six (6) days in advance on the following holidays: New Year's Day, Memorial Day, Independence Day, Thanksgiving Day, Christmas Eve, Christmas Day, and New Year's Eve, that a police officer will be needed for extra duty, the extra duty shall be assigned as follows:

The City shall post a notice stating the number of officers needed, whether the work is that normally performed by Uniform officers, the event, the date, and the hours to be worked. Each day to be worked as extra duty shall be posted separately. The extra duty sheet will be posted for not less than four (4) days. A police officer desiring the extra duty shall sign the sheet and/or request it via the scheduling program. The City shall award the extra duty to the most senior officer with the least amount of extra duty hours worked. If the extra duty is that which is normally performed by Uniform Division officers, then only officers whose names appear on the Uniform Division extra duty roster will be awarded the extra duty, with said hours not being posted until the start of said shift. Officers whose names appear on the Combined extra duty roster will be awarded the extra duty, with said hours not being posted until the start of said shift, only if no officer whose name appears on the Uniform Division extra duty roster requests the overtime. In the event that no officer from either extra duty roster signs the extra duty, or the duty spots have not all been signed, the Chiefs may sign and be awarded the extra duty. They will be awarded the duty based upon seniority and hours. Nothing contained in this section shall be interpreted as entitling officers assigned to the Services Division, Traffic Bureau officers, DARE officers, and/or Community Relations officers to the receipt of an extra duty assignment which is of a nature normally performed by officers assigned to the Detective Division.

The police officer assigned the extra duty shall be notified as soon as possible. Management shall post the assignment notification sheets in several locations around the Mishawaka Police Station and notify the officer by either a text, an email message, or a telephone call. The locations for posting are as follows: Squad Room, Detective Bureau and front desk. In addition, copies shall be distributed to the Chief's Office, Uniform Division Chief's Office, and to the Lodge President. The Lodge President shall also be furnished copies of the signup sheets and/or the

scheduling program report containing the officers' signatures.

Officers signing for the overtime shall be responsible to verify whether they have received the overtime assignment. If the officer is off duty for any reason, he/she may verify his/her overtime by telephoning the Chief's Office, the Uniform Division Chief, or by checking the officer's text messages, emails, or telephone (mobile or land line).

Emergency extra duty and call-in duty worked after the overtime has been assigned shall not affect the assignment.

(2) A probationary officer shall be eligible to work extra duty once the officer counts toward the minimum shift strength established by this Agreement.

(3) Emergency Extra Duty

Whenever the City is aware less than six (6) days in advance that a police officer will be needed for extra duty, except where the need for extra duty on a particular shift on a particular day arises after the commencement of the shift, the extra duty shall be assigned in the following manner:

The City shall first refer to the police officers working the shift immediately preceding the shift within each division on which the extra duty officer is needed. The City shall offer that extra duty to the police officer on that shift with the most seniority and the least number of extra duty hours worked not exercising vacation. In the event of a refusal of emergency extra duty time, the police officer shall not be charged on the extra duty roster for refusal and the City shall offer the extra duty time to the next police officer on the preceding shift with the most seniority and the least number of extra duty hours worked who is not exercising vacation, until a police officer accepts the extra duty assignment. In the event no police officer from the preceding shift who is not exercising vacation accepts the extra duty assignment, the City shall then refer to the appropriate extra duty roster.

In the event the emergency extra duty assignment is of a type normally performed by Uniform Division officers, the City shall refer to the Uniform Division extra duty roster and offer the extra duty to the police officer who has the most seniority with the least number of extra duty hours worked not exercising vacation. In the event of a refusal, the City shall continue down the Uniform Division extra duty roster offering the extra duty time to the police officer with the most seniority and the least number of extra duty hours worked or refused not exercising vacation until a police officer accepts the extra duty assignment. If all officers whose names appear on the Uniform Division extra duty roster refuse the extra duty assignment,

the City shall then refer to the Combined extra duty roster and offer the extra duty assignment to the most senior officer on that roster with the least number of extra duty hours worked who is not exercising vacation until an officer accepts the extra duty assignment. Should all officers not exercising vacation be called and no officer has accepted the extra duty assignment, the City shall refer back to the Uniform Division extra duty roster and call officers exercising vacation, followed by the Combined extra duty roster.

If no officer from the preceding shift accepts the overtime slot, the least senior officer without regard to hours worked will be ordered to stay, and no hours will be added to that officer's extra duty hours worked bank. Any officer working a mandatory overtime slot may attempt a split shift in any combination of whole hours using split shift procedures. If an officer accepts a split shift mandatory overtime slot, the hours worked will be added to the extra duty hours worked bank. The officer who accepted the mandatory split shift will be paid at the mandatory overtime rate. If all the above steps have been followed, and an officer is compelled to work the mandatory overtime slot, the slot may be offered to the chiefs, provided the compelled officer would prefer to decline the slot.

Any officer ordered to stay past his/her shift will only be required to do so once during the officer's six-day rotation. If overtime is needed within the same rotation, and no officer accepts it, the next officer with the least amount of seniority (regardless of hours) will be ordered to stay, and so on.

With respect to emergency extra duty in the Detective Division, the Chief of Police or the Detective Division Chief shall have the right to award extra duty to officers within that Division as they deem necessary. Officers awarded extra duty within the Detective Division shall be paid twice the officer's prevailing hourly rate for each hour worked. A diligent effort shall be made to award extra duty to officers that have been assigned a particular case and the overtime will be directly related to such case. All extra duty hours shall be logged on the Combined extra duty roster.

In the event that a detective is needed for general investigation (emergency call in), the officer doing the call in will refer to the Combined extra duty roster (detective's) and follow the procedure set forth in ARTICLE VII for the uniform division. The FOP will concede that it would be impossible at times for the officer in charge to know who is working a particular case.

When the need for extra duty on a particular shift arises after the commencement of the shift due to an officer scheduled to leave on compensatory time, the following shall apply: A mass text or message will be sent via scheduling program notifying

all officers, except those on vacation, of the overtime assignment. The assignment will be awarded to the most senior officer with the least amount of extra duty hours worked. Uniform officers and officers on the succeeding shift will be given preference. If no officer accepts the overtime assignment at this stage, then vacation officers will be offered the overtime with uniform officers on vacation being given first preference, followed Combined extra duty officers on vacation. If no vacation officer accepts the overtime, then a second mass text or message will be sent notifying officers that a mandatory overtime slot has been created. The above awarding procedures shall be followed, using most senior officer with least amount of extra duty hours worked, giving preference to uniform officers and succeeding shift. The officer awarded the slot shall be paid at the appropriate prevailing rate of pay, and the hours worked, excluding shift continuation, will be posted. If no officer accepts the overtime slot at this stage, the officer scheduled to leave on compensatory time will be ordered to stay and shall be paid at twice the officer's prevailing rate of pay. The officer ordered to stay may elect to have the chiefs offered the overtime slot.

When the need for extra duty on a particular shift arises after the commencement of the shift due to an officer injury, illness, or family emergency, the above procedures shall apply. If no officer accepts the assignment after the above procedures have been followed, then the following shall apply: The City will contact the least senior officer on the uniform extra duty roster, without regard to hours worked, and order that officer in for duty. The City shall continue up the seniority list, from least to most senior, until an officer is contacted and ordered in for duty. The hours worked by the officer ordered for duty will not be added to the officer's extra duty worked bank.

In the event that a uniform shift would commence without a supervisor, the city will be entitled to fill the opening. Supervisors will be offered the opening consistent with the provisions of the bargaining agreement outlined in Article VII Section 3. This language shall in no way interfere with standard minimum shift strength overtime provisions. No supervisor on vacation shall be contacted for the sole purpose of filling an open supervisor spot. If a supervisor is as an additional overtime supervisor, then he/she shall not be considered preceding shift for the purposes of overtime.

Emergency Overtime is to be paid at double time rate (2.0) but this does not include training. The mandatory rate is to be paid at two and one-half times (2.5) on holidays.

Officers exercising vacation time off will be offered overtime after the preceding

shift, uniform overtime list, and combined overtime list have refused the overtime.

(4) Split Shift – When an officer accepts an overtime assignment on a shift, the officer may attempt a split shift. The split shall be determined by the accepting officer in whole-hour increments (7/1, 6/2, 5/3, 4/4, 3/5, 2/6, or 1/7). If an officer wishes to attempt a split shift, he/she will notify a supervisor or the officer in charge of the shift. The supervisor will send the notification of the available split shift to all officers except those on vacation. Responding officers from the succeeding shift will be given preference. Each officer involved in the split shift will have the overtime hours worked added to their extra duty hours worked bank. If an officer accepts an assignment, and no other officer accepts the split shift, the accepting officer is required to work the full overtime shift.

