



AGENDA

December 02, 2024

Meetings of Standing Committees
Council Conference Room
5:45PM

REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL
COUNCIL CHAMBERS/CITY HALL
6:00PM

WebEx Telephone Number:1-408-418-9388
Meeting Number (access code): 2343 355 9758
Meeting password: j2RydX5nPD9

Livestream #1:
<https://mishawaka.in.gov/government/elected-appointed-officials/common-council/>

Livestream #2
<https://www.facebook.com/cityofmishawaka/>

Livestream #3:
www.youtube.com/@cityofmishawaka635

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

Dial: 23433559758@mishawaka.webex.com

1. Call to Order

2. Pledge of Allegiance

3. Roll Call

4. Approval of the Minutes of the Regular Meeting of November 18, 2024

5. Petitions, Communications, Remonstrance and Memorial

Appeal No. 2024-52 Use Variance for 3 Tenant in C-1 Commercial
District & Developmental Variance for 60
square foot Monument Sign - 917 Union Street

Petition No. 2024-10 Annexation of 7.72 Acres and Rezoning to S-2
Planned Unit Development for Apartment Complex
- Douglas Rd.

6. Report of Special Committee

7. Ordinances on First Reading

P.O. No. 2024-34 Amending the Flood Control Ordinance

P.O. No. 2024-35 Wellhead Protection Land Use Restrictions

P.O. No. 2024-36 Amending 5868 Civil City Salary FOR 2024-
Central Services

P.O. No. 2024-37 Amending 5907AA Civil City Salary for 2025 -
Central Services

P.O. No. 2024-38 Transfer of Funds:
Central Services

Supplies

1101-22-422-02

\$30,000.00

To:

Central Service

Other Service & Charges

1101-22-436-01

\$30,000.00

Total

\$30,000.00

P.O. No. 2024-39

Transfer of Funds:
Park & Rec

Personnel Services

2204-50-411-03 \$85,000.00

Supplies

2204-50-429-15 \$10,000.00

2204-50-429-16 \$5,000.00

\$100,000.00

To:

Other Services & Charges

2204-50-436-01 \$15,000.00

2204-50-436-90 \$85,000.00

Total \$100,000.00

P.O. No. 2024-40

Additional Appropriation:

ARP Coronavirus Local Fiscal Recovery Grant

Other Services & Charges \$129,667.00

Transfer of Funds:

Other Capital Outlays

2403-50-443-93 \$12,295.00

To:

Other Services & Charges

2403-50-459-03 \$12,295.00

Total \$12,295.00

P.O. No. 2024-41

Additional Appropriation:

General Fund

Personnel Services

Controller

1101-02-411-02 \$40,700.00

Human Resources

1101-04-411-02 \$55,700.00

Code Enforcement

1101-14-411-01 \$5,650.00

1101-14-411-63 \$4,425.00

Fire Department

1101-19-411-60 \$250,000.00

Other Services & Chargers
Professional Services
Human Resources

1101-04-431-04

\$11,200.00

Total

\$367,675.00

Other Services & Chargers
Professional Services

2209-50-431-09

\$250,000.00

Total

\$250,000.00

- P.O. No. 2024-42 Establishing a Merit System for Mishawaka Police Department
- P.O. No. 2024-43 Establishing a Merit System for Mishawaka Fire Department
- P.O. No. 2024-44 Collective Bargaining Agreement between the City and Mishawaka Police Lodge 91 - 01-01-2025 thru 12-31-2025

8. Resolutions

9. Ordinances on Second Reading

- P.O. No. 2024-31 Collective Bargaining Between the City and Local 364 Central Service.1-1-2025 thru 12-31-2027
(Assigned to Personnel Committee)
- P.O. NO. 2024-32 Collective Bargaining Between the City and Local 364 Sewer.1-1-2025 thru 12-31-2027
(Assigned to Personnel Committee)
- P.O. No. 2024-33 Amending Ord. No. 5898AA Establishing Designated Outdoor Refreshment Area
(Assigned to Public Health & Safety Committee)
(Requesting Amendment)

10. Privilege of the Floor - Non-Agenda Items

11. Unfinished Business

12. New Business

13. Adjournment -

This meeting will be aired via live stream:

An archived version of the livestream video can be viewed on the city of Mishawaka's Facebook and YouTube pages, <https://www.facebook.com/cityofmishawaka/> and www.youtube.com/@cityofmishawaka635 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.

Download Packet Link below:

<https://mishawakain.portal.civicclerk.com/event/950/files/agenda/3245>

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

Deborah S. Block, IAMCA, CMO, 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.

Scan the QR Code to access all Common Council Meeting Agenda's, Packets, and Meeting Minutes.



REGULAR MEETING OF THE MISHAWAKA COMMON COUNCIL

November 18, 2024

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 November 18, 2024, at 6:00PM. The meeting was called to order by Council President Gregg Hixenbaugh. All were asked to stand for the Pledge of Allegiance, which would be followed by a moment of silence in remembrance of Linda Dotson, who served the City of Mishawaka in several different capacities most recently as Deputy Clerk to Clerk Debbie Ladyga-Block and did a wonderful job of providing service to the citizens of Mishawaka in all capacities and also a moment of silence in remembrance of longtime Mishawaka police officer and business owner Quinto Squadroni, who had the distinction at the time of his passing of being their oldest living Mishawaka Police Department retiree and went on to have a really vibrant life after he left the police department including as the owner of one of the best restaurants and after hours hangout establishments in Mishawaka. Mr. Hixenbaugh stated the Council extended their condolences to both the Dotson family and the Squadroni family and may they both rest in peace.

Members attending virtually do so by WebEx. Public that attends 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.

Present: Mrs. Hazen (P), Mrs. Voelker (P), Mr. Carroll (P), Mr. Banicki (P), Mr. Emmons (P), Ms. Hahn (P), Mr. Mammolenti (P), Mr. Violi (P), Mr. Hixenbaugh (P)

P: Present E: Electronically Participating A: Absent

Also Present: Mike Trippel, Council Attorney

Minutes for the Regular Meeting on October 28, 2024, were approved as received from the Clerk's Office.

Mayor's Youth Council Presentation

Andrew Rimelspach, Sophomore at Penn High School and first year member of the Mayor's Youth Advisory Council, spoke before the Council. Mr. Rimelspach thanked the Council for the opportunity to update them and inform them on their Thanksgiving food drive. Mr. Rimelspach stated members of the MYAC had been contacting business owners for monetary donations as well as asking if they could leave a donation box to collect food items. Mr. Rimelspach stated some items that were collected were canned beans, mashed potatoes, yams, stuffing, and various other Thanksgiving meal items. Mr. Rimelspach stated all donations were going to families in need and as a learning experience for the food drive the following year, they may start it earlier, seek out more media coverage, and even set up a donation page or website for online donations. Mr. Rimelspach stated although it was a challenge that year to get donations with multiple

Thanksgiving food drives happening all at once, he still could not wait to see the smiles and impact they had made for the community of Mishawaka.

Mr. Emmons asked if they were having trouble getting donations for their baskets. Mr. Rimelspach stated yes, there were a lot of other school food drives going on and other businesses doing it as well, so the problems they were having were because of that. Mr. Emmons asked if they provided ham or turkey to the people. Mr. Rimelspach stated they provided both and the President of the MYAC, Arianna Rice, would answer other questions they had more in depth in her presentation.

Arianna Rice, Senior at Penn High School and President of the MYAC, spoke before the Council. Ms. Rice stated she had the honor of serving as the President of the Mayor's Youth Advisory Council for the 2024-2025 school year. Ms. Rice stated their goal for the 2024 food drive was to assist 50 families and 25 veteran families for a total of 75 families served. Ms. Rice stated they were able to raise a total of 1,493 total items with a total of \$1,225 in gift cards between Meijer and Martin's. Ms. Rice stated she recently spoke about the initiative on her school's network to encourage students and teachers to get involved by donating non-perishable food items or monetary donations. Ms. Rice stated she was thrilled to report that they had exceeded their goal. Ms. Rice thanked all three schools, Penn, Mishawaka, and Marian for their incredible generosity, and they had collected enough donations to fill all 75 boxes. Ms. Rice stated this would make a real difference in the lives of so many families in their community during the holiday season. Ms. Rice thanked everyone who contributed, and she was incredibly proud of how their Mishawaka schools had come together to support the important cause. Ms. Rice stated they were truly making an impact, and this was a great example of how future leaders could help those in need. Ms. Rice thanked the Council.

Ty Caruso, Senior at Marian High School and Vice President of the MYAC, spoke before the Council. Mr. Caruso stated he was very honored to be helping with the food drive and aiding the community. Mr. Caruso stated Marian High School donated to the MYAC and they also physically brought food. Mr. Caruso read a quote by Winston Churchill that said, 'we make a living by what we get, but we make a life by what we give.' Mr. Caruso stated he thought that quote showed the great privilege they all had to help the vulnerable and how honored they all should be to be contributing to the great service. Mr. Caruso stated he thought the people of Mishawaka who had all donated to the cause, no matter how big or small the donation was, had been looked on with great gratitude and a heart full of thanks. Mr. Caruso stated to all who had donated and to all who had helped, he hoped they could all look in the mirror that evening and say they made a positive difference in someone's life. Mr. Caruso stated with the help from the Council, he hoped that with what they could and what they had, they could continue to make a difference in the lives of Mishawaka citizens.

Millie Mammolenti, Sophomore at Mishawaka High School, spoke before the Council. Ms. Mammolenti began thanking the Council for allowing them all to speak that evening and provide an update on their Thanksgiving food drive. Ms. Mammolenti stated this was the youth council's biggest service project of the year and for the last several weeks, they had been seeking donations from local high schools, businesses, community members, neighbors, friends, family,

and Mishawaka city employees. Ms. Mammolenti stated through their generous donations along with everyone else's, they were able to collect enough food items for 75 local families, including 25 veteran families. Ms. Mammolenti stated last night, the youth council members boxed all the items, and they were ready to be delivered on Thursday. Ms. Mammolenti stated as a first-year youth council member, she looked forward to seeing the impact the food drive had on the community and veterans. Ms. Mammolenti thanked all for their help and donations for this great project.

