

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

June 19, 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, June 19, 2023 at 7:00PM. The meeting was called to order by Council President Gregg Hixenbaugh. All were asked to stand for the Pledge of Allegiance, followed by a moment of silence in recognition of former Redevelopment Commission Member, Dr. Gilbert Eberhart, who served many years in that capacity and longtime Mishawaka Police Officer, Mike Robinson. Mr. Hixenbaugh offered the Council's condolences to both of their respective families.

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.

Clerk Block called the roll.

Roll Call.

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

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

Minutes for the Regular Meeting on June 5, 2023 were approved as received from the Clerk's Office.

Clerk Block read the following letters from the City Plan Commission regarding their recommendations from their June 13, 2023 meeting and the Historic Preservation Commission regarding their recommendations from their June 6, 2023 meeting.

- | | |
|-----------------------------|---|
| Resolution 2023-01 | A resolution approving amendment to the declaratory resolution and the economic development plan for consolidated area improvement project |
| Petition No. 2023-06 | A petition by Creed Capital LLC requesting to rezone property at 2406 Schumacher and adjacent vacant property from C-1 General Commercial to R-3 Multi-Family Residential District. |
| Petition No. 2023-11 | A petition of RWP Investments LLC requesting to rezone property at 712 Division Street from R-1 Single Family Residential to R-2 Two Family Residential District |

- Petition No. 2023-12** A petition by City of Mishawaka requesting rezone from property west of and adjacent to 600 E 3rd from S-1 Extensive Open Space District to C-3 City Center Commercial District
- Petition No. 2023-13** A request submitted by Storage of America seeking to enact an established zoning as I-1 Light Industrial District for approximately 19.38 acres of vacant land south of 1505 South Byrkit Avenue
- Petition No. 2023-14** A request submitted by 1500 McKinley LLC requesting to enact and establish zoning a C-4 Automobile Oriented Commercial for property located 100 feet north of the northeast corner of East McKinley and Maplehurst in Mishawaka, Indiana
- HPC No. 2023-1** A proposed ordinance submitted by Robert Sullivan to establish 124 South Race Street, Mishawaka, Indiana, as a local historic landmark

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

PROPOSED ORDINANCE NO. 2023-24

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

Rezone from R-1 Single Family Residential to R-2 Two Family Residential to match existing use as a duplex – 712 Division St.

(Assigned to Land Use Planning Committee)

PROPOSED ORDINANCE NO. 2023-25

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

Rezone from S-1 Extensive Open Space to C-3 City Center Commercial – Northeast corner of Cedar & E. Third St.

(Assigned to Land Use Planning Committee)

PROPOSED ORDINANCE NO. 2023-26

**AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY TO THE CITY OF
MISHAWAKA, INDIANA AND PROVIDING ZONING CLASSIFICATION
THEREFORE**

**Annex and Zone to I-1 Light Industrial District for proposed Self Storage – Vacant land
south of 1505 S. Byrkit
(Assigned to Land Use Planning Committee)**

PROPOSED ORDINANCE NO. 2023-27

**AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY TO THE CITY OF
MISHAWAKA, INDIANA AND PROVIDING ZONING CLASSIFICATION
THEREFORE**

**Annex and Rezone to C-4 Automobile Oriented Commercial – 100’ north of the Northeast
corner of E. McKinley & Maplehurst
(Assigned to Land Use Planning Committee)**

PROPOSED ORDINANCE NO. 2023-28

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,
INDIANA, AUTHORIZING THE CITY TO ISSUE ONE OR MORE SERIES OF ITS
TAXABLE ECONOMIC DEVELOPMENT TAX INCREMENT REVENUE BONDS AND
APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO IN
CONNECTION WITH THE IRONWORKS PHASE 2 PROJECT**

**Approving and Authorizing Economic Revenue Bonds – Ironworks Phase II
(Assigned to Budget and Finance Committee)**

PROPOSED ORDINANCE NO. 2023-29

**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**

**Rezone from C-1 to R-3 Multi-Family Residential – 2406 Schumacher Dr. and adjacent
property
(Assigned to Land Use Planning Committee)**

PROPOSED ORDINANCE NO. 2023-30

**AN ORDINANCE TO ESTABLISH 124 SOUTH RACE STREET AS A LOCAL
HISTORIC LANDMARK WITHIN THE CITY OF MISHAWAKA, INDIANA**

(Assigned to Land Use Planning Committee)