- D. Officers not wishing to work call-in overtime may sign a waiver to this effect. This waiver may be revoked in writing at any time upon twenty-four (24) hours written notice.
- E. The City will post on the board those officers assigned to Special Weapons and Tactics (SWAT), evidence technician, Field Training Officer (FTO), DRE (Drug Recognition Expert), motorcycle officer, breath test operator, traffic technician, Major Crimes Detective, Major Crimes Evidence Technician, Instructors, Emergency Response Team (ERT) and SVU Detectives. The posting shall be kept current showing the number of extra duty hours worked by each police officer within their respective specialty or specialties. All extra duty hours worked by the above listed officers shall be logged on both the appropriate specialty list and the appropriate extra duty roster. Any officer accepting an emergency extra duty assignment within a specialty area shall receive hour-for-hour extra duty pay at twice the officer's prevailing hourly rate of pay.

Current number of instructors to be maintained, with additional instructor positions to be added at the discretion of the City.

Specialty pay will be granted for officers on a yearly basis with officers being paid for the top three (3) highest specialties that they are qualified to receive. Qualification for a specialty stipend is dependent upon officer completion of any required training and continued assignment to that specialty.

Any police officer having completed Vehicle Crash II, (ILEA Standard) may be placed on the Traffic Specialty list. On seniority / least numbers of hours worked within that specialty, two (2) officers may be called in on an overtime basis to assist the Traffic Captain or designee at fatal and serious injury accidents unless the

accident is determined to fit FACT criteria.

If a trained specialty officer is needed in a specialty other than traffic, the City may call in a police officer for extra duty from the posted specialty list having the most senior officer on the list with the least amount of overtime worked within their specialty being called in first. If the police officer with the most seniority and the least amount of overtime hours worked within their specialty cannot be reached after a diligent effort to contact has been made, then such officer may be bypassed.

- F. Notwithstanding any contrary provision contained in this Agreement, no officer shall be entitled to work more than sixteen (16) consecutive hours, whether as the result of the acceptance of an extra duty assignment or otherwise, unless the time to be worked in excess of sixteen (16) hours is the result of the continuation of the officer's second eight (8) hour shift.
- G. All extra duty hours worked by an officer, except those hours worked as part of the continuation of a regularly scheduled shift or where an officer is ordered to accept the extra duty assignment in accordance with this Agreement shall be logged on the appropriate extra duty roster. The extra duty hours shall be logged on the appropriate extra duty roster regardless of whether an officer chooses to receive monetary payment or compensatory time as compensation for the extra duty hours worked.
- H. If an officer accepts an overtime assignment beginning before, and ending after, 2:00 a.m. on the date that daylight savings time ends, the officer shall be allowed to work 17 straight hours. Any additional hours over 17 may only be worked as a result of shift continuation.
- I. When there is a need for emergency extra duty not related to minimum shift strength requirements and not related to a specialty, the following shall apply: The City shall have the right to offer the extra duty to officers from the preceding shift or succeeding shift when necessary. The City shall not be required to continue through the entire departmental roster when the City deems it unnecessary. All overtime offered will be consistent with the provisions of this collective bargaining agreement.
- J. In the event VCS or a similar personnel management system becomes disabled, then the City shall have the option to immediately offer overtime at the double time rate.

Section 3 - Holiday Schedule

- A. For the purposes of this Agreement, the holidays shall be as follows:
1. New Year's Day
 2. Martin Luther King Day
 3. Good Friday
 4. Easter Sunday
 5. Memorial Day
 6. Independence Day
 7. Labor Day
 8. Thanksgiving Day
 9. Friday after Thanksgiving
 10. Christmas Eve
 11. Christmas Day
 12. New Year's Eve
- B. Any police officer who works a regularly scheduled shift on one of the following seven (7) holidays – New Year's Day, Memorial Day, Independence Day, Thanksgiving Day, Christmas Eve, Christmas Day, and New Year's Eve – shall be paid at the rate of time and one-half of (1.5 times) the police officer's prevailing hourly rate of pay.
- C. Any police officer who is ordered (mandatory) to work Emergency Extra Duty on one of the twelve (12) holidays listed in paragraph A shall be paid at the rate of two and one-half (2.5) times the police officer's prevailing hourly rate of pay.

Section 4 - Court Time Pay

A Police Officer shall receive a witness fee for appearing during off-duty hours in accordance with the following provisions:

- A. When an officer appears as a necessary witness at the Mishawaka Division of the St. Joseph Superior or Circuit Court, the Mishawaka Board of Public Works and Safety, except when the Police Officer himself/herself is the subject of the disciplinary proceeding before the Board, or at the St. Joseph County Prosecutor's Office or St. Joseph County Clerk's Office for the purpose of signing affidavits, except that affidavits will be signed on duty at the Mishawaka Police Station whenever possible, the officer shall receive the sum of One Hundred Seventy-Five and 00/100 Dollars (175.00) per appearance. In addition, the officer shall receive hour-for-hour pay at the officer's appropriate prevailing hourly rate of pay for time spent at court in excess of three (3) hours, adding one (1) hour for any additional fraction thereof in excess of thirty (30) minutes.
- B. When an officer appears as a necessary witness at any other court, administrative

hearing or arbitration hearing located in St. Joseph County, Indiana, or elsewhere, except as provided in Paragraph A above, the officer shall receive the sum of Two Hundred and 00/100 Dollars (\$200.00) per appearance, less any compensation received for time and travel from any other sources within the City. In addition, the officer shall receive hour-for-hour pay at the appropriate prevailing hourly rate of pay for time spent at court in excess of four (4) hours, adding one (1) hour for any additional fraction thereof in excess of thirty (30) minutes.

- C. No witness fees shall be paid for civil court trial appearances unless the subject of the litigation involves matters investigated or witnessed by the police officer in the line of duty.
- D. In the event a police officer is subpoenaed by the City to testify in any court, administrative or arbitration proceeding or hearing outside St. Joseph County, then in addition to the witness fee established herein, the police officer shall also receive reimbursement for all reasonable and necessary expenses incurred, including, without limitation, gasoline, mileage, meals and room expense. Reimbursement will only occur pursuant to compliance with the adopted City travel policy.
- E. Police officers employed in part-time employment by the terms of which compensation is received for performing police-type duties shall not be entitled to compensation under this Article if such officers are involved in any incident or situation which is a direct result of such part-time private employment.
- F. Any police officer who retires or leaves the Department and is required to testify on behalf of the City in any court trial, arbitration hearing or administrative proceeding shall be paid by the City as specified in this Article.
- G. In all proceedings before the Board of Public Works and Safety, subpoenas for a police officer will be reviewed by the Clerk of the Board who will report any abuse of the subpoena power to the Board of Public Works and Safety. In such case, the Board shall have the right to regulate the time and date that witnesses will be required to appear in such a manner that will not impede the presentation of the respondent's case and will not result in the payment of excessive and needless witness fees to police officers subpoenaed as witnesses.
- H. When an officer appears at a proceeding described in this Section while on duty and the officer's participation in the proceeding continues past the end of the officer's regularly scheduled work day, the officer shall not receive the witness fee set out above. Rather, the officer shall receive only hour-for-hour extra duty pay under the terms set out in Article VII, Section 2 of this Agreement.

- I. When an officer receives a subpoena to appear on a single day at two (2) or more separate proceedings and at two or more different locations, the officer shall be entitled to receive a corresponding number of separate witness fees. However, if all the multiple proceedings are scheduled to commence before 12:00 P.M. (i.e. in the morning) within the same building or if all the multiple proceedings are scheduled to commence after 12:00 P.M. (i.e. in the afternoon) within the same building, then the officer shall only receive one (1) witness fee.
- J. When an officer's appearance is continued over from a morning session to an afternoon session on a single day, the officer shall be entitled to only one (1) witness fee.
- K. In the event that any shift of the Uniform Division would fall below Minimum shift strength due to an officer being in court, emergency extra duty will be called in as follows:

If court falls in the first four (4) hours (06:30 – prior to 10:30) (14:30 – prior to 18:30) (22:30 – prior to 02:30) of the shift, the City shall refer to the police officers working the shift immediately preceding to fill the Minimum shift strength.

If court starts in the second four hours of the shift, (10:30 – 14:30) (18:30 – 22:30) (02:30 – 06:30) the City shall refer to the police officers working shift succeeding to fill the Minimum shift strength.

In the event that no police officer accepts the overtime the City shall refer to Article VII, Section 2.

The above agreement pertains only to times when emergency overtime is needed due to officers being in court. It does not change any other provisions in this Agreement.

- L. An officer may not take off a portion of a shift in order to receive court time pay for a witness appearance during that time off.

Section 5 - Shooting Time Pay

- A. In the event a police officer is required to shoot while off duty, the officer shall receive two (2) hours of extra duty pay unless the department required the officer to spend more than two (2) hours at the range and if so the police officer shall receive minute for minute pay.
- B. The top three (3) shooting officers each year, as determined by score on annual

shooting qualification tests, will each receive an additional day off, called a shooting day. Use of the shooting day may not bring staffing below minimum shift strength and must be approved in advance by the Chief of Police.