Mr. Mammolenti stated good job to the youth council, all the participants in the food drive, Mrs. Wood, and Mrs. Reinoehl for organizing a wonderful project and as the bright students mentioned, what a great impact this would be making on their community and their families. Mr. Mammolenti thanked them all for their efforts.

Mr. Emmons asked if they were still taking monetary donations. Ms. Rice stated yes.

Mr. Hixenbaugh thanked the youth council representatives for being there, for their comments, and more importantly for the work they were doing on behalf of the community not just regarding the food drive but all the work that they did as part of the Mayor's Youth Council. Mr. Hixenbaugh stated they looked forward to seeing the other great things that they would accomplish during the year on behalf of Mishawaka.

Presentation of the Redevelopment Commission's Spending Plan for 2025

Mr. Hixenbaugh stated the record would reflect that in compliance with Indiana law, the Council had received the Redevelopment Commission Spending Plan for 2025.

Mr. Hixenbaugh thanked Controller Maguire, Mr. Prince, and everyone who was involved in putting the plan together.

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

PROPOSED ORDINANCE NO. 2024-31

AN ORDINANCE APPROVING AN AGREEMENT BETWEEN THE CITY OF MISHAWAKA AND THE EMPLOYEES OF THE CENTRAL SERVICES DEPARTMENT REPRESENTED BY THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 364

Collective Bargaining between the City and Local 364 Central Services. 1-1-2025 thru b12-31-2027

(Assigned to Personnel Committee)

PROPOSED ORDINANCE NO. 2024-32

AN ORDINANCE APPROVING AN AGREEMENT BETWEEN THE CITY OF MISHAWAKA AND THE EMPLOYEES OF THE SEWER DEPARTMENT REPRESENTED BY THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 364

**Collective Bargaining between the City and Local 364 Sewer. 1-1-2025 thru 12-31-2027
(Assigned to Personnel Committee)**

PROPOSED ORDINANCE NO. 2024-33

**AN ORDINANCE AMENDING ORDINANCE NO. 5898 AS AMENDED WHICH
ESTABLISHED A DESIGNATED OUTDOOR REFRESHMENT AREA
(Assigned to Public Health & Safety Committee)**

NEW BUSINESS

Mr. Emmons stated the First District Meeting would be held on Thursday November 21st at St. Bavo's Church at 7PM. Mr. Emmons stated they would have the United PetFood CEO speaking and she would be addressing some issues that they would like to help fund for the City of Mishawaka, not only in the West End but also in Rose Park. Mr. Emmons stated they were going to give them their ideas of what they wanted to do in the West End, because United PetFood wanted to be good neighbors and wanted to be a great part of the community, and they had already started to put their stamp on what they could do in the West End. Mr. Emmons stated it was basically a two-person control over there regarding the management and the CEO was a dynamic person. Mr. Emmons stated she was there five nights a week and on Friday nights, she would get on a plane to Florida and Sunday night, she caught a plane to come back to Mishawaka which demonstrated how dedicated she was. Mr. Emmons stated all were welcome to the meeting.

Mr. Mammolenti invited all that were listening, all that were in the Council Chambers, and anybody in the City of Mishawaka to come out to support the Mishawaka Cavemen football team on Friday November 22nd at 7:30PM at Steele Stadium as they would be playing in the semi-state championship. Mr. Mammolenti stated if they won, they would travel to the state championship down in Indianapolis. Mr. Mammolenti stated they could use and appreciate anyone's support, and he would be in attendance to support his fellow cavemen.

ADJOURNMENT 6:17PM

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

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

These minutes are a summary of actions taken at the Mishawaka Common Council meeting. The full video archive of the meeting is available for viewing at www.youtube.com/@cityofmishawaka635 for as long as this media is supported.

NOV 21 2024

City Clerk
Mishawaka, IN

AP 24-52
Received

NOV 07 2024

Planning and
Community Development

DATE: November 5, 2024
TO: Board of Zoning Appeals
City of Mishawaka, Indiana

The undersigned appellant respectfully shows the Board:

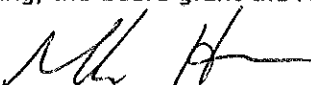
1. I, Micah Horner of Apex Realty Investments, LLC, am the owner of the following described real estate located within the City of Mishawaka, Penn Township, St. Joseph County, State of Indiana, to- wit:

Lot Lettered "A" as shown on the recorded Plat of Direct Line replat, recorded November 15, 2012 as Instrument No. 1236794 in the office of the recorder of Saint Joseph County, Indiana and commonly known as 917 Union Street, Mishawaka, IN 46544 Parcel ID #71-09-16-484-015.000-023

2. The above-described real estate presently has a zoning classification of C-1 Commercial District under the Zoning Ordinance of the City of Mishawaka.
3. Appellant presently occupies (or proposes to occupy) the above-described property in the following manner: office use.
4. Appellant desires to divide the current vacant space of the building (4,774 sf of the total 5,642 sf of space) into ~~two (2)~~ ^{three (3)} useable office spaces with separate entrances.
5. Section 137-300 of the Zoning Ordinance allows for convenient retail and service establishments with minimum impact on surrounding residential areas.
(requirements and note Section Number of the Ordinance.)
6. Owner would like to divide the building to allow for a 1,500 square foot tenant space in the current vacant portion of the building as the current space is larger than we would utilize and do not want to leave a portion of the building vacant.
7. Answer the following necessary questions for a **USE VARIANCE**:

- (1) Will approval be injurious to the public health, safety, morals or general welfare of the community? **NO, as having 2 rather than 1 office user would not cause any visible difference to the surrounding community.**
- (2) Will the use and value of the area adjacent to the property included in the variance be affected in a substantially adverse manner? **No, since we as owners will search for a tenant that will compliment our own office type use .**
- (3) Does the need for the variance arise from some condition peculiar to the property involved? **NO, however the property feasibly works well for smaller office uses which will be easier to find in today's market.**
- (4) Does strict application of the terms of this chapter constitute an unnecessary hardship if applied to the property for which the variance is sought? **As a small business owner we are bringing our business dollars into the City of Mishawaka, but do not have a current need for all the vacant space. Having a tenant for 1,500 sf will give us the income to maintain the property as well as reduce vacancy in the area.**
- (5) Will approval interfere substantially with the Mishawaka 2000 Comprehensive Plan? **NO as our intent is to maintain the same level of quality occupancy in the building as we ourselves will bring.**

WHEREFORE, Appellant prays and respectfully requests a hearing on this appeal and that after such hearing, the Board grant the requested variance.


Apex Realty Investments, LLC
Micah Horner, Member

CONTACT PERSON:

Name: Micah Horner

Address: 212 Greenfield Drive, Middlebury, IN 46540

Day Phone Number: 574-238-8827

Fax Number:

Email: micah@hornerroofing.com

NOV 21 2024

City Clerk
Mishawaka, IN

PK 24-10
Received

NOV 19 2024

Planning and
Community Development

November 20, 2024

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

RE: Petition for Annexation and Zoning Classification

The undersigned, EDWARD N. DOTY AS TRUSTEE OF THE EDWARD N. DOTY REVOCABLE TRUST, respectfully show they are the owners of the following described real estate located in the County of St. Joseph, State of Indiana, to-wit:

The Land, located at 15503 Douglas Road, Granger, IN 46530, is described as follows:

Real estate in St. Joseph County, in the State of Indiana, described as follows:
Part of the Southwest Quarter (1/4) of the Southeast Quarter (1/4) of Section 27, Township 38 North, Range 3
East and more particularly described as follows:
Beginning at the Southwest corner of the Southeast Quarter (1/4) of said Section 27;
Thence North 1160 feet;
Thence East 300.41 feet;
Thence South 1160 feet to the South line of the Southeast Quarter (1/4) of said Section 27;
Thence West and along said South line 300.41 feet to the place of beginning EXCEPTING therefrom the following:
Beginning at the Southeast corner of the above described tract;
Thence North 150 feet; thence West 100 feet;
Thence South 150 feet; thence East 100 feet to the place of beginning.
LESS AND EXCEPT the following premises conveyed to St. Joseph County, Indiana by Deed, recorded November 18, 2003 as Instrument No. 373957, and described as follows:
A parcel of land located in the Southeast Quarter of Section 27, Township 38 North, Range 3 East of the Second Principal Meridian in Harris Township, St. Joseph county, Indiana, more particularly described as follows:
Commencing at the Southwest corner of the Southeast quarter of Section 27;
Thence North 00 degrees 07 minutes 16 seconds West (basis of bearings) on the West line of the Southeast Quarter of Section 27, a distance of 20 feet to the point of beginning;
Thence North 00 degrees 07 minutes 16 seconds West on said West line, a distance of 20 feet;
Thence South 89 degrees 57 minutes 53 seconds East, parallel with the South line of the Southeast Quarter

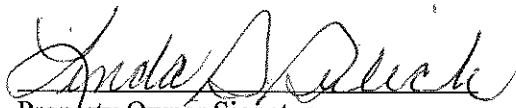
Section 27 on the North proposed right-of-way line of Douglas Road, a distance of 200.58 feet;
Thence South 00 degrees 06 minutes 44 seconds West, a distance of 20 feet to the North existing right-of-way of Douglas Road;
Thence North 89 degrees 57 minutes 53 seconds West, parallel with the South line of the Southeast Quarter of Section 27 on the North existing right-of-way of Douglas Road, a distance of 200.50 feet to the place of beginning.
Parcel contains 0.09 acres more or less.

Petitioners own One Hundred (100%) percent of the above-described parcel of land which is located in INDIANA and that Petitioners desire the same to be annexed to the City of Mishawaka, Indiana, with a S-2 PUD District. Petitioners further state they intend to utilize said land for a SENIOR AFFORDABLE APARTMENT COMMUNITY.