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

RESOLUTION R2023-14

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,
INDIANA, APPROVING A PETITION OF HR MISHAWAKA BOARD OF ZONING
APPEALS FOR THE PROPERTY LOCATED AT: NORTHEAST CORNER OF E
MCKINLEY AND MAPLEHURST, MISHAWAKA, INDIANA
Fiscal Plan for Annexation of 15793 E. University Dr.**

Ken Prince, Director of Planning and Community Development, spoke in favor of **RESOLUTION R2023-14**. Mr. Prince stated the fiscal plan for their consideration that evening was for a 5.04 acre parcel on the north side of University Drive. Mr. Prince stated this was immediately to the west of Granger Community Church across from a jersey shop that used to be Pier 1 imports, which was the property that was directly across the street. Mr. Prince stated to the west of that was the veterinary clinic and to the west of that was where Drive 'N Shine was proposing the car wash and the greater PUD beyond that. Mr. Prince stated the property was 66% contiguous to the city while exceeding the 12.5% required by state law for annexation. Mr. Prince stated as was customary, they distributed this to all of the various departments to identify if the property could be served by their existing budget and if any capital improvements would be required. Mr. Prince stated the utilities were all in University Drive and under the current jurisdiction of the city, so no additional capital expenses would be borne by the city as part of the development and they would be borne strictly by the developer and they identified that the property could be served by their existing budgets and he was happy to answer any questions they had.

Dave Holzem, Nifong Realty and Development out of Green Bay, spoke in favor remotely of **RESOLUTION R2023-14**. Mr. Holzem stated they were the developer of the proposed project and wanted to show that he was present and available to answer any questions.

Mr. Compton asked when he developed in other communities, what his practice was for hiring contractors and people to work on the project who are from that specific community. Mr. Holzem stated they had developed properties in Indiana and actually, Larry Nifong was a native of Mishawaka, Indiana. Mr. Holzem stated they just finished a PetSmart in Valparaiso, Indiana and that was a project that was general contracted by Larson Danielson, a local contractor. Mr. Holzem stated their engineers were locals, so they supported and encouraged local contractors and it was easier for them when people had familiarity and there was not a lot of travel time, logistically, etc. Mr. Holzem stated the majority of this project would be done with local contractors. Mr. Holzem stated they would run into a tenant requiring certain national vendors they used, but they could not control that since that was part of their process, but anything they could control would be done by local contractors. Mr. Compton appreciated that and understood there were certain agreements that they might have. Mr. Compton also appreciated him reaching out and working with local contractors. Mr. Holzem thanked them for their consideration.

Question was called for at 7:14PM for **RESOLUTION R2023-14. Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The resolution passed 9-0.

The chair entertained a motion to postpone the public hearing on **PROPOSED RESOLUTION R2023-15** due to a clerical error, which Mr. Prince would speak about, and to delete **PROPOSED RESOLUTION R2023-15** from that evening's agenda. The motion was made and seconded and Mr. Prince spoke about the error.

Ken Prince, Director of Planning and Community Development, spoke to the council. Mr. Prince apologized as there was a 21-step process regarding the potential bond issuance and the change of the TIF District and that was required and identified by Randy Rampola and what they did was they forwarded the Planning Commission resolution when they should have obviously should have forwarded the Council resolution, which actually would not occur until the July 17th regularly scheduled meeting. Mr. Prince stated they would be seeing a separate resolution under a different number coming at a later point in time but he just wanted to apologize for that snafu in the process. Mr. Prince stated this was the third time in 10 years that they had amended the TIF District, so they did not do it very often and he apologized once again. Mr. Hixenbaugh thanked Mr. Prince for saying that and stated there was no harm done.

A voice vote was held on the motion to remove **PROPOSED RESOLUTION 2023-15** from that evening's agenda. The motion passed unanimously and the item was removed.

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

PROPOSED ORDINANCE NO. 2023-17

**AN ORDINANCE ANNEXING CONTIGUOUS TERRITORY TO THE CITY OF
MISHAWAKA, INDIANA AND PROVIDING ZONING CLASSIFICATION
THEREFORE**

**Annex & Establish Zoning as C-1 General Commercial District – 15793 E. University Dr.
VOTE ONLY**

Mr. Mammolenti reported the Committee of Land Use Planning recommended this proposed ordinance should be adopted. Upon a second by Mr. Banicki, the motion carried.