Section 6 - Renegotiation of Wages

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

Section 7 - Pay Days

- A. Police officers shall be paid bi-weekly, every other Friday. An annual bi-weekly schedule of paydays shall be posted annually before each first payday.
- B. All other pay shall be disbursed by the City as follows:
 - 1. Clothing allowance checks will consist of two (2) equal checks paid on April 1st, and October 1st of each year.
 - 2. The Annual Residency Stipend will be paid on or about December 15th of each year.
 - 3. Specialty pay will be paid on or about December 15th of each year.
 - 4. Witness fees will be paid at the same time and in the same manner as is extra duty pay.
 - 5. Extra duty pay shall be paid with the next regular pay check following the period during which such extra duty pay was earned.
 - 6. All checks paid will have the proper deductions for such items as taxes, insurance, pension, United Way, savings bonds and credit union.
- C. If an error is made in a police officer's pay, it shall be corrected no later than the next paycheck. If the amount in error is a substantial amount or is not corrected in the next paycheck, a special check shall be issued to immediately correct the error.

Section 8 - Jury Duty

Any police officer who is required to report for and/or perform jury duty shall receive time off the officer's regular scheduled work day (s) with full pay, less any compensation

received from any other source other than the City.

Section 9 - Overtime Pay or Overtime Compensation

Any police officer who is entitled to overtime pay as previously stated within this Agreement shall have the option of taking the overtime in the form of cash or in the form of compensatory time. The compensatory time shall be given at a rate that is equal to the officer's rate of overtime. Compensatory time may be substituted instead of overtime for all extra hours worked with the exception of State and Federal grants.

Section 10 – Sub-Sergeant Officer in Charge of Shift

- A. When an officer holding a rank below Sergeant is placed in charge of a shift, that officer will be paid an additional \$25.00 for that shift. If the officer is in charge less than 2 hours, their time will be pro-rated minute for minute. If an officer is in charge for 2 hours or more, they will be paid twenty-five dollars (\$25.00).
- B. Prior to placing an officer holding a rank below Sergeant in charge of a shift, the City shall be entitled to initiate the following procedure. When a need arises on any of the uniform patrol shifts for the presence of at least one (1) supervisor with the rank of Sergeant or higher, an overtime alert would be sent out to Supervisors of the Mishawaka Police Department for a 2.0 payrate open shift slot. If a supervisor accepts the overtime slot on the shift, the need for that supervisor would then be fulfilled. No supervisors shall be ordered in if the open shift slot for a supervisor goes unfilled.

ARTICLE VIII **VACATIONS**

Section 1 - Eligibility and Amount

- A. Vacation time shall inure to the benefit of police officers based upon years of service as follows:
 - 1. Police officers having completed one (1) year of service, but less than two (2) years, shall receive one (1) week of vacation and 1 (one) random day.
 - 2. Police officers having completed two (2) years of service, but less than three (3) years, shall receive two (2) weeks of vacation and two (2) random days.
 - 3. Police officers having completed three (3) years of service, but less than five (5) years, shall receive two (2) weeks of vacation and three (3) random days.
 - 4. Police officers having completed five (5) years of service, but less than ten (10) years, shall receive three (3) weeks of vacation and three (3) random days.

5. Police officers having completed ten (10) years of service, but less than fifteen (15) years, shall receive four (4) weeks of vacation and four (4) random days.
 6. Police officers having completed fifteen (15) years of service, but less than twenty (20) years, shall receive five (5) weeks of vacation and five (5) random days.
 7. Police officers having completed twenty (20) years of service, but less than twenty-five (25) years, shall receive six (6) weeks of vacation and six (6) random days.
 8. Police officers having completed more than twenty-five (25) years of service shall receive six (6) weeks of vacation and seven (7) random days.
 9. If the first Sunday following the vacation is a scheduled work day, then, the police officer shall have that Sunday off work as an additional day of vacation.
- B. Vacation shall be selected in each division by seniority per shift. Vacation schedules shall allow one officer per shift per division to start vacation on each Sunday of the year, thus causing an overlapping effect. The right to such overlapping vacation has been agreed to by the City and the Lodge.
- C. In the event a police officer, while off duty as a result of vacation or random days taken in conjunction with the vacation is ordered back to work by the City, accepts an emergency extra duty assignment, or is subpoenaed to appear in Court regarding a matter related to his/her employment as a police officer, the City shall pay the officer two (2) times the officer's prevailing hourly rate of pay for the hours worked or the witness fee established by this Agreement, whichever is applicable, and shall also return the earned vacation day to the officer, provided the officer works at least four (4) hours when called in. The City must grant all requests by an officer to exercise an earned vacation day returned in accordance with this provision if at the time of the request the affected shift is at or above the minimum shift strength established by this Agreement. Furthermore, the City must grant at least two (2) earned vacation day requests on each shift each day, even if the affected shift is already below minimum shift strength, except that if the affected shift is already one (1) below minimum shift strength as a result of an officer exercising a random day, the City must grant only one (1) earned vacation day request. The officer must make an attempt through the Chief's Office to secure an excuse from the subpoena.

Section 2 - Compensation Time Owed

Officers shall be able to request compensation time owed from any supervisor within their division and the compensation time owed shall be awarded on a first requested, first received basis. Compensation time owed requests shall be stamped on a time clock. The City must grant all compensation time owed requests, provided that the City may only grant such requests when the affected shift is above minimum shift strength. At no time may the City grant a compensation time owed request if the resulting shift strength would drop below the minimum as set by this agreement.

Section 3 - Random Days

- A. Officers shall be able to request a random day from any supervisor within their division and the random day shall be awarded on a first requested, first received basis. The random day selected shall be within one (1) year from the date of the request. Random day requests shall be stamped on a time clock. The City must grant all such requests if, at the time of the request, the affected shift is at or above the minimum shift strength established by this agreement. Furthermore, the City must grant at least one (1) random day request on each shift each day, even if the affected shift is already below minimum shift strength, except when the affected shift has fallen below minimum shift strength as a result of an officer's absence due to a vacation day.
- B. Random days may be accumulated from year to year. Police officers will make an effort to take all of their random days in the year that they are due; provided, however, that a police officer may not carryover more than eighteen (18) days under this Section.
- C. Random days shall be allotted as of January 1st.
- D. At the end of the calendar year, officers may voluntarily sell back to the City up to a total of six (6) of their unused random days valued at their then applicable daily rate of pay.
- E. Officers may voluntarily choose to exchange up to six (6) random days for an equivalent bank of compensation time owed on an annual basis. However, the total amount of compensation time owed that is accumulated by officer cannot exceed the maximum established under federal law of four hundred eighty (480) hours.
- F. Effective January 1, 2023, any officer hired by the City shall not be entitled to receive random days. Instead, the officer will receive personal days in an amount equivalent to the number of random days set out in Article VIII, Section 1 above. At no time may the City grant a personal day request if the resulting shift strength would drop below the minimum set by this Agreement. Otherwise, the City shall administer an officer's

use of a personal day in the same manner as an officer's use of a random day is administered under the terms of this Agreement.

Section 4 – Earned Vacation Days

- A. Earned vacation days may be accumulated from year to year. A police officer may not carry over more than six (6) earned vacation days under this section
- B. All earned vacation days accumulated prior to January 1, 2009 will be in a separate bank and available to be used by the police officer as established by this agreement. No additional days may be added to this bank. Any earned vacation days that are available in this bank must be used before any other earned vacation days are used.

Section 5 - Vacation Selection

- A. Vacations may be picked for two (2) week slots in the first round, or if officers choose to split their two (2) week pick they can pick one a (1) week vacation slot on the first round. If an officer chooses to make his/her first selection in a one-week increment, the officer's second week of vacation must be chosen in the second round. All further selections will be for one-week blocks, except as provided in subsection B. The police officer shall sign a vacation schedule and note the date and time signed. The police officer next in seniority on the shift will have not less than three (3) days to pick vacation selection. If such police officer fails to pick within the three (3) days the next police officer in seniority can pick and so on down the list. The police officer that is passed over for failure to pick his/her vacation can sign any time but must pick the vacation from the weeks that are open at the time he/she signs.
- B. Any officer entitled to one (1) week of vacation may choose to take his/her selection as one (1) weeklong vacation or as six (6) random days. Any officer entitled to two (2) weeks of vacation may choose two (2) weeks vacation, or twelve (12) random days, or one (1) week vacation and six (6) random days. Any officer entitled to three (3) weeks of vacation may choose three (3) weeks vacation, or eighteen (18) random days, or one (1) week of vacation and twelve (12) random days, or two (2) weeks of vacation and six (6) random days. Officers entitled to four (4), five (5), or six (6) weeks of vacation may also take up to four (4) weeks (24 days) as random days. No officer may take more than four (4) weeks of vacation as random days (24 random days).

Section 6 - Computation of Years of Service

Vacation time is computed on the basis of a police officer's years of service. If a police officer completes a sufficient number of years of service so as to entitle the officer to additional vacation time as hereinabove provided, the officer shall receive such additional

vacation time during the calendar year that the officer completes such year of service.