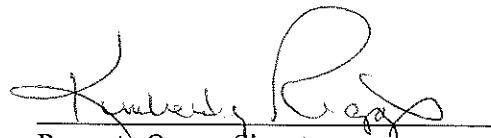
Accompanying this petition is a drawing, to scale, showing the above-described parcel of real estate, showing the size of the proposed building and also the location of the proposed building structure(s).

Petitioners further show this proposed annexation to be in the best interest of the City of Mishawaka, Indiana, and of the territory sought to be annexed which is urban in character and is an economic and social part of the City of Mishawaka.

Wherefore, Petitioners pray and respectfully request that the Common Council of the City of Mishawaka refer this matter to the Mishawaka City Plan Commission and that after hearing, an appropriate ordinance be enacted annexing the above described parcel of real estate to the City of Mishawaka with a S-2 PUD.


Property Owner Signature

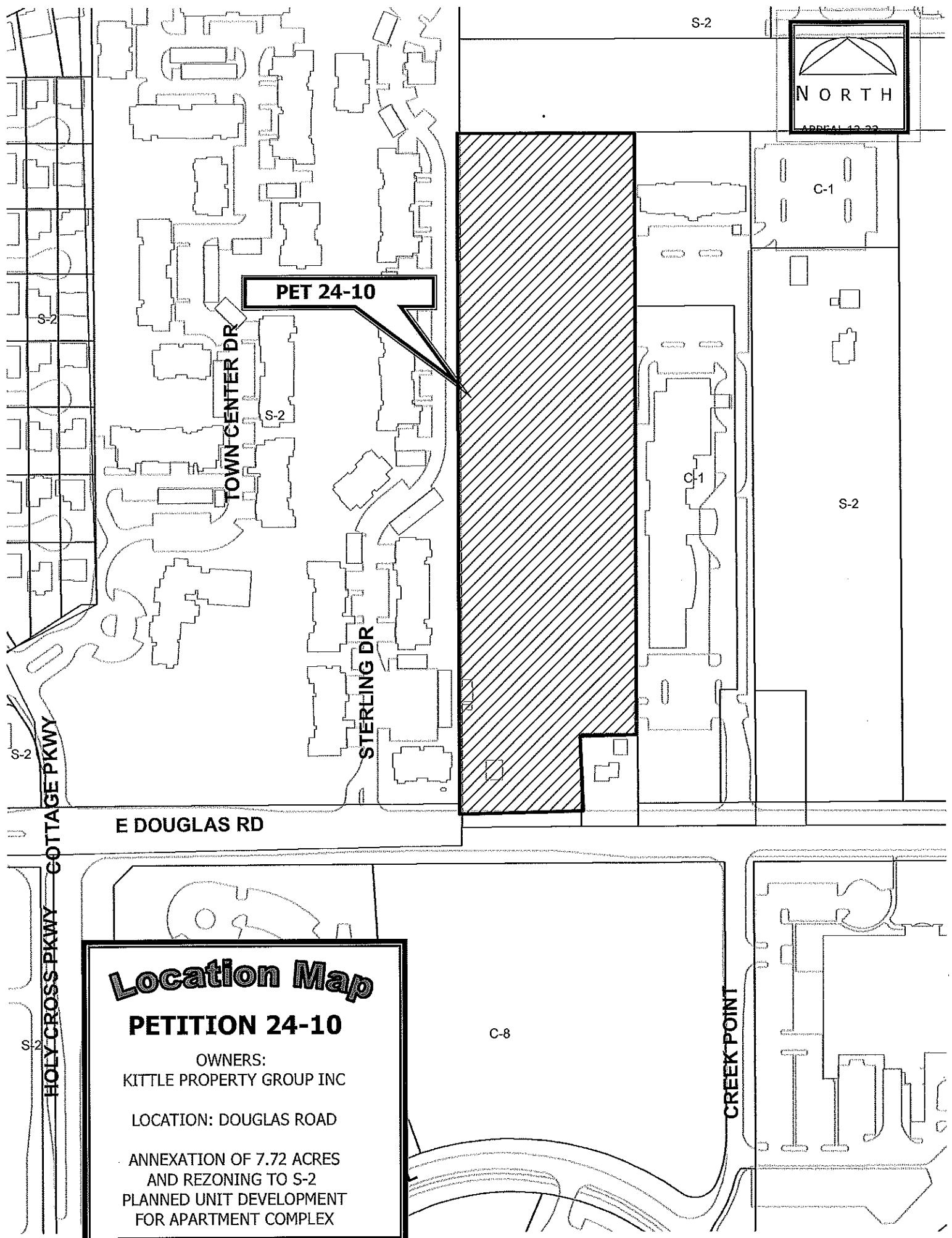
Linda S. Sulich, Co-Executor
Print Property Owner Name


Property Owner Signature

Kimberly Riggs, Co-Executor
Print Property Owner Name

Contact Person:

Brian R. Pozen
Kittle Property Group, Inc.
310 E. 96th Street
Suite 400
Indianapolis, IN 46240
317-590-5842
BPozen4634@KittleProperties.com



S-2



C-1

PET 24-10

TOWN CENTER DR

S-2

STERLING DR

C-1

S-2

E DOUGLAS RD

Location Map

PETITION 24-10

OWNERS:
KITTLE PROPERTY GROUP INC

LOCATION: DOUGLAS ROAD

ANNEXATION OF 7.72 ACRES
AND REZONING TO S-2
PLANNED UNIT DEVELOPMENT
FOR APARTMENT COMPLEX

C-8

CREEK POINT

1st Reading
2nd Reading
Passed
Failed
Continued To

PETITION 24-11

NOV 25 2024

City Clerk
Mishawaka, IN

CITY OF MISHAWAKA, INDIANA
PROPOSED ORDINANCE NO. 2024-34
ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 121, OF THE MUNICIPAL
CODE OF THE CITY OF MISHAWAKA, INDIANA, COMMONLY KNOWN AS "THE FLOOD CONTROL
ORDINANCE" OF THE CITY OF MISHAWAKA, INDIANA.

WHEREAS, the Federal Emergency Management Agency (FEMA) has required amendments to the City's Flood Control Ordinance for continuation in the National Flood Insurance Program;

WHEREAS, the Plan Commission of the City of Mishawaka, Indiana, has recommended favorably for the adoption of an amended Flood Control Ordinance, to now be known as the Flood Damage Prevention Ordinance as hereinafter described.

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

Section 1. Chapter 121 of the Municipal Code of the City of Mishawaka, commonly known as "The Flood Control Ordinance", shall be entirely deleted and replaced with "The Flood Damage Prevention Ordinance" as follows:

FLOOD DAMAGE PREVENTION ORDINANCE

ARTICLE 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE, AND METHODS

- Section A. Statutory Authorization
- Section B. Findings of Fact
- Section C. Statement of Purpose
- Section D. Methods of Reducing Flood Loss

ARTICLE 2. Definitions

ARTICLE 3. General Provisions

- Section A. Lands to Which This Ordinance Applies
- Section B. Basis for Establishing the Areas of Special Flood Hazard
- Section C. Establishment of Floodplain Development Permit
- Section D. Compliance
- Section E. Abrogation and Greater Restrictions
- Section F. Discrepancy between Mapped Floodplain and Actual Ground Elevations
- Section G. Interpretation
- Section H. Warning and Disclaimer of Liability
- Section I. Penalties for Violation

ARTICLE 4. ADMINISTRATION

- Section A. Designation of Administrator
- Section B. Floodplain Development Permit and Certification Requirements
- Section C. Duties and Responsibilities of the Administrator
- Section D. Map Maintenance Activities
- Section E. Variance Procedures

ARTICLE 5. PROVISIONS FOR FLOOD HAZARD REDUCTION

- Section A. Floodplain Status Standards
 1. Standards for Identified Floodways
 2. Standards for Identified Fringe
 3. Standards for SFHAs without Established Base Flood Elevation and/or Floodways/Fringe
 4. Standards for SFHAs not Identified on a Map
- Section B. General Standards
- Section C. Specific Standards
 1. Building Protection Requirement
 2. Residential Construction (excluding manufactured homes)
 3. Non-Residential Construction
 4. Manufactured Homes and Recreational Vehicles
 5. Accessory Structures
 6. Pavilions, Gazebos, Decks, Carports, and Similar Development
 7. Above Ground Gas or Liquid Storage Tanks
- Section D. Standards for Subdivision Proposals
- Section E. Standards for Critical Facilities

ARTICLE 6. LEGAL STATUS PROVISIONS

- Section A. Severability
- Section B. Effective Date

FLOOD DAMAGE PREVENTION ORDINANCE

Article 1. Statutory Authorization, Findings of Fact, Purpose, and Methods

Section A. Statutory Authorization

The Indiana Legislature has in IC 36-1-4-11 granted the power to local government units to control land use within their jurisdictions. Therefore, the Common Council of the City of Mishawaka does hereby adopt the following floodplain management regulations.

Section B. Findings of Fact

The flood hazard areas of the City of Mishawaka are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare. Additionally, structures that are inadequately elevated, floodproofed, or otherwise protected from flood damage also contribute to the flood loss. In order to minimize the threat of such damages and to achieve the purposes hereinafter set forth, these regulations are adopted.

Section C. Statement of Purpose

It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Protect human life and health.
- (2) Minimize expenditure of public money for costly flood control projects.
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- (4) Minimize prolonged business interruptions.
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in floodplains.
- (6) Help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight area.
- (7) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.
- (8) Minimize the impact of development on adjacent properties within and near flood prone areas.
- (9) Ensure that the flood storage and conveyance functions of the floodplain are maintained.
- (10) Minimize the impact of development on the natural, beneficial values of the floodplain.
- (11) Prevent floodplain uses that are either hazardous or environmentally incompatible.
- (12) Meet community participation requirements of the National Flood Insurance Program.