Mr. Hixenbaugh stated since they had held the public hearing on this matter, pursuant to state law, he opened the floor for any questions or comments from the council on this proposed ordinance. Hearing none, he called for the question.

Question was called for at 7:18PM for **PROPOSED ORDINANCE NO. 2023-17. Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 9-0, thus it became **ORDINANCE NO. 5843.**

PROPOSED ORDINANCE NO. 2023-20

**AN ORDINANCE AMENDING CHAPTER 5811 FIXING THE SALARIES OF ALL
EMPLOYEES OF THE CITY OF MISHAWAKA EXCEPT SWORN PUBLIC SAFETY,
MISHAWAKA PARK DEPARTMENT, ELECTED OFFICIALS AND THE
MISHAWAKA UTILITIES FOR THE CITY OF MISHAWAKA, INDIANA, FOR THE
YEAR BEGINNING JANUARY 1, 2023
Amending Ordinance 5811 Civil City Salary Ordinance**

Mr. Banicki reported the Committee of Budget and Finance recommended this proposed ordinance should be adopted. Upon a second by Mr. Mammolenti, the motion carried.

Ken Witkowski, Chief of the Mishawaka Police Department, spoke in favor of **PROPOSED ORDINANCE NO. 2023-20**. Chief Witkowski stated this ordinance regarded Kelly Gorney, their Major Crimes Technician. Chief Witkowski stated it was a fairly new position for them so it was kind of a work in progress as they moved forward and kept finding different arenas that benefited them with her expertise and qualifications. Chief Witkowski stated she had a Forensic Science degree as well as a Criminal Justice degree and was a Forensic Analyst. Chief Witkowski stated actually the position evolved from the expiration of the homicide unit and they needed expertise in this field. Chief Witkowski stated they had hired some laterals recently and were exciting about moving forward. Chief Witkowski stated in a homicide investigation or really any major crime, you got one opportunity to get it right and once you left that scene you could not go back and put the toothpaste back into the tube so for perk purposes they needed experts at those positions. Chief Witkowski stated he was contacted by one of the lead sworn officers to ask that they moved forward and try to give her the same stipend as the sworn officers, because she was on call, she came in all the time and they thought it was beneficial to have her there. Chief Witkowski stated it was crucial for the integrity of evidence collection and currently, she was their sole investigator at autopsies when she went so it was very beneficial to have her at the scene. Chief Witkowski stated when she went to the autopsy with the questions that are asked when doctors ask certain things, she could testify to the fact that this was what was found and how she believed it happened and make sense of it all to piece it together. Chief Witkowski stated her presence also helped preserve chain of evidence and she would take full responsibility of packaging evidence that needed to be presented to the State lab or wherever else it may go. Chief Witkowski mentioned it also saved overtime from officers, because she was able to collect the evidence and take it and put it in the vault so they did not have to spend man hours. Chief Witkowski stated she was on call so they would like to see a stipend for her although it was different from sworn as she was a civilian and they realized that, but they could not replace her and she did such a good job. Chief Witkowski believed overall, they had one of the most experienced teams in the county with the people they got and with her coming on board. Chief Witkowski stated they felt it was crucial and beneficial to the department.

Mr. Mammolenti stated it sounded like she was an outstanding choice for the department and filled a great role that was well needed and would be utilized extremely well. Mr. Mammolenti asked if she would also be doing a lot of court time. Chief Witkowski stated that was right and she could be an expert witness in court. Mr. Mammolenti then asked if she would be paid the

same wage when she was doing court time. Chief Witkowski stated she would because that was just a normal working day.

Mrs. Voelker asked if she was a salaried employee. Chief Witkowski stated she was. Mrs. Voelker asked if this was a certification on top of her current salary. Chief Witkowski stated that was correct. Mrs. Voelker asked if she was called out in the middle of the night, if it would not cost the city any more for her to go out, because that was an expectation of her job. Chief Witkowski stated she would get time owed and she had been out to 9 or 10 already this year of different shootings and different sorts, so she was currently getting time owed and time and a half but she only got time owed and could not get paid because she was a civilian.

Mrs. DeMaegd congratulated not only the police department but the whole city for being able to have Ms. Gorney there to do this work and she could understand it was very tedious and time consuming and it took a lot of patience and they were so lucky to have her. Chief Witkowski stated they were very fortunate to have that caliber of a person with them.