ARTICLE IX
SENIORITY, LAYOFF AND RECALL

Section 1 - Definition of Terms

- A. Seniority shall be determined by the date of the police officer's appointment by the Board of Public Works and Safety. If more than one police officer has the same date of appointment, then, seniority shall be determined alphabetically.
- B. A "layoff" is hereby defined to be a necessary reduction of the work force of the Mishawaka Police Department. Layoffs shall be made in the reverse order of seniority; that is, the police officer with the least seniority shall be laid off first, and the police officer with the most seniority shall be laid off last.
- C. A "recall" shall be an increase in the work force of the Police Department following a layoff. Recall shall be by seniority with the police officer with the most seniority being the first officer to be recalled and the police officer with the least seniority being the last officer to be recalled.
- D. All civilian personnel shall be laid off before any police officer is laid off.

Section 2 - Seniority Pick of Shift

- A. Shift preference shall be granted to all police officers and shall be determined on the basis of Departmental Seniority.
 - 1. The City will provide a Shift Preference Slip to every police officer on or before September 1st each year.
 - a. It will be the police officer's responsibility to obtain his/her own Shift Preference Slip in cases where the police officer will be gone during the September 1st to 15th dates due to vacation, random days or trading days.
 - b. In case of illness, schools, and departmental business, the Chief will provide the police officer the Shift Preference Slip early or see that the police officer gets a slip and has the opportunity to fill it out.
 - 2. The police officer shall fill out the Shift Preference Slip and return it to the Lodge Wage & Grievance Committee officer on or before September 15th, listing first, second and third choices of shifts. If the police officer fails to return the Shift Preference Slip on or before September 15th, the officer

may be assigned to any shift that the Chief determines to be in the best interests of the Department.

3. On or before September 25th, the Chief and the Wage & Grievance Committee will review the slips and assign police officers on a seniority basis to each shift, as requested by the police officer. They will make a diligent effort to keep the changed police officer's rotation or work schedule as close as possible to his/her former rotation or schedule.
 4. If an officer is promoted to a rank on a specific shift and voluntarily leaves that shift, the officer's rank on the new shift will be First Class Patrol Officer.
 5. The new list will take effect the first full schedule in January.
- C. The Chief of Police will post the new list of Shift Personnel on or before October 1st, along with the work week rotation or work schedule after the new list is posted. The vacation list will be posted only after the new list and rotations are posted.
- D. No extra duty pay will be paid as a result of the Shift Change due to the September Shift Preference by Seniority Pick.
- E. A police officer can only request a Shift Preference change within his/her own division, e.g. Uniform, Detective Division, Services, etc.
- F. After the Seniority Pick of Shift process is completed and in effect, the Chief has the right to change a police officer's shift only for the betterment of the Department.
1. If there is such a change, an officer shall have the right to use the Grievance Procedure proceeding directly to the Board of Public Works and Safety.
 2. If there is such a change, the Chief will post any vacancy or opening which shall be filled as provided in Section I herein below.
 3. In the event no one applies for such a vacancy or opening, the Chief has the right to fill such vacancy or opening with the least senior officer that counts toward shift strength.
 4. Any police officer involved in such a change shall have at least sixteen (16) hours off between his/her old shift and new shift.
 5. In the event of a change under this Section, any police officer required to

work more than his/her regular work week shall receive extra duty pay as provided in this Collective Bargaining Agreement.

- G. Police officers will have a commitment of one (1) year on the shift after the September Seniority Pick of Shift process is completed, unless an opening or vacancy is posted in that year.

1. A committee shall be established for the purpose of ruling on any request by a police officer for a shift change for a valid reason during the year. Such committee shall be comprised of the President and Vice President of the Lodge, the Chief of Police, the appropriate Division Chief, and a fifth person from the bargaining unit, whose name shall be drawn by lot. This committee shall determine whether the request for the shift change is to be granted. In the event such request is granted, the opening shall be posted for a period of five (5) days. The most senior police officer of equal rank bidding on the opening shall have the right to make the change. If no police officer of equal rank bids for the opening, then the police officer requesting the change shall bear the responsibility to secure another police officer to change with him/her on the desired shift. The officers involved shall take one another's rotation with no extra duty time pay to either police officer.

If such a change in shift does take place, the requesting police officer will in a period of each fifteen (15) days resubmit a request setting forth reasons to continue the change. This then will be reviewed by the committee to see if the change request is still valid. If the committee finds the change request still to be valid, the change will remain in effect for fifteen (15) more days pending a new request from the requesting officer.

At such time as the request is denied, the requesting officer and changed officer from the requesting shift will be returned to their regular assigned shifts.

2. Should any police officer request a change in Divisions after the September pick, the officer will have to replace the lowest seniority Second Class Patrol Officer in the requested Division.
3. In the event of an opening or vacancy in the Detective Division, Services Division or Traffic Bureau, such opening or vacancy shall be filled by the appointment of the Chief of Police.
4. If a police officer is required to change Divisions, the Seniority Pick process

shall be instituted, meaning that if a police officer is taken out of the Detective Division or Services Division, such officer shall be able to transfer to a shift of his/her request in the Uniform Division, if the police officer has the Departmental Seniority to do so. The bumped police officer will have the same right to bump. Bumping rights shall take effect immediately.

H. In case of a non-rank opening or vacancy on a shift after the September Seniority Pick, the Chief will post the vacancy or opening for bids.

1. In the event the vacancy or opening is one with rank (Captain, Lieutenant, Sergeant), the Chief has the right to promote, transfer, or demote from any shift or Division to replace the open rank. When said position has been filled, the Chief will then post the resulting vacancy or opening for bids.
2. The Chief reserves the right to have a Probationary Officer work on any shift or any Division for the first year on the Department without changing any regular police officers on that shift.
3. The Probationary Officer's regular work week rotation will be kept as close as possible to what it was before any change; extra duty pay will be paid if the officer is required to work over his/her regular work week.
4. Immediately upon a Probationary Officer's completion of the officer's first year with the Department, the officer's slot will be posted for bid and shall be filled as set forth in Section I below.

I. Posting opening for bids.

1. The Chief will post on the bulletin board any Second Class Patrol Officer vacancy or opening on a shift during the year.
2. A posted opening or vacancy will be left up for bids ten (10) days.
3. A police officer bidding on a vacancy or opening shall sign the posted list and indicate his/her seniority date.
4. Department seniority shall determine the police officer who gets the vacancy or opening.
5. The same process will go into effect to replace the police officer who got

the bid.

6. In the event no one bids on a vacancy or opening, the Chief shall have the right to fill the opening or vacancy with the lowest in seniority police officer or to fill the opening or vacancy with a probationary officer.
7. All posted vacancies shall be filled within thirty (30) days after posting is completed.
8. All ranks shall be filled within thirty (30) days.

J. Emergency or Temporary Openings or Vacancies.

1. For temporary openings under two (2) weeks, Article XVII of this Agreement shall apply.
2. In the event an opening or vacancy should occur on a shift due to illness, schooling, vacations, or other similar reasons, for a period of more than two (2) weeks, the Chief may replace the police officer in the following manner:
 - a. The temporary opening will be posted as a "temporary opening" for four (4) days. The police officer with rank of not less than Second Class Patrol Officer with the most seniority who signs for the opening shall get it.
 - b. During the temporary assignment or replacement, the police officer's regular work week shall not be changed without his/her permission.
 - c. In the event no one bids on the vacancy or opening, the Chief has the right to assign the least senior officer that counts toward shift strength to fill the opening or vacancy.

K. The Chief shall have the right to determine the number of police officers to be assigned and which division, but this number shall be set prior with shifts being determined by the seniority pick of shift.

L. Any officer assigned to the Traffic Bureau will remain eligible to exercise his/her rights to bump from shift to shift on the basis of seniority. Officers of the traffic bureau will also retain their rights to request transfers out of the Bureau, under the authority and provisions of this Agreement.

- M. Anything in this Article to the contrary notwithstanding, the Uniform Division rank shall be not less than the following:

Day Shift

- 1 Captain
- 1 Lieutenant
- 4 Sergeants

Afternoon Shift

- 1 Captain
- 1 Lieutenant
- 3 Sergeants

Midnight Shift

- 1 Captain
- 1 Lieutenant
- 3 Sergeants

Any rank held in excess of the minimum set forth above shall nonetheless be subject to the bumping procedures by Second Class Patrol Officers and First Class Patrol Officers as set forth in the Seniority Pick of Shift Article.

ARTICLE X
SICK LEAVE

Section 1 – Definition

Sick leave shall be that period of time between the time and date that an officer notifies the Police Department of his/her unfitness for duty due to illness or injury and such time as that officer reports to Department management that the officer is again fit for duty. The officer shall complete a written Explanation of Absence from Duty on the form provided by the Mishawaka Police Department on the day the officer returns to duty. A copy of the form is attached to this Contract.

Section 2 - Explanation of Absence from Duty Form

The Explanation of Absence From Duty Form to be filed by an officer to terminate sick leave shall include the following information: name of officer, dates of absence, hours lost, reason for absence (personal illness, emergency, injury) with explanation, was doctor contacted, name of doctor, diagnosis, statement that officer is completely recovered from illness or injury, statement concerning any other gainful employment during or after

absence, date of report and signature of officer.