Section D. Methods of Reducing Flood Loss

In order to accomplish its purposes, these regulations include methods and provisions for:

- (1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water hazards, or which result in damaging increases in flood heights or velocities.
- (2) Requiring that uses vulnerable to floods, including facilities, which serve such uses, be protected against flood damage at the time of initial construction.
- (3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters.
- (4) Controlling filling, grading, dredging, excavating, and other development which may increase flood damage.
- (5) Preventing or regulating the construction of flood barriers, which will unnaturally divert floodwaters, or which may increase flood hazards in other areas.

Article 2. Definitions

Unless specifically defined below, words or phrases used in these regulations shall be interpreted so as to give them meaning they have in common usage and to give these regulations the most reasonable application.

Accessory Structure means a structure with a floor area of 400 square feet or less that is on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure; an accessory structure specifically excludes structures used for human habitation.

- (1) Accessory structures are considered walled and roofed where the structure includes at least two outside rigid walls and a fully secured roof.
- (2) Examples of accessory structures include but are not necessarily limited to two-car detached garages (or smaller), carports, storage and tool sheds, and small boathouses.
- (3) The following may have uses that are incidental or accessory to the principal structure on a parcel but are generally not considered to be accessory structures by the NFIP:
 - a. Structures in which any portion is used for human habitation, whether as a permanent residence or as temporary or seasonal living quarters, such as a detached garage or carriage house that includes an apartment or guest quarters, or a detached guest house on the same parcel as a principal residence.
 - b. Structures used by the public, such as a place of employment or entertainment.
 - c. Development that does not meet the NFIP definition of a structure for floodplain management purposes. Examples include, but are not necessarily limited to, a gazebo, pavilion, picnic shelter, or carport that is open on all sides (roofed but not walled).

Addition (to an existing structure) means any walled and roofed expansion to the perimeter of a structure in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing walls, is new construction.

Alteration of a watercourse means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other modification which may alter, impede, retard, or change the direction and/or velocity of the flow of water during conditions of the base flood.

Appeal means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance, a request for a variance, or a challenge of a board decision.

Area of special flood hazard is the land within a community subject to a one percent (1%) or greater chance of being flooded in any given year.

Base flood means the flood having a one percent (1%) chance of being equaled or exceeded in any given year. The base flood may also be referred to as the 1% annual chance flood or one hundred (100) year flood.

Base Flood Elevation (BFE) means the water surface elevation of the base flood in relation to a specified datum, usually the North American Vertical Datum of 1988.

Basement means that portion of a structure having its floor sub-grade (below ground level) on all sides.

Best Available Flood Layer (BAFL) means floodplain studies and any corresponding floodplain maps prepared and/or approved by the Indiana Department of Natural Resources which provide base flood elevation information, floodplain limits, and/or floodway delineations for flood hazards identified by approximate studies on the currently effective FIRM (Zone A) and/or for waterways where the flood hazard is not identified on available floodplain mapping.

Building – See "Structure."

Community means a political entity that has the authority to adopt and enforce floodplain ordinances for the areas within its jurisdiction.

Critical facility means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire, and emergency response installations, and installations which produce, use, or store hazardous materials or hazardous waste.

Development means, for floodplain management purposes, any man-made change to improved or unimproved real estate including but not limited to:

- (1) construction, reconstruction, or placement of a structure or any addition to a structure;
- (2) installing a manufactured home on a site, preparing a site for a manufactured home, or installing a recreational vehicle on a site for more than 180 days;
- (3) installing utilities, erection of walls and fences, construction of roads, or similar projects;
- (4) construction of flood control structures such as levees, dikes, dams, channel improvements, etc.;
- (5) mining, dredging, filling, grading, excavation, or drilling operations;
- (6) construction and/or reconstruction of boat lifts, docks, piers, and seawalls;
- (7) construction and/or reconstruction of bridges or culverts;
- (8) storage of materials; or
- (9) any other activity that might change the direction, height, or velocity of flood or surface waters.

"Development" does not include activities such as the maintenance of existing structures and facilities such as painting; re-roofing; resurfacing roads; or, gardening, plowing, and similar agricultural practices that do not involve filling, grading, excavation, or the construction of permanent structures.

Elevation Certificate means a FEMA form that is routinely reviewed and approved by the White House Office of Management and Budget under the Paperwork Reduction Act, that is encouraged to be used to collect certified elevation information.

Enclosed area (enclosure) is an area of a structure enclosed by walls on all sides.

Enclosure below the lowest floor. See “Lowest Floor” and “Enclosed Area.”

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the community’s first floodplain ordinance.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FEMA means the Federal Emergency Management Agency.

Fill for floodplain management purposes, means any material deposited or placed which has the effect of raising the level of the ground surface above the natural grade elevation. Fill material includes but is not limited to consolidated material such as concrete and brick and unconsolidated material such as soil, sand, gravel, and stone.

Flood or Flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.
- (3) Mudslides (i.e., mudflows) which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

Flood or flooding also includes the collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or current of water exceeding anticipated cyclical levels that result in a flood as defined above.

Flood hazard area means areas subject to the one percent (1%) annual chance flood. (See “Special Flood Hazard Area”)

Flood Insurance Rate Map (FIRM) means an official map of a community, on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Flood Insurance Study (FIS) means the official hydraulic and hydrologic report provided by FEMA. The report contains flood profiles, as well as the FIRM and the water surface elevation of the base flood.

Flood prone area means any land area acknowledged by a community as being susceptible to inundation by water from any source. (See “Floodplain”)

Flood Protection Grade (FPG) is the BFE plus two (2) feet at any given location in the SFHA. (See “Freeboard”)

Floodplain or flood prone area means any land area susceptible to being inundated by water from any source. (See “Flood”)

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance and erosion control ordinance), and other applications of police power which control development in flood-prone areas. The term describes such state or local regulations in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Floodproofing (dry floodproofing) is a method of protecting a structure that ensures that the structure, together with attendant utilities and sanitary facilities, is watertight to the floodproofed design elevation with walls that are substantially impermeable to the passage of water. All structural components of these walls are capable of resisting hydrostatic and hydrodynamic flood forces, including the effects of buoyancy, and anticipated debris impact forces.

Floodproofing certificate is a form used to certify compliance for non-residential structures as an alternative to elevating structures to or above the FPG.

Floodway is the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Freeboard means a factor of safety, usually expressed in feet above the BFE, which is applied for the purposes of floodplain management. It is used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the base flood.

Fringe or Flood Fringe is the portion of the floodplain lying outside the floodway.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Hardship (as related to variances of this ordinance) means the exceptional hardship that would result from a failure to grant the requested variance. The Board of Zoning Appeals of the City of Mishawaka requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is NOT exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

Historic structure means any structure that is:

- (1) listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

- (3) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (4) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by (a) an approved state program as determined by the Secretary of Interior, or (b) directly by the Secretary of Interior in states without approved programs.

Hydrologic and hydraulic engineering analysis means analyses performed by a professional engineer licensed by the State of Indiana, in accordance with standard engineering practices that are accepted by the Indiana Department of Natural Resources and FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

International Code Council-Evaluation Service (ICC-ES) Report means a document that presents the findings, conclusions, and recommendations from a particular evaluation. ICC-ES reports provide information about what code requirements or acceptance criteria were used to evaluate a product, and how the product should be identified, installed.

Letter of Final Determination (LFD) means a letter issued by FEMA during the mapping update process which establishes final elevations and provides the new flood map and flood study to the community. The LFD initiates the six-month adoption period. The community must adopt or amend its floodplain management regulations during this six-month period unless the community has previously incorporated an automatic adoption clause.

Letter of Map Change (LOMC) is a general term used to refer to the several types of revisions and amendments to FEMA maps that can be accomplished by letter. They are broken down into the following categories:

- (1) **Conditional Letter of Map Revision (CLOMR)** means FEMA's comment on a proposed project that would, upon construction, result in modification of the SFHA through the placement of fill outside the existing regulatory floodway.
- (2) **Conditional Letter of Map Revision Based on Fill (CLOMR-F)** means a letter from FEMA stating that a proposed structure that will be elevated by fill would not be inundated by the base flood.
- (3) **Letter of Map Amendment (LOMA)** means an amendment by letter to the currently effective FEMA map that establishes that a building or area of land is not located in a SFHA through the submittal of property specific elevation data. A LOMA is only issued by FEMA.
- (4) **Letter of Map Amendment Out as Shown (LOMA-OAS)** means an official determination by FEMA that states the property or building is correctly shown outside the SFHA as shown on an effective NFIP map. Therefore, the mandatory flood insurance requirement does not apply. An out-as-shown determination does not require elevations.
- (5) **Letter of Map Revision (LOMR)** means an official revision to the currently effective FEMA map. It is issued by FEMA and changes flood zones, delineations, and elevations.
- (6) **Letter of Map Revision Based on Fill (LOMR-F)** means FEMA's modification of the SFHA shown on the FIRM based on the placement of fill outside the existing regulatory floodway.

Lowest adjacent grade means the lowest elevation, after completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

Lowest floor means, for floodplain management purposes, the lowest elevation described among the following:

- (1) The lowest floor of a building.
- (2) The basement floor.

- (3) The garage floor if the garage is connected to the building.
- (4) The first floor of a structure elevated on pilings or pillars.
- (5) The floor level of any enclosure, other than a basement, below an elevated structure where the walls of the enclosure provide any resistance to the flow of floodwaters. Designs for meeting the flood opening requirement must either be certified by a registered professional engineer or architect or meet or exceed the following criteria:
 - a. The walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of floodwaters.
 - b. At least two (2) openings are designed and maintained for the entry and exit of floodwater; and these openings provide a total net area of at least one (1) square inch for every one (1) square foot of enclosed area. The bottom of all such openings shall be no higher than one (1) foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher. Doorways and windows do not qualify as openings.
- (6) The first floor of a building elevated on pilings or columns in a coastal high hazard area (as that term is defined in 44 CFR 59.1), as long as it meets the requirements of 44 CFR 60.3.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mitigation means sustained actions taken to reduce or eliminate long-term risk to people and property from hazards and their effects. The purpose of mitigation is twofold: to protect people and structures, and to minimize the cost of disaster response and recovery.