Mr. Hixenbaugh stated he supported this and they were lucky to have her, as she provided a valuable addition to their resources. Mr. Hixenbaugh stated what he understood him to say that evening as well as in an earlier conversation that the two of them had was that this was not a replacement for the sworn officers who received special pay as a Major Crimes Technician and she supplemented and took care of other responsibilities to help them to operate more efficiently and asked if that was correct. Chief Witkowski stated that was exactly correct. Mr. Hixenbaugh asked, to clarify, if she received overtime compensation not in terms of dollars and cents but the city taking advantage of the flexibility they had as a governmental employer compensating her with additional paid time off which she then scheduled through the Police Department in lieu of receiving time and a half and overtime compensation. Chief Witkowski stated yes. Mr. Hixenbaugh asked if the stipend amount she would be receiving as anticipated in this proposed ordinance was equivalent to the extra duty pay that sworn officers received. Chief Witkowski stated that was correct and it was exactly the same as sworn officers. Mr. Hixenbaugh stated it sounded like they were lucky to have her and they had discussed it before, but he wanted to reiterate the Council's thanks to him and his department for reacting very quickly to the change in how major crime investigation was handled in St. Joseph County. Mr. Hixenbaugh stated as far as he could tell, they had not missed a beat even though they had to hire some people and do some things that they had not had to do in house in some time. Mr. Hixenbaugh congratulated him and his officers and civilian employees for being able to pull this off very seamlessly. Chief Witkowski thanked him very much.

Question was called for at 7:28PM for **PROPOSED ORDINANCE NO. 2023-20. Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 9-0, thus it became **ORDINANCE NO. 5844.**

PROPOSED ORDINANCE NO. 2023-21

AN ORDINANCE OF THE CITY OF MISHAWAKA, INDIANA, AUTHORIZING AN INVESTMENT POLICY

Authorizing an Investment Policy

Mr. Emmons reported the Committee of Budget and Finance recommended this proposed ordinance should be adopted. Upon a second by Mr. Banicki, the motion carried.

Kayla Yoder, Deputy Controller, spoke in favor of **PROPOSED ORDINANCE NO. 2023-21**. Mrs. Yoder stated she was requesting approval for three investment ordinances required by state statute. Mrs. Yoder stated the first one was this proposed ordinance, which authorized an investment policy for the city. Mrs. Yoder stated the policy set forth investment objectives in parameters for the management of public funds to provide a competitive return. Mrs. Yoder stated she was happy to answer any questions.

Mr. Hixenbaugh thanked Mrs. Yoder for the work that she and others did on this and it was a very comprehensive ordinance and it set out their strategy which was to be fiscally responsible, to be prudent and not to take on unnecessary risk but to look to maximize the return on their funds in the best interest of the community. Mr. Hixenbaugh thanked everyone involved in drafting not only this ordinance, but the other two companion ordinances as well.

Question was called for at 7:31PM for **PROPOSED ORDINANCE NO. 2023-21. Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 9-0, thus it became **ORDINANCE NO. 5845**.

PROPOSED ORDINANCE NO. 2023-22

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA AUTHORIZING THE INVESTMENT OF PUBLIC FUNDS

PURSUANT TO INDIANA CODE 5-13-9-5.7

Authorizing the Investment of Public Funds

Mr. Banicki reported the Committee of Budget and Finance recommended this proposed ordinance should be adopted. Upon a second by Mrs. Voelker, the motion carried.

Kayla Yoder, Deputy Controller, spoke in favor of **PROPOSED ORDINANCE NO. 2023-22**. Mrs. Yoder stated this ordinance allowed the investment of public funds for more than two years but not more than five years, commonly known as the Maturity Ordinance. Mrs. Yoder stated they rarely went longer than two years.

Question was called for at 7:33PM for **PROPOSED ORDINANCE NO. 2023-22. Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 9-0, thus it became **ORDINANCE NO. 5846.**

PROPOSED ORDINANCE NO. 2023-23

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA AUTHORIZING THE INVESTMENT OF PUBLIC FUNDS PURSUANT TO INDIANA CODE 5-13-9-5 Authorizing the Investment of Public Funds outside City Limits

Mrs. Voelker reported the Committee of Budget and Finance recommended this proposed ordinance should be adopted. Upon a second by Mr. Banicki, the motion carried.