Section 3 – Policy

During sickness, including pregnancy, a police officer's pay shall continue for a maximum of sixty (60) working days, subject to the right of the Board of Public Works and Safety to require a physician's statement confirming the police officer's illness and the officer's inability to perform his/her duties. Medical disabilities shall be determined by the police officer's pension board.

Section 4 – Notice

It shall be the responsibility of each individual officer to contact the Police Department prior to the officer's assigned duty time notifying it of any illness or injury that renders the officer unfit for duty.

Section 5 - Outside Employment

No officer shall engage in employment outside the Police Department during the hours that the officer is being paid by the City or the eight (8) hours immediately following the officer's use of a sick day. This provision shall not be interpreted to in any way preclude an officer from engaging in outside employment when the officer is exercising the right to a random day, vacation day, or compensatory time.

Section 6 - Physical/Mental Condition

Every officer shall maintain adequate physical and/or mental condition at all times. If an officer is unable or unwilling to perform assigned duties due to lack of good physical and/or mental condition, the Chief may order such officer to undergo appropriate examination and testing by doctors or other health care providers to determine the officer's fitness for duty. After hearing before the Board of Safety, the Board may put the officer on sick leave status or refer him/her to the Police Pension Board for medical disability review.

Section 7 - Work-Related Injury

- A. The City agrees, for the life of this Agreement, to maintain the present level of Worker's Compensation insurance with a qualified insurance carrier.
- B. When a police officer is absent from duty due to an illness or injury arising out of or in the course of his/her employment by the City and which is compensable under the Indiana Worker's Compensation Act, the City will make up the difference between the amount of daily benefits to which the officer is entitled under such Act and the amount of daily salary the officer would have received if working for a period not to exceed fifty-two (52) weeks. Following such fifty-two (52) week period, the police officer's health and ability to perform work for the Police

Department shall be reviewed by the City. If the police officer is able to return to work, the officer shall do so; and if not, the City will refer the police officer to the Police Pension Board.

Section 8 - Physical Examinations

Each officer may undergo, at the City's expense, one (1) comprehensive physical examination every three (3) years, commencing January 1, 2002. The physical examination shall be performed by a physician or physicians chosen by the City. One-third (1/3) of the officers employed by the Police Department shall have the option to undergo the physical examination each year. No officer shall be entitled to receive additional monetary or other compensation as a result of undergoing this physical examination.

ARTICLE XI **FUNERAL LEAVE**

In case of death in the police officer's immediate family or the police officer's spouse's immediate family (meaning parent, step-parent, spouse, grandparent, grandchild, parent-in-law, brother, sister, sister-in-law, brother-in-law, child or step-child) a police officer shall receive upon request, four (4) consecutive work days off without loss of regular pay to make preparations for and attend the funeral and burial of such relative and to attend to any necessary business or legal matters of the decedent or the decedent's estate.

In the event of the death of the police officer's or the police officer's spouse's aunt, uncle, niece, nephew or first cousin or in the event a police officer is designated to serve as a pallbearer at any funeral, then in such instances, a police officer will have the day of the funeral off without loss of regular pay.

In addition, the Police Chief or Division Chief, or if either are unable to be reached, then the officer in charge of the police officer's shift, shall have the right to grant, in appropriate cases and in their sole discretion, additional days off work for funerals.

ARTICLE XII **INSURANCE**

Section 1 - Life and Accident

The City shall contribute at least at the present level which it is contributing toward the cost of the life insurance policy in the amount of \$15,000.00 double indemnity for each police officer.

Section 2 - Medical and Hospital

The City shall offer medical and hospital care coverage to all officers throughout the life

of the Agreement complying with the terms included in the Insurance Memorandum attached to this Agreement.

ARTICLE XIII

UNIFORM ALLOWANCE

The City shall, in addition to all other compensation herein granted, pay each officer a uniform allowance of Two Thousand Fifty and 00/100 Dollars (\$2050.00) annually to purchase and maintain uniforms as prescribed by the Chief. In consideration of this allowance, the police officers agree to keep their uniforms neat, clean, and in good repair and to replace all worn-out clothing as necessary. The annual uniform allowance is not paid during the first year of employment unless the new officer is a lateral hire. When an officer reaches one year of service, clothing allowance shall be paid at a pro-rated amount for the remainder of that calendar year.

ARTICLE XIV

DUTIES OF POLICE OFFICERS

Police officers shall not be ordered or required to perform any unrelated duties not falling within the purview of full-time members of the police force except to raise or lower the flag, shovel snow on the front walk to the curb when not shoveled by the janitor and the janitor is not available to perform such duties, and perform such reasonable and necessary vehicle maintenance as is called for by any General Order and/or Rules and Regulations governing the Mishawaka Police Department's Assigned Vehicle Program.

ARTICLE XV

STRIKE PROHIBITION

The Lodge will not engage in, nor sanction, strike action, slow down, "blue flu", or similar action during the life of this Agreement or any extension thereof. If this Article is violated, the participants shall be immediately subject to discharge as provided in Ordinance Number 1666 of the City of Mishawaka.

ARTICLE XVI

JOINT SAFETY COMMITTEE

Section 1 – Definition

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

Section 2 - Safety Equipment

- A. The City shall make reasonable provisions for the safety and health of the police officers during the hours of their employment. It shall endeavor to maintain its equipment in safe operating condition. The City shall furnish such protective devices and/or equipment as it deems necessary to properly safeguard the health and safety of the police officers and protect them from injury.
- B. In the event a police officer believes that his/her assigned vehicle is unsafe for use during his/her tour of duty, the officer shall return it to the station. If the Officer in Charge of the police officer's shift agrees with the police officer, the vehicle shall be deadlined and the condition slip made out on the vehicle. The vehicle will remain deadlined until the proper repairs are made. No police officer will be required to drive an unsafe vehicle.
- C. Officers who choose to carry a shotgun on duty will carry a department issued shotgun or one that is approved by the department range master. Shotguns will be twelve (12)-gauge. It is recommended that a shotgun be carried, but it is optional. While on duty, shotguns will be carried in a shotgun rack (inside the vehicle cabin or trunk) or in a firearms bag in the trunk. All shotguns shall be loaded to full capacity, chamber empty, with the safety in the ON position, and with at least five (5) extra shells inside the officer's vehicle.

Officers who choose to carry a patrol rifle on duty will carry a department issued patrol rifle or one approved by the department range master. Rifles will be .223/5.56 caliber. While on duty, patrol rifles will be carried in a rifle rack (inside the vehicle cabin or trunk) or in a firearms bag inside the trunk. Rifles will be carried with an empty chamber and magazine inserted with the safety in the ON position.

When officers are off duty, all department and personal weapons used in the line of duty will be properly and safely secured.

- D. All police department vehicles used in the line of duty shall be equipped with air conditioning, AM/FM radio and heater, and all of such items shall be maintained in working condition.
- E. Given the unique demand on the tires of the Uniform Division squad cars, it is essential for safety of operation of squad cars that the tires be in excellent condition. Tires on the Uniform Division squad cars which have less than 25% of the tread shall be replaced immediately. No police officer shall be forced to operate a squad car unless the tires meet or exceed these minimum requirements.

Section 1 - Department Strength

The City will make a diligent effort to fill all vacancies in the Department within thirty (30) days after such vacancies occur.

A. The minimum strength the Uniform Division can operate with, will be as follows:

D. Probationary officers shall count as shift strength 30 days after successful completion of the FTO program and lateral transfers count as shift strength upon successful completion of the FTO program. However, any Probationary Officer who on the date of hiring has already graduated from either the Indiana Law Enforcement Academy or another certified law enforcement academy recognized by the State of Indiana shall be counted toward minimum shift strength three (3) months after said officer's date of hire, subject to being released from the FTO program. Probationary officers shall be eligible to work extra duty at the time they count toward minimum shift strength.

- E. When there is a need for necessary additional officers (e.g., prisoner guard and crime scene security) those necessary positions shall be considered as shift strength positions. Emergency extra duty procedures shall be followed to fill such positions. If the need for a prisoner guard or crime scene security arises after the commencement of a shift, the overtime shall immediately be offered at the double time rate. In the event no one fills the request for additional officers, the OIC may contact the ERT "On Call." The ERT will then designate an officer (or officers) from the appropriate ERT platoon to be activated in uniform capacity. The ERT officer(s) will be considered shift strength, however, shall not be used for the purpose of motorized patrol or considered preceding shift as opposed to the above stated officers who accepted the request. ERT officers activated in this manner will be compensated at a flat rate of 4 hours of twice their prevailing wage, and shall NOT count as hours worked against them as it pertains to future overtime assignments. In the event that the detail requires the officer to stay more than 4 hours, then the compensation should remain twice the prevailing rate, hour for hour. Should the shift change during the 4 hours that the ERT officer is activated, then revert back to standard emergency extra duty procedures. If the need continues into the following shift, revert back to standard emergency extra procedures.
- F. Effective January 1, 2024, the City shall have the right to establish a minimum shift strength for each shift within the Uniform Division of eleven (11) officers on motorized patrol. However, in the event that the number of officers assigned to the Uniformed Division falls below seventy (70), minimum shift strength for each shift shall revert to ten (10) officers on motorized patrol within ninety (90) days.