Natural grade for floodplain management purposes means the elevation of the undisturbed natural surface of the ground. Fill placed prior to the date of the initial identification of the flood hazard on a FEMA map is also considered natural grade.

New construction for floodplain management purposes means any structure for which the "start of construction" commenced on or after the effective date of a floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the community's first floodplain ordinance.

North American Vertical Datum of 1988 (NAVD 88) as adopted in 1993 is a vertical control datum used as a reference for establishing varying elevations within the floodplain.

Obstruction includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, canalization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation, or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water; or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

One-percent annual chance flood is the flood that has a one percent (1%) chance of being equaled or exceeded in any given year. See "Regulatory Flood".

Physical Map Revision (PMR) is an official republication of a community's FEMA map to effect changes to base (1-percent annual chance) flood elevations, floodplain boundary delineations, regulatory floodways, and planimetric features. These changes typically occur as a result of structural works or improvements, annexations resulting in additional flood hazard areas, or correction to base flood elevations or SFHAs.

Prefabricated Building is a building that is manufactured and constructed using prefabrication. It consists of factory-made components or units that are transported and assembled on-site to form the complete building.

Principally above ground means that at least 51 percent of the actual cash value of the structure, less land value, is above ground.

Recreational vehicle means a vehicle which is:

- (1) built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projections;
- (3) designed to be self-propelled or permanently towable by a light duty truck; and
- (4) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational camping, travel, or seasonal use.

Regulatory flood means the flood having a one percent (1%) chance of being equaled or exceeded in any given year, as calculated by a method and procedure that is acceptable to and approved by the Indiana Department of Natural Resources and the Federal Emergency Management Agency. The regulatory flood elevation at any location is as defined in Article 3, B of this ordinance. The "Regulatory Flood" is also known by the term "Base Flood", "One-Percent Annual Chance Flood", and "100-Year Flood".

Repetitive loss means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equaled or exceeded 25% of the market value of the structure before the damage occurred.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Solid waste disposal facility means any facility involved in the storage or disposal of non-liquid, non-soluble materials ranging from municipal garbage to industrial wastes that contain complex and sometimes hazardous substances. Solid waste also includes sewage sludge, agricultural refuse, demolition wastes, mining wastes, and liquids and gases stored in containers.

Special Flood Hazard Area (SFHA), synonymous with "areas of special flood hazard" and floodplain, means those lands within the jurisdiction of the City of Mishawaka subject to a one percent (1%) or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency on Flood Insurance Rate Maps, Flood Insurance Studies, Flood Boundary and Floodway Maps and Flood Hazard Boundary Maps as Zones A, AE, AH, AO, A1-30, A99, or VE. The SFHA includes areas that are flood prone and designated from other federal, state or local sources of data including but not limited to best available flood layer maps provided by or approved by the Indiana Department of Natural Resources, historical flood information reflecting high water marks, previous flood inundation areas, and flood prone soils associated with a watercourse.

Start of construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or

footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building, including a gas or liquid storage tank, which is principally above ground. The term includes a manufactured home, as well as a prefabricated building. It also includes recreational vehicles installed on a site for more than 180 consecutive days.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "repetitive loss" or "substantial damage" regardless of the actual repair work performed. The term does not include improvements of structures to correct existing violations of state or local health, sanitary, or safety code requirements which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions.

Variance is a grant of relief from the requirements of this ordinance consistent with the variance conditions herein.

Violation means the failure of a structure or other development to be fully compliant with this ordinance.

Walled and roofed means a building that has two or more exterior rigid walls and a fully secured roof and is affixed to a permanent site.

Watercourse means a lake, river, creek, stream, wash, channel, or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Article 3. General Provisions

Section A. Lands to Which This Ordinance Applies

This ordinance shall apply to all areas of special flood hazard (SFHAs) within the jurisdiction of the City of Mishawaka, Indiana as identified in Article 3, Section B, including any additional areas of special flood hazard annexed by the City of Mishawaka, Indiana.

Section B. Basis for Establishing the Areas of Special Flood Hazard

- (1) The regulatory flood elevation, floodway, and fringe limits for the studied SFHAs within the jurisdiction of the City of Mishawaka, delineated as an "AE Zone" on the St. Joseph County, Indiana and Incorporated Areas Flood Insurance Rate Map dated January 6, 2011 shall be determined from the one-percent annual chance flood profiles in the Flood Insurance Study of St. Joseph County, Indiana and Incorporated Areas and the corresponding Flood Insurance Rate Maps (FIRM) dated January 6, 2011 as well as any subsequent updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date. Should the floodway limits not be delineated on the Flood Insurance Rate Map for a studied SFHA designated as an "AE Zone", the limits of

the floodway will be according to the best available flood layer as provided by the Indiana Department of Natural Resources.

- (2) The regulatory flood elevation, floodway, and fringe limits for each of the SFHAs within the jurisdiction of the City of Mishawaka, delineated as an "A Zone" on the St. Joseph County, Indiana and Incorporated Areas Flood Insurance Rate Map, dated January 6, 2011, as well as any subsequent updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date, shall be according to the best available flood layer provided by the Indiana Department of Natural Resources, provided the upstream drainage area from the subject site is greater than one square mile. Whenever a party disagrees with the best available flood layer data, the party needs to replace existing data with better data that meets current engineering standards. To be considered, this data must be submitted to the Indiana Department of Natural Resources for review and subsequently approved.
- (3) In the absence of a published FEMA map, or absence of identification on a FEMA map, the regulatory flood elevation, floodway, and fringe limits of any watercourse in the community's known flood prone areas shall be according to the best available flood layer as provided by the Indiana Department of Natural Resources, provided the upstream drainage area from the subject site is greater than one square mile.
- (4) Upon issuance of a Letter of Final Determination (LFD), any more restrictive data in the new (not yet effective) mapping/study shall be utilized for permitting and construction (development) purposes, replacing all previously effective less restrictive flood hazard data provided by FEMA.

Section C. Establishment of Floodplain Development Permit

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities in areas of special flood hazard.

Section D. Compliance

- (1) No structure shall hereafter be located, extended, converted, or structurally altered within the SFHA without full compliance with the terms of this ordinance and other applicable regulations.
- (2) Where an existing or proposed structure or other development is affected by multiple flood zones, by multiple base flood elevations, or both, the development activity must comply with the provisions of this ordinance applicable to the most restrictive flood zone and the most conservative (highest) base flood elevation affecting any part of the existing or proposed structure; or for other developments, affecting any part of the area of the development.
- (3) No land or stream within the SFHA shall hereafter be altered without full compliance with the terms of this ordinance and other applicable regulations.

Section E. Abrogation and Greater Restrictions

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Section F. Discrepancy between Mapped Floodplain and Actual Ground Elevations

- (1) In cases where there is a discrepancy between the mapped floodplain (SFHA) with base flood elevations provided (riverine or lacustrine Zone AE) on the FIRM and the actual ground elevations, the elevation provided on the profiles or table of still water elevations shall govern.

- (2) If the elevation of the site in question is below the base flood elevation, that site shall be included in the SFHA and regulated accordingly.
- (3) If the natural grade elevation of the site in question is at or above the base flood elevation and a LOMA or LOMR-FW is obtained, the floodplain regulations will not be applied provided the LOMA or LOMR-FW is not subsequently superseded or invalidated.

Section G. Interpretation

In the interpretation and application of this ordinance all provisions shall be:

- (1) Considered as minimum requirements.
- (2) Liberally construed in favor of the governing body.
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

Section H. Warning and Disclaimer of Liability

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on rare occasions. Therefore, this ordinance does not create any liability on the part of the City of Mishawaka, the Indiana Department of Natural Resources, or the State of Indiana, for any flood damage that results from reliance on this ordinance, or any administrative decision made lawfully thereunder.

Section I. Penalties for Violation

Failure to obtain a Floodplain Development Permit in the SFHA or failure to comply with the requirements of a Floodplain Development Permit or conditions of a variance shall be deemed to be a violation of this ordinance. All violations shall be considered a common nuisance and be treated as such in accordance with the provisions of the Zoning Code for the City of Mishawaka. All violations shall be punishable by a fine as prescribed by Section 137-47 of the Zoning Code for the City of Mishawaka and IC 36-1-3-8 and may be amended from time to time.

- (1) A separate offense shall be deemed to occur for each day the violation continues to exist.
- (2) The Common Council of the City of Mishawaka shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a Standard Flood Insurance Policy to be suspended.
- (3) Nothing herein shall prevent the City of Mishawaka from taking such other lawful action to prevent or remedy any violations. All costs connected therewith shall accrue to the person or persons responsible.

Article 4. Administration.

Section A. Designation of Administrator

The Common Council of the City of Mishawaka hereby appoints the City Planner or designated representative to administer and implement the provisions of this ordinance and is herein referred to as the Floodplain Administrator.

Section B. Floodplain Development Permit and Certification Requirements

An application for a floodplain development permit shall be made to the Floodplain Administrator for all development activities located wholly within, partially within, or in contact with an identified special flood hazard area. Such application shall be made by the owner of the property or his/her authorized agent, herein referred to as the applicant, prior to the actual commencement of such construction on a form furnished for that purpose. Such applications shall include, but not be limited to plans drawn to scale showing the nature, location, dimensions, and elevations of the area in question, existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

(1) Application Stage.