Kayla Yoder, Deputy Controller, spoke in favor of **PROPOSED ORDINANCE NO. 2023-23.** Mrs. Yoder stated this ordinance required annual approval and allowed the city to purchase CDs from banks outside of the city limits. Mrs. Yoder stated they contracted with the Bank Advisory Arm of Baker Tilly who managed to bid in paperwork.

Question was called for at 7:35PM for **PROPOSED ORDINANCE NO. 2023-23. Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 9-0, thus it became **ORDINANCE NO. 5847.**

PRIVILEGE OF THE FLOOR

Larry Green and Kay Green, 1807 East Jefferson Boulevard, spoke under **PRIVILEGE OF THE FLOOR.** Mrs. Green stated she was born and raised in Mishawaka and she could not be more proud of the city and loved the city but she was raised in a time that your word was your bond and Jefferson was being widened they had meeting after meeting and finally decided what size they were going to make it and everything. Mrs. Green stated they were all promised it would stay a boulevard with no truck traffic and there were five signs on each of the road that said no trucks. Mrs. Green stated there used to be two signs on Capital that said you could not turn west on Jefferson, but when they were working on McKinley, they took those signs down temporarily which sent trucks down Jefferson and they were told as soon as it was fixed the signs would go back up but they never had gone back up and traffic got worse and worse. Mrs. Green stated the semis turned on Clover, which was a very small two-lane street and they had the choice when heading west to either go to the other lane to get on Clover or they would go up over the curb and the same way again when they were coming out. Mrs. Green stated they had five small children that lived across the street that were out and about all of the time up and down the sidewalk and this was an accident waiting to happen. Mrs. Green stated their mailbox had been taken down by the mirrors off the trucks when they turned the corner, they constantly had a hole out in front of their house when they turned and started to accelerate and what brought it all to a head was what happened three weeks ago when she was bringing the trash containers in, turned her back and got hit right in the middle of the back with concrete that was about as big as a baseball. Mrs. Green

stated they asked the police to come out and could not tell them how many times they asked them to look into patrolling their area. Mrs. Green stated as of now, they had patched the hole with black top but now there was a new hole with the concrete. Mrs. Green stated they had done petitions, talked to the Mayor and he asked them to get a list of all the trucks that were turning there as well as the names of the trucking companies and said they would send letters to the businesses on Clover Road, so they could tell their truck drivers not to go that way anymore but she did not know if that made any difference. Mrs. Green stated the only thing that was going to slow it down or stop it was the signs back on Capital Avenue that said you could not turn that way. Mrs. Green stated even if it was just for a week, if truckers started to get tickets on that stretch of road, they would immediately be telling other truckers to not go down Jefferson because they would receive that ticket and that was the only thing that would slow it down. Mrs. Green stated she did not want someone to get hurt and that was what would happen. Mrs. Green stated this was supposed to be a boulevard so she was asking the Council to do anything they could and they felt they had done everything they possibly could do to get it taken care of and they were not making any headway whatsoever. Mrs. Green thanked them very much. Mr. Green stated the easy solution to settle this was to get the signs back up on Capital turning east on Jefferson and they had no problems before. Mr. Green stated it seemed like when they took the sign down was when the troubles began. Mr. Green stated you were talking all hours of the night with trucks running right down in front of their home. Mr. Green complimented Tim Williams, who used to be on the Mishawaka Police Department. Mr. Green stated Lieutenant Williams would sit in his driveway and went out and gave tickets and also talked to a few of the truckers and they agreed to not come down Jefferson again. Mr. Green gave him all kinds of compliments for that because Mishawaka Police were there and they did act and they did help. Mr. Green thanked them for their time. Mr. Hixenbaugh stated they were all sorry to hear what they were dealing with and one immediate suggestion he made was once they concluded the meeting that evening, to talk to a couple of individuals who happened to be there that evening. Mr. Hixenbaugh stated Chief Witkowski could talk to them from a police standpoint, their Cooperation Counsel, Pat Hinkle, was also present and he was sure he'd be happy to speak with them about what he could add to the solution and then Ken Prince, who not only dealt with economic development but was the Deputy Mayor. Mr. Hixenbaugh stated none of those three gentlemen, as helpful as they could be, were the City Engineer but they all had a great body of knowledge and perhaps could help round out some semblance of a solution. Mr. Hixenbaugh stated hopefully some good could come of that conversation but they did appreciate the information they shared and opened up the floor for any questions or comments from the Council.