Section 3 - Detective Division

- A. The Detective Division shall consist of not less than nine (9) detectives and one (1) Division Chief. All vacancies will be filled within thirty (30) days.
- B. In the event the City is asked to participate in a special crimes unit or similar type operation, the parties will meet for the purpose of negotiating mutually satisfactory changes in this Agreement for the purpose of allowing the City's participation.

Section 4 - First Class Patrol Officer Positions

- A. A police officer shall be automatically promoted to the rank of First Class Patrol Officer on or before the third anniversary of date of hire. The term "bargaining unit" shall mean all slotted positions, except the Police Chief and the Division Chiefs. All vacancies in rank shall be filled within thirty (30) days.
- B. Maintenance of First Class Patrol Officer Pay.

Once a police officer achieves the rank of First Class Patrol Officer or higher, the base pay for such officer thereafter shall never be less than that paid to other First Class Patrol Officers, regardless of the subsequent rank of such police officer. The Board of Safety reserves the right to refuse a request made by a police officer for voluntary demotion from the rank of First Class Patrol Officer.

ARTICLE XVIII PERSONAL SERVICE RECORDS

- A. No person, excepting the Mayor, the members of the Board of Public Works and Safety, the Police Chief, the Division Chiefs and the Corporation Counsel or City Attorney in connection with the pending grievance or disciplinary matter involving the police officer, shall read, view, or copy a police officer's personnel file which is kept by the Police Department.
- B. A police officer shall be given a copy of all additions to his/her personnel service record.

ARTICLE XIX GRIEVANCE PROCEDURES

- A. Should any police officer or group of police officers feel aggrieved concerning his, her or their wages, hours and conditions as controlled by this contract, excluding the disciplining of a police officer which is governed by the Board of Public Works and Safety and excluding matters which are within and a part of the jurisdiction of the Common Council, or concerning any matter or conditions arising out of any employee-employer relationship, including any kind of unjust discrimination and any matter or condition affecting his, her or their health and safety, adjustment shall be sought as follows:
 - 1. It shall first be the responsibility of the employee or group of employees to seek relief from his, her or their immediate superior in charge of his, her or their work position. At this stage, the grievance can be submitted orally or can be submitted in writing. The grievance must be presented within thirty (30) days from the date the Union or the individual grievant become aware of the alleged incident, whichever occurs later.
 - 2. If such grievance is not resolved to the satisfaction of the employee or group of employees, the problem shall be put into writing by the individual or group, and together with an assigned wage and grievance committee member, presented to the Officer in Charge of his, her or their

shift.

3. If the grievance is still not resolved after a period of seven (7) days, the Wage and Grievance Committee of the Lodge shall meet with the Chief of Police to settle the grievance.
4. If the aggrieved police officer shall have found no satisfaction after seven (7) days, the written grievance shall be presented to the City's Board of Public Works and Safety for determination and settlement; if the matter is not settled by the Board of Public Works and Safety within fourteen (14) days to the satisfaction of the aggrieved police officer, the issue or complaint may be submitted to arbitration in accordance with the terms and conditions set forth under this contract for arbitration.
5. The police officer may be represented by legal counsel only before the Board of Public Works and Safety and hearing before the arbitrator.
6. Nothing in this Article shall prevent a police officer from processing his/her own grievance without the assistance of the Lodge.
7. When it has been determined according to this collective bargaining agreement that an officer was incorrectly passed over for an extra duty assignment the following shall apply:
 - a. The aggrieved officer will be given thirty (30) calendar days, beginning the date the when it was determined the officer was aggrieved, to work the number of hours erroneously not awarded.
 - b. The aggrieved officer has the right to choose the hours of make-up overtime.
 - c. The aggrieved officer shall be paid at the prevailing hourly rate for which the officer would have been paid had he/she been correctly awarded the overtime. The officer may not be awarded a random day, time owed, or vacation time, nor may the officer do a time exchange as compensation for the make-up overtime.
 - d. The aggrieved officer shall give the City a minimum of twenty-four (24) hours' notice of the date(s) and time(s) which the officer chooses for the make-up overtime.

- e. The aggrieved officer working make-up overtime does not count toward minimum shift strength requirements.
 - f. If a detective bureau extra duty assignment is incorrectly awarded, the Chief may have the aggrieved officer perform a police duty outside of investigations if there is no available work to be performed within the detective bureau.
- B. Should the Chief of Police feel aggrieved concerning actions initiated by the FOP Lodge #91, or a group of members of the FOP Lodge #91, which allegedly violate this contract or are in conflict with this contract, adjustment may be sought as follows:
- 1. It shall be the responsibility of the Chief of Police to put into writing such alleged violation and present it to the President of the FOP Lodge #91 and the head of the Wage and Grievance Committee.
 - 2. If the grievance is not settled at this stage within fourteen (14) days to the satisfaction of the aggrieved Chief of Police, the alleged violation shall be presented to the FOP membership by the President of the FOP Lodge #91 and the Wage and Grievance Committee.
- C. Captains shall not be part of the Lodge's Wage and Grievance committee; provided, however, that the exclusion of Captains from such committee shall not be interpreted to mean that Captains are in any way excluded from the bargaining unit set forth in this Agreement.

ARTICLE XX CHAIN OF COMMAND

The City shall maintain and post a complete chain of command for each Division and shift within that Division. The chain of command shall include a list of all departmental ranks or positions and shall include the name of each officer who holds such rank or position.

ARTICLE XXI ARBITRATION

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 some 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 police officer and the City are unable to resolve a grievance, working conditions, contract interpretation, rules and regulations, or policies over which there is a dispute, within thirty (30) days from and including the date of their first meeting, excepting matters coming within the exclusive jurisdiction of the Board of Public Works and Safety pertaining to disciplining pursuant to Indiana statute, including methods and subjects established by the grievance procedure, any and all unresolved issues shall be submitted to arbitration as hereinafter provided, excluding matters which are within and a part of the jurisdiction of the Common Council.

- A. Within five (5) days from the expiration of the thirty (30) day period referred to above, the police officer or Lodge and the City through its Board of Public Works and Safety shall select and name an arbitrator. If on the expiration of the period allowed therefore the parties are unable to agree upon an arbitrator, the American Arbitration Association shall select an arbitrator upon request in writing from either the police officer, the Lodge, or the City.
- B. The arbitrator shall set a date for a hearing within ten (10) days after the date of the officer's appointment and shall give at least seven (7) days' notice in writing to the police officer, Lodge and City of the time and place of such hearing.
- C. The arbitrator is hereby authorized to conduct such hearing in an informal manner and without recourse to the technical common-law rules of evidence required in judicial proceedings, and such manner of proof and introduction of evidence shall be deemed sufficient and shall govern the proof, decision, and administration or judicial review of all questions of fact if substantial, reliable and probative evidence supports such arbitrator's determination. The arbitrator shall, as a matter of policy, provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. Every person who is a party to such proceedings shall have the right to submit the evidence in open hearing and shall have the right of cross-examination.
- D. The hearing conducted by the arbitrator shall be concluded within twenty (20) days of the time of commencement, and within ten (10) days after the conclusion of the hearing. The arbitrator shall make written findings and a written opinion upon the issues presented, a copy of which shall be mailed or otherwise delivered to the police officer, Lodge and the City. The decision of the arbitrator shall be binding upon both the police officer, the Lodge and the City.
- E. The arbitrator's fees and necessary expenses of arbitration shall be paid by the losing party. It is agreed by the parties that such fees and expenses shall not include the attorney fees of either party.

ARTICLE XXII

DURATION

Section 1 - Effective Date

This Agreement shall be in effect from the 1st day of January, 2023 providing that it is approved by the Lodge and by Resolution of the Board of Public Works and Safety and the Common Council of the City of Mishawaka and shall remain in force and effect to and including the 31st day of December, 2024.

Section 2 - Future Negotiations

The parties agree that, commencing no later than the 31st day of August, 2024, they will undertake negotiations for a new Agreement.

The parties agree to form a separate working group made up of representatives from both bargaining teams to discuss alternative staffing models for the Mishawaka Police Department, including but not limited to the implementation of a twelve (12) hour shift staffing model. The work group is to report recommendations to both bargaining teams by no later than April 1, 2023. At the time that the parties tentatively agree to an alternate staffing model for the MPD, the parties will also immediately begin negotiations for an additional across the board wage increase, which will be made effective retroactive to January 1, 2023.

Section 3 - Renegotiation and Amendment

Notwithstanding any provision herein to the contrary, it is understood and agreed by the parties hereto that any provision contained in the Agreement may be amended at any time by the mutual agreement of the parties hereto.