- a. A description of the proposed development.
- b. Location of the proposed development sufficient to accurately locate property and structure(s) in relation to existing roads and streams.
- c. A legal description of the property site.
- d. For the reconstruction, rehabilitation, or improvement of an existing structure, or an addition to an existing building, a detailed quote and description of the total work to be completed including but not limited to interior work, exterior work, and labor as well as a certified valuation of the existing (pre-improved or pre-damaged) structure.
- e. A site development plan showing existing and proposed development locations and existing and proposed land grades.
- f. A letter from a licensed professional surveyor or engineer noting that an elevation reference benchmark has been established or confirmed for those projects requiring elevations to be met.
- g. Verification that connection to either a public sewer system or to an approved on-site septic system is available and approved by the respective regulatory agency for proposed structures to be equipped with a restroom, kitchen or other facilities requiring disposal of wastewater.
- h. Plans showing elevation of the top of the planned lowest floor (including basement) of all proposed structures in Zones A, AH, and AE. Elevation should be in NAVD 88.
- i. Plans showing elevation (in NAVD 88) to which any non-residential structure will be floodproofed.
- j. Plans showing location and specifications for flood openings for any proposed structure with enclosed areas below the flood protection grade.
- k. Plans showing materials to be used below the flood protection grade for any proposed structure are flood resistant.
- l. Plans showing how any proposed structure will be anchored to resist flotation or collapse.
- m. Plans showing how any electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities are designed and/or located. Elevation should be in NAVD 88.

- n. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. A hydrologic and hydraulic engineering analysis is required, and any watercourse changes submitted to DNR for approval. Once DNR approval is obtained, a FEMA Conditional Letter of Map Revision must be obtained prior to construction. (See Article 4, Section C (8) and Article 4, Section E for additional information.)
- o. Any additional information, as requested by the Floodplain Administrator, which may be necessary to determine the disposition of a proposed development or structure with respect to the requirements of this ordinance.

(2) Finished Construction.

- a. Upon completion of construction of any structure requiring certification of elevation, an elevation certificate which depicts the “as-built” lowest floor elevation and other applicable elevation data is required to be submitted by the applicant to the Floodplain Administrator. The elevation certificate shall be prepared by or under the direct supervision of a registered land surveyor and certified by the same.
- b. Upon completion of construction of an elevated structure constructed on fill, a fill report is required to be submitted to the Floodplain Administrator to verify the required standards were met, including compaction.
- c. Upon completion of construction of a floodproofing measure, a floodproofing certificate is required to be submitted by the applicant to the Floodplain Administrator. The floodproofing certificate shall be prepared by or under the direct supervision of a registered professional engineer or architect and certified by same.

Section C. Duties and Responsibilities of the Floodplain Administrator

The Floodplain Administrator and/or designated staff is hereby authorized and directed to enforce the provisions of this ordinance. The administrator is further authorized to render interpretations of this ordinance, which are consistent with its spirit and purpose.

Duties and Responsibilities of the Floodplain Administrator shall include, but are not limited to:

- (1) Enforce the provisions of this ordinance.
- (2) Evaluate application for permits to develop in special flood hazard areas to assure that the permit requirements of this ordinance have been satisfied.
- (3) Interpret floodplain boundaries and provide flood hazard and flood protection elevation information.
- (4) Issue permits to develop in special flood hazard areas when the provisions of these regulations have been met or refuse to issue the same in the event of noncompliance.
- (5) Advise permittee that additional Federal, State and/or local permits may be required. If specific Federal, State and/or local permits are known, require that copies of such permits be provided and maintained on file with the floodplain development permit.
- (6) Conduct substantial damage determinations to determine whether existing structures, damaged from any source and in special flood hazard areas, must meet the development standards of these regulations.

- (7) For applications to improve structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator shall:
- a. Verify and document the market value of the pre-damaged or pre-improved structure.
 - b. Compare the cost to perform the improvement; or the cost to repair a damaged building to its pre-damaged condition; or, the combined costs of improvements and repair, if applicable, to the market value of the pre-damaged or pre-improved structure. The cost of all work must be included in the project costs, including work that might otherwise be considered routine maintenance. Items/activities that must be included in the cost shall be in keeping with guidance published by FEMA to ensure compliance with the NFIP and to avoid any conflict with future flood insurance claims of policyholders within the community.
 - c. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; the determination requires evaluation of previous permits issued for improvements and repairs as specified in the definition of "substantial improvement" for proposed work to repair damage caused by flood, the determination requires evaluation of previous permits issued to repair flood-related damage as specified in the definition of substantial damage.
 - d. Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the applicable general and specific standards in Article 5 of this ordinance are required.
- (8) Notify adjacent communities and the State Floodplain Coordinator prior to any alteration or relocation of a watercourse and submit copies of such notifications to FEMA.
- (9) Ensure that construction authorization has been granted by the Indiana Department of Natural Resources for all development projects subject to Article 5, Section A (1), Section A (3) (a) and Section A (4) of this ordinance. Maintain a record of such authorization (either copy of actual permit/authorization or floodplain analysis/regulatory assessment).
- (10) Verify the upstream drainage area of any proposed development site near any watercourse not identified on a FEMA map to determine if Article 4, Section C (9) is applicable.
- (11) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (12) Verify and record the actual elevation of the lowest floor (including basement) of all new or substantially improved structures, in accordance with Article 4, Section B.
- (13) Verify and record the actual elevation to which any new or substantially improved structures have been floodproofed in accordance with Article 4, Section B.
- (14) Make on-site inspections of projects in accordance with Article 4, Section D.
- (15) Coordinate with insurance adjusters prior to permitting any proposed work to bring any flood-damaged structure covered by a standard flood insurance policy into compliance (either a substantially damaged structure or a repetitive loss structure) to ensure eligibility for ICC funds.
- (16) Ensure that an approved connection to a public sewer system or an approved on-site septic system is planned for any structures (residential or non-residential) to be equipped with a restroom, kitchen or other facilities requiring disposal of wastewater.
- (17) Provide information, testimony, or other evidence as needed during variance hearings.

- (18) Serve notices of violations, issue stop-work orders, revoke permits and take corrective actions in accordance with Article 4, Section D.
- (19) Maintain for public inspection and furnish upon request local permit documents, damaged structure inventories, substantial damage determinations, regulatory flood data, SFHA maps, Letters of Map Change (LOMC), copies of DNR permits, letters of authorization, and floodplain analysis and regulatory assessments (letters of recommendation), federal permit documents, and "as-built" elevation and floodproofing data for all buildings constructed subject to this ordinance in accordance with Article 4, Section D.
- (20) Coordinate map maintenance activities and associated FEMA follow-up in accordance with Article 4, Section E.
- (21) Utilize and enforce all Letters of Map Change (LOMC) or Physical Map Revisions (PMR) issued by FEMA for the currently effective SFHA maps of the community.
- (22) Request any additional information which may be necessary to determine the disposition of a proposed development or structure with respect to the requirements of this ordinance.

Section D. Administrative Procedures

- (1) Inspections of Work in Progress. As the work pursuant to a permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and terms of the permit. In exercising this power, the administrator has a right, upon presentation of proper credential, to enter on any premises within the territorial jurisdiction at any reasonable hour for the purposes of inspection or other enforcement action.
- (2) Stop Work Orders.
 - a. Upon notice from the floodplain administrator, work on any building, structure or premises that is being done contrary to the provisions of this ordinance shall immediately cease.
 - b. Such notice shall be in writing and shall be given to the owner of the property, or to his agent, or to the person doing the work, and shall state the conditions under which work may be resumed.
- (3) Revocation of Permits.
 - a. The floodplain administrator may revoke a permit or approval, issued under the provisions of the ordinance, in cases where there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.
 - b. The floodplain administrator may revoke a permit upon determination by the floodplain administrator that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this ordinance.
- (4) Floodplain Management Records.
 - a. Regardless of any limitation on the period required for retention of public records, records of actions associated with the administration of this ordinance shall be kept on file and maintained under the direction of the Floodplain Administrator in perpetuity. These records include permit applications, plans, certifications, Flood Insurance Rate Maps; Letter of Map Change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and documentation of elevations required by this ordinance; notifications to adjacent communities, FEMA, and the state related to alterations of watercourses; assurances that the flood

carrying capacity of altered watercourses will be maintained; documentation related to appeals and variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to this ordinance.

- b. These records shall be available for public inspection at Department of Planning and Community Development, City Hall, 100 Lincolnway West, Mishawaka, IN 46544.

- (5) Periodic Inspection. Once a project is completed, periodic inspections may be conducted by the Floodplain Administrator to ensure compliance. The Floodplain Administrator shall have a right, upon presentation of proper credential, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

Section E. Map Maintenance Activities

To meet NFIP minimum requirements to have flood data reviewed and approved by FEMA, and to ensure that the City of Mishawaka flood maps, studies and other data identified in Article 3, Section B accurately represent flooding conditions so appropriate floodplain management criteria are based on current data, the following map maintenance activities are identified:

(1) Requirement to Submit New Technical Data

- a. For all development proposals that impact floodway delineations or base flood elevations, the community shall ensure that technical data reflecting such changes be submitted to FEMA within six months of the date such information becomes available. These development proposals include:
 - i. Floodway encroachments that increase or decrease base flood elevations or alter floodway boundaries.
 - ii. Fill sites to be used for the placement of proposed structures where the applicant desires to remove the site from the special flood hazard area.
 - iii. Alteration of watercourses that result in a relocation or elimination of the special flood hazard area, including the placement of culverts; and Subdivision or large-scale development proposals requiring the establishment of base flood elevations.
- b. It is the responsibility of the applicant to have required technical data for a Conditional Letter of Map Revision or Letter of Map Revision and submitted to FEMA. The Indiana Department of Natural Resources will review the submittals as part of a partnership with FEMA. The submittal should be mailed to the Indiana Department of Natural Resources at the address provided on the FEMA form (MT-2) or submitted through the online Letter of Map Change website. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.
- c. The Floodplain Administrator shall require a Conditional Letter of Map Revision prior to the issuance of a floodplain development permit for proposed floodway encroachments that increase the base flood elevation.
- d. Floodplain development permits issued by the Floodplain Administrator shall be conditioned upon the applicant obtaining a Letter of Map Revision from FEMA for any development proposal subject to this section.

(2) Right to Submit New Technical Data

The Floodplain Administrator may request changes to any of the information shown on an effective map that does not impact floodplain or floodway delineations or base flood elevations, such as labeling or planimetric details.

Such a submission shall include appropriate supporting documentation made in writing by the Mayor of the City of Mishawaka and may be submitted to FEMA at any time.