Mr. Mammolenti thanked them both for coming that evening and sharing their thoughts and asked how long the sign had been removed for. Mrs. Green stated the sign had probably been gone almost ten years. Mrs. Green stated she was talking to everyone trying to have it put back up but the state had to put it back up since it was on Capital and nobody could request it except the city and she did not know if it had been requested or not. Mrs. Green stated they asked about it many times and the trucker probably had turned and did not realize it until they turned but it was the same truckers over and over. Mrs. Green stated it was all of the time. Mr. Mammolenti asked how long they had resided at the property. Mrs. Green stated 21 years. Mr. Mammolenti asked if she recalled this ever being an issue prior to the sign being removed. Mrs. Green stated it had been somewhat of an issue ever since they widened the street, but it was reasonable and it was not like how it was now. Mrs. Green stated now it was just one after another. Mr. Mammolenti asked once they turned if there

were signs on the side of the road. Mrs. Green stated there were five signs on each side of the street stating no trucks.

Mr. Compton thanked Mrs. Green for calling him and speaking to him personally and it was nice to see her in person. Mr. Compton stated he sent an email to the Head of Engineering and she clarified that there were six signs and they were the maximum size they could be, but they were after the turn. Mr. Compton reiterated what their Council President said because as she stated, the state had to take care of the signs on Capital and Mishawaka was not responsible for putting them there nor could they. Mr. Compton stated Mr. Prince and Mr. Hinkle both had the Mayor's ear and both of them could assist in requesting from the state that this be better labeled and directed at that intersection. Mr. Compton stated other than that, human nature was what it was and he was not condoning what was happening but it was what it was and that was where Chief Witkowski could maybe help with that a little bit if once in a while, they could have someone watching for truck traffic in there. Mr. Compton stated if some of the key repeat offenders and their company gets word and maybe letters needed to be sent again, something a little stronger, to solve this. Mr. Compton stated he was making all of these suggestions to give the people they would talk to that evening an idea of what he was thinking about and some assistance that they could help them with. Mr. Compton stated he would appreciate that and appreciated both for being there that evening. Mrs. Green stated she worried mostly about the kids and they had a lot of kids in that neighborhood and it was a very dangerous situation coming on and off of that road. Mr. Compton stated they ran into this where they had residential and industrial neighborhoods bumping into each other, especially on a busy street like Jefferson. Mr. Compton stated they had it on Elder Road, Home Street, Currant Road, etc. where it was somewhat industrial and deliveries needed to be made. Mr. Compton stated it was just that they needed to follow the rules and have a safe route in and out for everyone. Mrs. Green stated they were all accessible off of McKinley and that was the assigned route. Mr. Compton stated he understood and thanked them again.

Mr. Green stated he was a longtime resident of Mishawaka, 80 years he had been there and 79 for his wife. Mr. Green stated he had one more request in which when you were turning going south on the bypass and you turned on Jefferson, they put up a sign that said Jefferson Street and still a Boulevard. Mr. Green thanked them. Mr. Hixenbaugh stated that was dually noted and thanked him.

Mr. Mammolenti made a comment for having worked with several truck drives in the past 10 to 15 years and stated he thought that a sign up there would deter it very, very much. Mr. Mammolenti stated he would like to see, as everyone else here would, something done as quickly as possible because those truck drivers were trained to look at signs before they turned and he would say 99% of them if they saw that sign, would not turn when they knew the truck route was on McKinley. Mr. Mammolenti stated anything that could be done as quickly as possible would be greatly appreciated.

Mr. Hixenbaugh stated his sense of it was that if they city were to engage in an effort to try to lobby the powers that be in the state, that the Council would be happy to assist and partner with the administration in that effort. Mr. Hixenbaugh stated clearly this was an issue that needed to be addressed, probably in other locations as well but if they could try to address this one and if they could let them know what it was they could do to help, they would be happy to be of assistance.

UNFINISHED BUSINESS

PROPOSED ORDINANCE NO. 2023-10

**AN ORDINANCE OF THE COMMON COUNCIL OF THE
CITY OF MISHAWAKA, INDIANA AMENDING
TITLE III, CHAPTER 34 OF THE
MISHAWAKA MUNICIPAL CODE
Amending the Municipal Code Personnel Policies – Call to Active Military Duty
AMENDMENT REQUESTED**

The chair entertained a motion to delete the proposed ordinance in its entirety and replace it with an amended ordinance that had been distributed to the Council from the Clerk's Office. The motion was made and seconded, thus a voice vote was held. The motion passed unanimously and the committee report was read.