Section 4 - Relation to Regulations and Rules

This Agreement shall supersede any rules and regulations inconsistent herewith, provided, however, rules and regulations not inconsistent with this Agreement may be adopted and promulgated by the Board of Public Works and Safety of the City of Mishawaka pursuant to Indiana statutes.

Section 5 - State of Emergency

In the event that a state of civil emergency is declared by the Mayor (civil disorders, natural disasters, etc.) , the following provisions of this Agreement - Article VI, Sections 1-4; Article VII, Section 1, Section 2 (i) and 2 (ii); Article VIII, Section 2; Article XI; Article XVII - may be suspended by the Mayor during the time of the emergency.

ARTICLE XXIII
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.

ARTICLE XXIV
GENERAL MATTERS

Section 1 - Police Department Rules

- A. Any changes in the Police Department Rules and Regulations will be discussed with the Lodge representatives prior to promulgation.
- B. All rules and regulations of the Police Department shall be issued in written form and shall be submitted to the Lodge at least seven (7) days before they are to take effect.

Section 2 - Job Security

The City and the Lodge agree that no permanent job presently being performed by a full-time police officer will be eliminated if it causes a reduction in the number of sworn officers.

Section 3- Light Duty

- A. There shall be at least four (4) light duty positions available. If a light duty position is available, the City shall provide light duty for any police officer requesting it during the time the police officer is temporarily disabled from performing the officer's regularly assigned duties. An officer who is placed on light duty may be reassigned to any shift or division within the Police Department.
- B. An officer will make a written request for light duty status to the Chief of Police. At that time the officer will also turn in written documentation from the officer's physician as to the reason the officer cannot perform the full duties of a police officer. The physician must be a licensed M.D. in the State of Indiana, and the statement will include:
 - A description and extent of limitations;
 - The probable length of limitations;
 - The prognosis for recovery; and
 - A recommendation as to the extent of any duty restrictions.

Light duty status will be granted for a thirty (30) day period or less. At the

discretion of the Chief, an officer may be granted another thirty (30) day light duty assignment upon request, but an officer cannot be on light duty for more than one hundred twenty (120) days for any single injury or illness.

Before the officer's return to regular duty, the officer must have a written statement from the Physician stating the officer may return to work. If the officer assigned to light duty is unable to return to full duty at the end of the light duty assignment, the officer will be placed on available paid sick leave. If the officer's paid sick leave has expired the officer may be placed on any other available paid leave for which the officer is eligible. If the officer is not eligible for any paid leave, the officer will be placed on unpaid leave and fully advised concerning any disability pension for which he/she may be eligible.

Section 4 - Right to Record Meetings

The Lodge or the City shall have the right to tape record any meeting held between the City and the Lodge reference wages and grievances.

Section 5 - Keeping of Police Officer's Gun

Upon leaving the department for any reason other than a quit or a fire, the police officer shall retain his/her service weapon which had been issued to him/her by the City.

Section 6 - Lodge Representation

Any police officer questioned by any superior with respect to any matter which might involve disciplinary action shall have the right to have a representative of the Lodge present during such questioning. In the event such questioning is being recorded, the police officer shall be informed prior to any such recording and shall be furnished with a copy of the recording and given the opportunity to make a transcription of the recording.

ARTICLE XXV **INDEMNIFICATION**

Section 1 - Claims and Judgments

- A. The City shall indemnify and hold harmless any police officer from all legal claims, suits, costs and judgment arising out of the acts or omissions of the officer arising out of and in the course of the performance of the duties of such officer; provided, however, that if an employer other than the City provides indemnification for the actions of the officer, the City shall not provide indemnification. Indemnity shall not be provided in the event any police officer willfully violates any legal order of a superior officer or the rules and regulations of the Police Department.
- B. Should any criminal action be instituted against any police officer for any action

arising out of and in the course of the performance of the duties of such office and should such proceeding be dismissed or result in a final disposition in favor of such person, the City shall reimburse such officer for the cost of defending such proceeding including reasonable counsel fees and expenses of the original hearing or trial or all appeals.

Section 2 - Executions on Judgments

The City shall take such actions as it deems appropriate to forestall the execution of judgment against a police officer personally and if notwithstanding such efforts by the City execution takes place, the City will indemnify and hold harmless the police officer on any judgment covered under Section 1 of this Article

Section 3 – Trials

- A. The City shall provide legal counsel of the City's choosing to any police officer against whom legal action has commenced, as set forth in Section 1 of this Article. However, in no case shall the legal counsel provided by the City have been involved in the prosecution of an administrative or disciplinary action against the officer which was based upon the same set of facts underlying the legal action in question.
- B. The police officer shall have the option to retain his/her own attorney at the officer's own expense to represent the officer's interests in litigation without any effect on the responsibilities of the City under this Article.

Section 4 - Police Officer's Responsibilities

- A. As a condition precedent to the right of indemnification under this Article, any police officer 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 if the City deems appropriate.
 - 2. Give written notice containing the particulars sufficient to identify the police officer 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, demand notices, summons, complaint or other process received by such police officer or officer's representative to the City's attorney.

4. Cooperate with the City in the conduct or settlement of any legal proceedings 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 police officer's physical or mental condition in the conduct or settlement of any legal proceedings.

ARTICLE XXVI BILL OF RIGHTS

All police officers within the bargaining unit shall be entitled to the protection of what shall hereafter be termed the "Mishawaka Police Officers' Bill of Rights."

- A. All police officers shall have the right to Lodge representation selected from a list prepared by the Lodge or the police officer shall have the right to select an active police officer in good standing with the Lodge, during any interview or questioning involving a disciplinary matter.
- B. When for any reason a police officer is under investigation by the City for conduct which results in dismissal, criminal charges, or suspension for more than five (5) days, the following additional rules are hereby established and shall be followed:

Section 1- Interviews

- A. Advance Notice

Prior to being interviewed for any reason which could lead to disciplinary action, an officer shall be:

1. Informed in writing of the nature of the investigation and whether the officer is a witness or a suspect, if and when known; informed of other information necessary to reasonably apprise the officer of the nature of the allegations of the complaint, including the date, time and location of the occurrence;
2. If prior to or at any time during the interrogation of a police officer it is determined that the officer may be charged with a criminal offense or be suspected of being implicated in a criminal offense, the officer shall be immediately informed of his/her constitutional rights and the investigation shall be terminated unless the officer chooses to waive his/her constitutional rights of self-incrimination;
3. Afforded an opportunity and facilities to contact and consult privately with an attorney of the officer's choosing and/or representative of the Lodge;

4. 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 officer not less than twenty-four (24) hours before initial interview commences, or written reports are required from the officer.

B. Interview Safeguards

Any interview of an officer shall be when the officer is on duty unless the seriousness of the complaint dictates otherwise.

1. Interviews shall take place at the Mishawaka Police Station facility, or elsewhere if mutually agreed, unless the emergency of the situation necessitates otherwise.
2. The officer may have a Lodge representative and/or an attorney present to witness the interview provided the representative and/or attorney does not participate in the interview. However, the interview may not be unduly delayed awaiting an unavailable Lodge representative when other Lodge representatives are available.
3. An attorney or representative chosen by the officer 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 in excess of twenty-four (24) hours because of the unavailability of the attorney or representative chosen by the officer. However, no matter how extreme an emergency exists, no interrogation shall take place until the officer shall be given a minimal of three (3) hours to obtain the services of a representative and/or attorney.
4. During the interrogation of the officer, the attorney or representative shall not make any statements or objections of any kind to the investigator nor will the officer in any way impede the interrogation but will restrict all remarks to conferring with the officer. The representative's failure to object to a question shall not constitute a waiver of the officer's ability to later object to any questions asked.
5. The officer being interviewed shall be informed of the name, rank, and command of the Officer in Charge of the investigation and the

interviewing officer.

6. Interviews shall be done under circumstances free of intimidation or coercion and shall not otherwise violate the officer's constitutional rights. The officer shall not be subjected to offensive or abusive language. No promise of award shall be made as an inducement to answer questions.
7. Interviews shall not be overly long. The officer shall be entitled to reasonable intermissions as requested for personal necessities, telephone calls, rest periods, with one ten (10) minute intermission every hour, if the officer requests.
8. All interviews shall be limited in scope in activities, circumstances, events, conduct or acts which pertain to the subject of investigation.
9. Interviews and investigations shall be concluded with no unreasonable delay.

C. When the investigation results in charges being filed:

1. The officer will be furnished with a copy of all documents in the Internal Investigation file which will contain all material facts of the matter under investigation;
2. The officer will be furnished with the names of all witnesses and complaints who will appear against him/her and/or whose statements will be used against the officer.

D. When disciplinary action results:

1. When the investigation results in a determination of a sustained complaint and disciplinary action, only the findings and the disciplinary order will be placed in the officer's personnel file unless the officer requests inclusion of the complete record.
2. No dismissal, demotion, or other punitive measures shall be taken against an officer unless the officer is notified of the action and a reason for such action prior to the effective date of such action.