(3) Annexation / Detachment

Upon occurrence, the Floodplain Administrator shall notify FEMA in writing whenever the boundaries of the City of Mishawaka have been modified by annexation or the community has assumed authority over an area, or no longer has authority to adopt and enforce floodplain management regulations for a particular area. In order that the St. Joseph County, Indiana and Incorporated Areas Flood Insurance Rate Map accurately represent the City of Mishawaka boundaries, include within such notification a copy of a map of the City suitable for reproduction, clearly showing the new corporate limits or the new area for which the City has assumed or relinquished floodplain management regulatory authority.

Section F. Variance Procedures

- (1) The Board of Zoning Appeals, as established by the Common Council of the City of Mishawaka, shall hear and decide appeals and requests for variances from requirements of this ordinance.
- (2) The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this ordinance. Any person aggrieved by the decision of the board may appeal such decision to the St. Joseph County Circuit or Superior Court.
- (3) In considering such applications, the board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
 - a. the danger to life and property due to flooding or erosion damage.
 - b. the danger that materials may be swept onto other lands to the injury of others.
 - c. the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - d. the importance of the services provided by the proposed facility to the community.
 - e. the necessity to the facility of a waterfront location, where applicable.
 - f. the compatibility of the proposed use with existing and anticipated development.
 - g. the availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.
 - h. the safety of access to the property in times of flood for ordinary and emergency vehicles.
 - i. the expected height, velocity, duration, rate of rise, and sediment transport of the floodwaters at the site.
 - j. the costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (4) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (5) Variances from the provisions of this ordinance shall only be granted when the board can make positive findings of fact based on evidence submitted at the hearing for the following:
 - a. A showing of good and sufficient cause.

- b. A determination that failure to grant the variance would result in exceptional hardship as defined in Article 2.
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.
- (6) No variance for a residential use within a floodway subject to Article 5, Section A (1), Section A (3) (a) or Section A (4) of this ordinance may be granted.
 - (7) Any variance granted in a floodway subject to Article 5, Section A (1), Section A (3) (a) or Section A (4) will require a permit from the Indiana Department of Natural Resources. Variances shall not be issued within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
 - (8) Variances to the Provisions for Flood Hazard Reduction of Article 5 may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade.
 - (9) Variances may be issued for the repair or rehabilitation of "historic structures" upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a "historic structure" and the variance is the minimum to preserve the historic character and design of the structure.
 - (10) Variances may be issued for new construction, substantial improvements, and other development necessary for the conduct of a functionally dependent use.
 - (11) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (12) Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.
 - (13) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Flood Protection Grade and the elevation to which the lowest floor is to be built and stating that the cost of the flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
 - (14) The Floodplain Administrator shall maintain the records of appeal actions and report any variances to the Federal Emergency Management Agency or the Indiana Department of Natural Resources upon request.

Article 5. Provisions for Flood Hazard Reduction

Section A. Floodplain Status Standards

(1) Floodways (Riverine)

Located within SFHAs, established in Article 3, Section B, are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles, and has erosion potential. Under the provisions of the Flood Control Act (IC 14-28-1) a permit for construction in a floodway from the Indiana Department of Natural Resources is required prior to the issuance of a local building permit for any excavation, deposit, construction, or obstruction activity located in the floodway. This includes land preparation activities such as filling, grading, clearing, and paving undertaken before the actual start of construction of the structure. General licenses and exemptions to the requirements of the Flood Control Act (IC 14-28-1 and 312 IAC 10) may apply to qualified additions/improvements to existing lawful residential structures, rural bridges, logjam removals, wetland restoration, utility line crossings, outfall projects, creek rock removal, and prospecting.

- a. If the site is in a regulatory floodway as established in Article 3, Section B, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources and apply for approval for construction in a floodway, provided the activity does not qualify for a general license or exemption (IC 14-28-1 or 312 IAC 10).
- b. No action shall be taken by the Floodplain Administrator until approval has been granted by the Indiana Department of Natural Resources for construction in the floodway, or evidence provided by an applicant that the development meets specified criteria to qualify for a general license or exemption to the requirement of the Flood Control Act. The Floodplain Development Permit shall meet the provisions contained in this article.
- c. The Floodplain Development Permit cannot be less restrictive than an approval issued for construction in a floodway issued by the Indiana Department of Natural Resources, or the specified criteria used to qualify for a general license or exemption to the Flood Control Act for a specific site/project. However, a community's more restrictive regulations (if any) shall take precedence.
- d. In floodway areas identified on the FIRM, development shall cause no increase in flood levels during the occurrence of the base flood discharge without first obtaining a Conditional Letter of Map Revision and meeting requirements of Article 4, Section E (1). A Conditional Letter of Map Revision cannot be issued for development that would cause an increase in flood levels affecting a structure and such development should not be permitted.
- e. In floodway areas identified by the Indiana Department of Natural Resources through detailed or approximate studies but not yet identified on the effective FIRM as floodway areas, the total cumulative effect of the proposed development, when combined with all other existing and anticipated development, shall not adversely affect the efficiency of, or unduly restrict the capacity of the floodway. This adverse effect is defined as an increase in the elevation of the regulatory flood of at least fifteen-hundredths (0.15) of a foot as determined by comparing the regulatory flood elevation under the project condition to that under the natural or pre-floodway condition as proven with hydraulic analyses.
- f. For all projects involving channel modifications or fill (including levees) the City of Mishawaka shall submit the data and request that the Federal Emergency Management Agency revise the regulatory flood data per mapping standard regulations found at 44 CFR § 65.12.

(2) Fringe (Riverine)

If the site is in the fringe (either identified on the FIRM or identified by the Indiana Department of Natural Resources through detailed or approximate studies and not identified on a FIRM), the Floodplain Administrator may issue the local Floodplain Development Permit provided the provisions contained in this article have been met.

(3) SFHAs without Established Base Flood Elevation and/or Floodways/Fringes (Riverine)

- a. Drainage area upstream of the site is greater than one square mile:

If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined, and the drainage area upstream of the site is greater than one square mile, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources for review and comment.

No action shall be taken by the Floodplain Administrator until written approval from the Indiana Department of Natural Resources (approval for construction in a floodway, letter of authorization, or evidence of general license qualification) or a floodplain analysis/regulatory assessment citing the one-percent annual chance flood

elevation and the recommended Flood Protection Grade has been received from the Indiana Department of Natural Resources.

Once the Floodplain Administrator has received the proper written approval, evidence of general license qualification, or floodplain analysis/regulatory assessment approving the proposed development from the Indiana Department of Natural Resources, a Floodplain Development Permit may be issued, provided the conditions of the Floodplain Development Permit are not less restrictive than the conditions received from the Indiana Department of Natural Resources and the provisions contained in this section have been met.

- b. Drainage area upstream of the site is less than one square mile:

If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined and the drainage area upstream of the site is less than one square mile, the Floodplain Administrator shall require the applicant to provide an engineering analysis showing the limits of the floodplain and one-percent annual chance flood elevation for the site.

Upon receipt, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in this article have been met.

(4) SFHAs not Identified on a Map

- a. If a proposed development site is near a waterway with no SFHA identified on a map, the Floodplain Administrator shall verify the drainage area upstream of the site. If the drainage area upstream of the site is verified as being greater than one square mile, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources for review and comment.
- b. No action shall be taken by the Floodplain Administrator until written approval from the Indiana Department of Natural Resources (approval for construction in a floodway, letter of authorization, or evidence of general license qualification) or a floodplain analysis/regulatory assessment citing the one-percent annual chance flood elevation and the recommended Flood Protection Grade has been received from the Indiana Department of Natural Resources.
- c. Once the Floodplain Administrator has received the proper written approval, evidence of general license qualification, or floodplain analysis/regulatory assessment approving the proposed development from the Indiana Department of Natural Resources, a Floodplain Development Permit may be issued, provided the conditions of the Floodplain Development Permit are not less restrictive than the conditions received from the Indiana Department of Natural Resources and the provisions contained in this article have been met.

Section B. General Standards

In all areas of special flood hazard, the following provisions are required:

- (1) All new construction, reconstruction or repairs made to a repetitive loss structure, and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (2) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage below the FPG.
- (3) New construction and substantial improvements must incorporate methods and practices that minimize flood damage.

- (4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be located at/above the FPG for residential structures. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be located at/above the FPG or designed so as to prevent water from entering or accumulating within the components below the FPG for non-residential structures. Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the FPG.
- (5) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (8) Any alteration, repair, reconstruction, or improvements to a structure that is in compliance with the provisions of this ordinance shall meet the requirements of "new construction" as contained in this ordinance.
- (9) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions), which is greater than fifty (50) lots or five (5) acres, whichever is less.
- (10) Where an existing or proposed structure or other development is affected by multiple flood zones, by multiple base flood elevations, or both, the development activity must comply with the provisions of this ordinance applicable to the most restrictive flood zone and the highest base flood elevation affecting any part of the existing or proposed structure; or for other developments, affecting any part of the area of the development.
- (11) Fill projects that do not involve a structure must be protected against erosion and scour during flooding by vegetative cover, riprap, or bulk heading. If vegetative cover is used, the slopes shall be no steeper than 3' horizontal to 1' vertical.

Section C. Specific Standards

In all areas of special flood hazard where base flood elevation data or flood depths have been provided, as set forth in Article 3, Section B, the following provisions are required:

- (1) **Building Protection Requirement.** In addition to the general standards described in Article 5, Section B, structures to be located in the SFHA shall be protected from flood damage below the FPG. This building protection requirement applies to the following situations:
 - a. Construction or placement of a residential structure.
 - b. Construction or placement of a non-residential structure.
 - c. Addition or improvement made to an existing structure where the cost of the addition or improvement equals or exceeds 50% of the value of the existing structure (excluding the value of the land). An addition and/or improvement project that is continuous in scope or time is considered as one project for permitting purposes.
 - d. Reconstruction or repairs made to a damaged structure where the costs of restoring the structure to its before damaged condition equals or exceeds 50% of the market value of the structure (excluding the value of the land) before damage occurred (the costs of any proposed additions or improvements beyond restoring the damaged structure to its before damaged condition must be included in the cost).
 - e. Installing a manufactured home on a new site or a new manufactured home on an existing site.