Mr. Compton reported the Committee of Personnel recommended this proposed ordinance should be adopted. Upon a second by Mr. Banicki, the motion carried.

Ken Witkowski, Chief of the Mishawaka Police Department, spoke in favor of **PROPOSED ORDINANCE NO. 2023-10AA**. Chief Witkowski stated Susan Kile did the research on this and the backlog and how they got to where they were that day and they found out that it started back in 1973 under Mayor Bob Beutter back then. Chief Witkowski stated it was updated in 1989 and in 2007 again with the first one in '89 talking about allowing up to 15 days annually and then the others were vaguer how he read them, but they mentioned 30 days of paid leave beyond deployment, so that was why he was in favor of the new one. Chief Witkowski stated it spelt it out to the T on how they should operate to do this military pay and actually it was exactly how they had been done it for quite a few years. Chief Witkowski stated he spoke to a retired officer earlier in the day who was hired in 1998 and he was a military guy and when he questioned him about how he was paid, there was no question about the long-term deployment with it being put in by federal law, he confirmed that the summer was two weekends and then the weekend once a month was when he was not being compensated extra, but was allowed to take that time to go on military leave. Chief Witkowski stated of course if it was his off day, he would not receive anything except the military pay but he was allowed by the city to leave work and attend the training. Chief Witkowski stated he liked it and of course the all knew the military and the veterans but you could not see much what they did and they protected this country and he would be the first to say that he could not commend them not only for the work they did for public safety but then they went and did this also. Chief Witkowski stated they had several ones in Mishawaka's Police Department who had been deployed to Iraq and a female officer who had been to Afghanistan he believed twice. Chief Witkowski stated in past practice, they had been doing this way but this was just a better way of describing it with the new ordinance and he liked how it would be moving forward so there would be no questions. Chief Witkowski stated they started a VCS software back in 2017, so even back then it was stated on there that there was a block where you checked for if it was a military day. Chief Witkowski stated other agencies in the area had done it and they stayed even with other agencies around the county and the state for recruiting purposes. Chief Witkowski thanked the Council.

Mr. Hazen wanted to be cleared and stated the old ordinance said that they would pay them the difference between the military pay and what they made as a police officer and an employee of the city and if that was correct. Chief Witkowski stated that was for the long term, yes and that had never changed. Chief Witkowski stated with the long term, you balanced between the military pay and the city pay and that person got the higher of the two or you figured out what they were owed or what they owed the city. Mr. Hazen asked if they got called in for active duty over the two week stay then that was when that kicked in. Chief Witkowski stated yes that was when that would kick in. Mr. Hazen stated he went back and looked for all of the ordinances and he could not find anything and asked in '73, '89 and in '07 if they were policies. Chief Witkowski stated it was **ORDINANCE NO. 3339 or PROPOSED ORDINANCE 89-107** was the first one they found. Mr. Hazen asked if they were deleting **ORDINANCE NO. 4631** or if they were deleting **ORDINANCE NO. 3339**. Mr. Hixenbaugh stated as a point of clarification, in section 1, this indicated that they were amending and deleting **ORDINANCE NO. 4631**. Mr. Hixenbaugh stated ordinance number aside, their current existing ordinance with regard to military leave pay was being amended. Mr. Hixenbaugh stated the action they were taking earlier was just to get to the heart of this amendment and if you looked at what was originally proposed by the Chief and Human Resources, it had some language that through the work of the Personnel Committee, Mr. Compton, Mr. Bellovich and himself, they came up with what they thought was a better set of phrases that governed what the terms were going to be of this short term military leave pay and it was, in essence, just one paragraph in the ordinance, section two sub paragraph four that had been changed to reflect that when those on reserve or guard status were called to their two week annual training requirement or their one weekend a month that if they were scheduled to work, they would not only receive civilian pay or what they would have received from the city but they also would receive the military pay unlike those long term deployments where there was that offset. Mr. Hixenbaugh stated it was not that case in the short term and this was very consistent, as they discussed as a group, with some case law that came out of the Seventh Circuit Court of Appeals that governed Indiana and themselves which obligated employers to look at the shorter term leaves as being equivalent to other banks of short term leave pay that was provided to employees, so the safest and most compliant thing for them to do as a community was to provide this type of pay. Mr. Hixenbaugh stated the existing language that was in that original ordinance was maintained and the only thing that his amendment would do was change that one single paragraph with regard to those short term leave periods and the pay that employees would receive if they had to miss work because they were on reserve or guard status. Mr. Hazen stated he definitely understood that and the problem he had with this was he never saw where it said they could pay this way back to whenever it was started so he did not know how they paid that. Mr. Hazen asked if this body did not pass some function or policy to pay that way, then how were they paying that way. Chief Witkowski stated originally in '89, it started with the body here and they had been doing it all along and he was not sure he had that answer but when he came on they were doing it that way and in '98 they were doing it. Chief Witkowski stated as far as he could follow it through, there was mention of 30 days of pay beyond the deployment and there was language in there way back before him and he just knew in the time he had been there, they were doing it. Mr. Hazen stated what he was trying to say was he was there before Chief Witkowski and he did not remember being paid this way and he could not find anywhere where it stated they were being paid this way in an ordinance or a policy. Mr. Hazen stated he wish he could have seen that before that evening and he was all for it as it was a great thing to do, but he just wanted to make sure that everybody knew that they could not just