Section 2 - Personal Privileges

- A. No officer shall be required for purposes of assignment or other personnel action

to disclose any item of his/her property, income assets, source of income or personal or domestic expenditures including those of any member of the officer's family, unless such information is obtained pursuant to proper legal process or tends to indicate a conflict of interest with respect to the performance of the officer's official duties.

- B. No officer shall have his/her residence, private place of business, if any, private vehicle or locker space assigned to him/her by the Mishawaka Police Department searched unless a valid search warrant is obtained or the officer voluntarily agrees to such search.
- C. No member of the immediate family of the officer shall be required to give a statement to the investigator and prior to requesting any member of the immediate family of the officer to give a statement, the officer shall be given notice of such intended request and the officer shall be given an opportunity to confer with that family member before that family member shall be asked to give a statement.

Section 3 - Political Activities

Except when on duty, no officer shall be prohibited from engaging in political activities.

Section 4 - Blood, Breath and Urine Tests

Blood, breath and urine tests for controlled substances are mandatory for any member of the department who is suspected of being under the influence of alcohol or any drug while on duty; provided, however, that the officer shall not be required to submit to any such tests in regard to any occurrence at a time when he, while off duty, was compelled to take immediate police action in response to an emergency situation.

Section 5 - Polygraph Examinations

The police officer under investigation shall not be required to take a polygraph examination unless the officer's accuser or accusers agree to take such a polygraph examination, and have taken such examination prior to the police officer being asked to take such examination; provided, however, anything in this Article to the contrary notwithstanding, none of the charts, conversations, discussions, questions or results derived from such polygraph examination shall be used against such officer in any disciplinary proceeding nor used against any such officer in any civil or criminal proceeding. In the event the polygraph examiner desires to question the police officer after the polygraph test has been administered, the examiner shall first advise the officer of his/her rights in writing and if the officer waives in writing his/her rights, then any statements by such officer may be used against such officer.

Section 6 - Maintenance of Records

- A. Complaints investigated by the Department shall be handled in the following manner by classification:
1. Unfounded, exonerated and non-sustained complaints shall be destroyed upon the lapse of two years from the date of complaint with the enforcement officer who is the subject of the complaint having a right to be present during the destruction, if the officer so desires. Said officer shall be informed of the proposed destruction before it takes place.
 2. Sustained complaints may be kept in the personnel file for a period of three (3) years at the end of which time they shall be destroyed, in the presence of the law enforcement officer who is the subject thereof, if so desired by the officer, 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 police officer shall have the opportunity at a reasonable time during office hours, to review his/her active personnel file and any closed investigative file in which the officer was the accused. Although such request may be made orally, it shall be accompanied by written request signed by the officer for a matter of record. In the event there is any comment adverse to the officer's interests in his/her 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 the officer shall have the right to file a grievance in regard to any such matter which is of such gravity that it could effect promotional opportunities which grievance shall then be processed in accordance with grievance procedures.
- C. Any officer 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.
- D. A written warning given to an officer shall remain in the officer's personnel file for a period of six (6) months from the date of issue. Upon the expiration of this period, the warning shall be removed from the personnel file and destroyed, in the presence of the affected officer if so requested.
- E. A written reprimand given to an officer shall remain in the officer's personnel file for a period of one (1) year from the date of issue. Upon the expiration of this period, the reprimand shall be removed from the personnel file and destroyed, in the presence of the affected officer if so requested.

Section 7 – Limitations

No police officer shall be subject to internal discipline by the Mishawaka Police Department for any cause or matter occurring more than 60 (days) from the date that the City first became aware of the alleged incident. Notwithstanding this provision, and in accordance with Indiana Code §36-8-3-4(n), if an officer is subject to criminal charges as a result of an incident, the Board of Public Works and Safety may place the officer on administrative leave with or without pay. Any other disciplinary action by the City shall be stayed until the disposition of the criminal charges in the trial court. At such time the criminal charges are resolved in the trial court, no police officer shall be subject to internal discipline by the Mishawaka Police Department unless it is within the remainder of the 60-day window as provided in this section.

ARTICLE XXVII FAMILY LEAVE

In the event of a child born to a police officer or a police officer's spouse, a police officer shall receive eight (8) continuous hours leave time without loss of pay to attend the child's birth. Any additional leave time, for family or medical purposes, shall be granted by the Chief, or in the Chief's absence the Shift Commander, in accordance with the Family and Medical Leave Act of 1993.

ARTICLE XXVIII RANK STRUCTURE

- A. The President of the Board of Public Works and Safety shall be the executive head of the Department of Police with the following officers of the department as listed below in order of rank:
1. Chief of Police
 2. Division Chiefs of Police
 - (a) Uniform Division Chief
 - (b) Detective Division Chief
 - (c) Services Division Chief
 3. Captains of Police
 4. Lieutenants of Police
 5. Sergeants of Police
 6. First Class Patrol Officers

7. Second Class Patrol Officers

8. Probationary Officers

The above ranks will be recognized throughout the department regardless of the individual's unit or duty assignment.

Authority within this Police Department shall be delegated through the above departmental command channels and recognized in that order.

Whenever two or more officers of equal rank are present (unless specifically stated otherwise), the officer with seniority in rank shall be in command and fully responsible for police activities. Whenever equal rank is concerned, caused by the absence of a superior officer, seniority of service in rank will prevail and that officer shall be in charge unless otherwise ordered. This order of command shall be in force on all members of the Police Department. The above and foregoing shall not affect bumping rights.

ARTICLE XXIX
CANINE AND SPECIAL ASSIGNMENT OFFICERS

Section 1 - Canine Officers

- A. Police officers assigned to Canine duty may be assigned to any division within the Police Department at the sole discretion of the Chief of Police. In the event a Canine officer is assigned to the Uniform Division that officer shall count toward minimum shift strength and shall work such hours as assigned by the Police Chief.
- B. An officer assigned to Canine duty shall be required, as part of the officer's regular duties, to spend off-duty time caring, grooming, feeding, exercising, and training the police dogs owned by the Mishawaka Police Department.
- C. The City shall grant each officer assigned to Canine duty one (1) hour of time off each workday, in order to compensate the officer for the off-duty care and training duties performed.
- D. The City shall compensate each officer assigned to Canine duty for his/her off-duty participation in any demonstration or similar activity by the payment of extra duty pay as defined by this Agreement or by awarding the officer compensatory time at a rate equal to the officer's rate of extra duty pay.

Section 2 - Special Assignment Officers

- A. Police officers assigned to the Special Operations (SOS) unit, Metro Homicide, Special Victims Unit, DARE unit, Community Relations, Canine unit, Services Division, as well as the Traffic Bureau officers shall be considered to be on special assignment. Such officers shall not count toward the minimum shift strength requirements established by this Agreement and shall work such hours as are assigned by the Chief of Police.
- B. Special assignment officers shall not be used in such a manner as to avoid the assignment of extra duty to other officers. Nor shall such special assignment officers be used in such a manner as to circumvent the minimum shift strength requirements established by this Agreement

ARTICLE XXX SCHOOLS

- A. The City shall select and post all available openings for advanced training covering all specialties, including traffic. Officers shall be given an opportunity to attend such schooling by signing the posted list. Selections of the officers shall be made from those who have signed the list with the City choosing from the list. No officer may be scheduled for training while on vacation. Any officer failing a specialty course more than once may be disqualified from further attendance at the discretion of the City.
- B. When an officer is directed by management to attend mandatory schooling or training, the officer will receive overtime pay at one and one-half hours for each hour spent in attending such schooling or training. No officer may be scheduled for training while on vacation. This provision will not apply, however, to officers attending the basic course of instruction at the Indiana Law Enforcement Academy.

ARTICLE XXXI COMPENSATORY TIME

- A. When attending schooling or training on a voluntary basis, a police officer shall be given compensatory time at a rate of one and one-half (1.5) hours for each hour of schooling or training attended.
- B. Compensatory time owed by the City for voluntary schooling, training or heavy maintenance work may be taken by officers but will not take precedence over random days and may not be given if the absence of the officer will cause the shift's strength to fall below minimum strength.

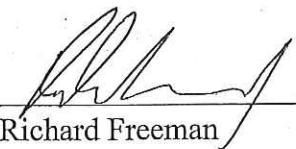
- C. In the event a police officer retires, resigns or is discharged with time owed on the books, past practice will be followed.
- D. Once compensatory time is authorized, the date may not be revoked or cancelled.

ARTICLE XXXII
DRUG - FREE WORKPLACE

In recognition of the importance, both in human and economic terms, of alcohol and drug abuse, the City of Mishawaka and its administration is committed to make every effort to have a drug and alcohol free workplace and workforce. The rules related to Drug Free Workplace are attached and made a part of this Contract as an Exhibit.

Signed and dated the 16 day of January 2023.

The Mishawaka Fraternal Order of Police
Lodge 91, by FOP President


Richard Freeman

The City of Mishawaka, by Chief of Police


Kenneth Witkowski, Jr.