switch it and that they could pay a certain way without going before the Council. Chief Witkowski stated he could totally understand that and that was not the case with him, because this was in the works before he took the Chief's position. Mr. Hazen thanked Chief Witkowski.

Mr. Compton stated in their discussion what he drew out of it was this was something they had been doing, right or wrong and he agreed with Mr. Hazen in that it was probably wrong to do so without the Council's approval, but this was what they had been doing, right, wrong or indifferent. Mr. Compton stated there was some question about that and that was what brought it to that point in which they did not really have it in writing like it should be, so they decided, as a committee, that it would be best to add a little language to cover this. Mr. Compton agreed with Mr. Hazen and it sounded like it was never really in writing and it should have been and approved before the Council, but now they were trying to fix it going forward and asked if that was what he was saying. Chief Witkowski stated he totally agreed and until that glitch or whatever they called it came up, they had been moving along doing this. Chief Witkowski stated there was language back in '89 mentioning 15 days of annual leave, so there was language there but it was not as descriptive as it should have been to how they dealt with it now. Mr. Compton thanked Chief Witkowski.

Mr. Hixenbaugh thanked Chief Witkowski for the work he had done on this and thanked Susan Kile, from Human Resources, Becky Maguire, the Controller, and Mr. Bellovich and Mr. Compton for their work on this as well. Mr. Hixenbaugh stated although he was there speaking for obvious reasons and maybe perhaps not so obvious, his recollection was that at present, they had six city employees who were subject to the reserve and guard status and five of them were police officers. Mr. Hixenbaugh asked if that were correct. Chief Witkowski stated yes and he had five. Mr. Hixenbaugh stated whatever the total number was, this ordinance governed all city employees and their compensation and it was not strictly a public safety ordinance per se and asked if he agreed with him on that. Chief Witkowski stated he did. Mr. Hixenbaugh echoed Mr. Compton and Mr. Hazen's comments in saying that he believed it was always appropriate for these type of compensatory items to either be memorialized in an ordinance or in a collective bargaining agreement and they had multiple units they bargained with, including his officers, that also would have been a fine place for the language to have been crystal clear and have been embedded so he was glad they were clarifying that now and he appreciated him pushing this issue forward so that they were making the clarification, but moving forward he thought they were all in agreement that it either needed to be clear cut in an ordinance or it needed to be clear cut in the collective bargaining agreement or both so they had good paper trail for them to refer to with regard to how they were compensating their employees. Chief Witkowski stated he could see that being added to the contract and he did not think there would be any issue. Mr. Hixenbaugh thanked him again for the information on the work he did on this.

Question was called for at 8:06PM for **PROPOSED ORDINANCE NO. 2023-10AA. Motion carried by unanimous roll call vote (summary: Yes = 9).**

Yes: Mr. Hazen, Mr. Bellovich, Mr. Mammolenti, Mr. Banicki, Mr. Emmons, Mrs. DeMaegd, Mr. Compton, Mrs. Voelker, Mr. Hixenbaugh. The proposed ordinance passed 9-0, thus it became **ORDINANCE NO. 5848.**

ADJOURNMENT 8:06PM

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

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