- f. Installing a travel trailer or recreational vehicle on a site for more than 180 days.
- g. Reconstruction or repairs made to a repetitive loss structure.
- h. Addition or improvement made to any existing structure with a previous repair, addition or improvement constructed since the community's first floodplain ordinance.

(2) Residential Construction.

- a. New construction or substantial improvement of any residential structures shall meet provisions described in Article 5, Section A and applicable general standards described in Article 5, Section B.
- b. In **Zone A and Zone AE**, new construction or substantial improvement of any residential structure shall have the lowest floor; including basement, at or above the FPG. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of Article 5, Section C (2) (c). Should fill be used to elevate a structure, the standards of Article 5, Section C (2) (d) must be met.
- c. **Fully enclosed areas** formed by foundation and other exterior walls below the flood protection grade shall meet the following requirement:
 - i. Designed to preclude finished living space and designed to allow for the automatic entry and exit of floodwaters to equalize hydrostatic flood forces on exterior walls. Flood openings must be designed and installed in compliance with criteria set out in FEMA Technical Bulletin 1. Engineered flood openings must be designed and certified by a registered design professional (requires supporting engineering certification or make/model specific ICC-ES Report), or meet the following criteria for non-engineered flood openings:
 - A. Provide a minimum of two openings on different sides of an enclosure. If there are multiple enclosed areas, each is required to meet the requirements for enclosures, including the requirement for flood openings in exterior walls (having a total net area of not less than one square inch for every one square foot of enclosed area).
 - B. The bottom of all openings shall be no more than one foot above the higher of the final interior grade (or floor) and the finished exterior grade immediately under each opening.
 - C. If the floor of the enclosure is below the BFE, the openings must be located wholly below the BFE.
 - D. If the floor of the enclosure is at or above the BFE, but below the FPG, the openings must be located wholly below the FPG.
 - E. Doors and windows do not qualify as openings.
 - F. Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
 - ii. The floor of such enclosed area must be at or above grade on at least one side.
- d. A residential structure may be constructed on a **fill** in accordance with the following:

- i. Fill shall be placed in layers no greater than 1 foot deep before compacting to 95% of the maximum density obtainable with either the Standard or Modified Proctor Test method. The results of the test showing compliance shall be retained in the permit file.
 - ii. Fill shall extend ten (10) feet beyond the foundation of the structure before sloping below the BFE.
 - iii. Fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulk heading. If vegetative cover is used, the slopes shall be no steeper than 3' horizontal to 1' vertical.
 - iv. Fill shall not adversely affect the flow of surface drainage from or onto neighboring properties.
- e. A residential structure may be constructed using a **stem wall foundation** (also called chain wall, raised-slab-on-grade, and slab-on-stem-wall-with-fill). Any backfilled stem wall foundation (also called chain wall, raised-slab-on-grade, and slab-on-stem-wall-with-fill) must be backfilled with compacted structural fill, concrete, or gravel that supports the floor slab. No flood openings are required for this type of construction.

(3) Non-Residential Construction.

- a. New construction or substantial improvement of any non-residential structures (excludes accessory structures) shall meet provisions described in Article 5, Section A and applicable general standards described in Article 5, Section B.
- b. In **Zone A and Zone AE**, new construction, or substantial improvement of any commercial, industrial, or non-residential structure (excludes accessory structures) shall either have the lowest floor, including basement, elevated to or above the FPG or be floodproofed to or above the FPG. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of Article 5, Section C (3) (c). Should fill be used to elevate a structure, the standards of Article 5, Section C (3) (d) must be met.
- c. **Fully enclosed areas** formed by foundation and other exterior walls below the flood protection grade shall meet the following requirement:
 - i. Designed to preclude finished living space and designed to allow for the automatic entry and exit of floodwaters to equalize hydrostatic flood forces on exterior walls. Flood openings must be designed and installed in compliance with criteria set out in FEMA Technical Bulletin 1. Engineered flood openings must be designed and certified by a registered design professional (requires supporting engineering certification or make/model specific ICC-ES Report), or meet the following criteria for non-engineered flood openings:
 - A. Provide a minimum of two openings on different sides of an enclosure. If more than one enclosed area is present, each must have openings on exterior walls (having a total net area of not less than one square inch for every one square foot of enclosed area).
 - B. The bottom of all openings shall be no more than one foot above the higher of the final interior grade (or floor) and the finished exterior grade immediately under each opening.
 - C. If the floor of the enclosure is below the BFE, the openings must be located wholly below the BFE.
 - D. If the floor of the enclosure is at or above the BFE, but below the FPG, the openings must be located wholly below the FPG.
 - E. Doors and windows do not qualify as openings.

- F. Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
- ii. The floor of such enclosed area must be at or above grade on at least one side.
- d. A nonresidential structure may be constructed on **fill** in accordance with the following:
- i. Shall be placed in layers no greater than 1 foot deep before compacting to 95% of the maximum density obtainable with either the Standard or Modified Proctor Test method. The results of the test showing compliance shall be retained in the permit file.
 - ii. Shall extend ten (10) feet beyond the foundation of the structure before sloping below the BFE.
 - iii. Shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulk heading. If vegetative cover is used, the slopes shall be no steeper than 3' horizontal to 1' vertical.
 - iv. Shall not adversely affect the flow of surface drainage from or onto neighboring properties.
- e. A nonresidential structure may be **floodproofed** in accordance with the following:
- i. A Registered Professional Engineer or Architect shall certify that the structure has been designed so that below the FPG, the structure and attendant utility facilities are watertight and capable of resisting the effects of the regulatory flood. The structure design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice. Such certification shall be provided to the Floodplain Administrator.
 - ii. Floodproofing measures shall be operable without human intervention and without an outside source of electricity.
- f. A nonresidential structure may be constructed using a **stem wall foundation** (also called chain wall, raised-slab-on-grade, and slab-on-stem-wall-with-fill). Any backfilled stem wall foundation must be backfilled with compacted structural fill, concrete, or gravel that supports the floor slab. No flood openings are required for this type of construction.

(4) **Manufactured Homes and Recreational Vehicles.**

- a. These requirements apply to all manufactured homes to be placed on a site in the SFHA:
- i. The manufactured home shall be elevated on a permanent foundation such that the lowest floor shall be at or above the FPG and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
 - ii. Fully enclosed areas formed by foundation and other exterior walls below the FPG shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Article 5, Section C (2) (c).
- b. Recreational vehicles placed on a site in the SFHA shall either:
- i. Be on site for less than 180 days and be fully licensed and ready for use on a public highway (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions), or

- ii. Meet the requirements for “manufactured homes” as stated earlier in this section.

(5) Accessory Structures

Within SFHAs, new construction or placement of an accessory structure must meet the following standards:

- a. Shall have a floor area of 400 square feet or less.
- b. Use shall be limited to parking of vehicles and limited storage.
- c. Shall not be used for human habitation.
- d. Shall be constructed of flood resistant materials.
- e. Shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters.
- f. Shall be firmly anchored to prevent flotation.
- g. Service facilities such as electrical and heating equipment shall be elevated or floodproofed to or above the FPG.
- h. Shall be designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Article 5, Section C (3) (c).
- i. Shall not have subsequent additions or improvements that would preclude the structure from its continued designation as an accessory structure.

(6) Free-standing Pavilions, Gazebos, Decks, Carports, and Similar Development.

Within SFHAs, new construction or placement of free-standing pavilions, gazebos, decks, carports, and similar development must meet the following standards:

- a. Shall have open sides (having not more than one rigid wall).
- b. Shall be anchored to prevent flotation or lateral movement.
- c. Shall be constructed of flood resistant materials below the FPG.
- d. Any electrical, heating, plumbing and other service facilities shall be located at/above the FPG.
- e. Shall not have subsequent additions or improvements that would preclude the development from its continued designation as a free-standing pavilion, gazebo, carport, or similar open-sided development.

(7) Above Ground Gas or Liquid Storage Tanks.

Within SFHAs, all newly placed aboveground gas or liquid storage tanks shall meet the requirements for a non-residential structure as required in Article 5, Section C (3).

Section D. Standards for Subdivision and Other New Developments

- (1) All subdivision proposals and all other proposed new development shall be consistent with the need to minimize flood damage.
- (2) All subdivision proposals and all other proposed new development shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (3) All subdivision proposals and all other proposed new development shall have adequate drainage provided to reduce exposure to flood hazards.
- (4) In all areas of special flood hazard where base flood elevation data are not available, the applicant shall provide a hydrologic and hydraulic engineering analysis that generates base flood elevations for all subdivision proposals and all other proposed new development (including manufactured home parks and subdivisions), which is greater than fifty (50) lots or five (5) acres, whichever is less.

Section E. Standards for Critical Facilities

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA. Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated to or above the FPG at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the FPG shall be provided to all critical facilities to the extent possible.

Article 6. Legal Status Provisions

Section A. Severability.

If any section, subsection, sentence, clause, or phrase of these regulations is, for any reason, declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof, other than the part so declared.

Section B. Effective Date.

This ordinance shall be in full force and effect upon adoption.

Passed by the Common Council of the City of Mishawaka, Indiana on this _____ day of _____, 2024, at _____ o'clock ____m.

Common Council
City of Mishawaka, Indiana

Presiding Officer
Gregg Hixenbaugh

Attest: _____
Deborah A. Block, IAMC, MMC, City Clerk

Presented by me to the Mayor this _____ day of _____, 2024, at _____ o'clock ____m.

Deborah A. Block, IAMC, MMC, City Clerk

Approved by me this ____ day of _____, 2024, at ____ o'clock ____m.

David A. Wood, Mayor

1st Reading

2nd Reading

Passed

Failed

Continued To

Petition 24-12

NOV 25 2024

City Clerk
Mishawaka, IN

CITY OF MISHAWAKA, INDIANA

PROPOSED ORDINANCE NO. 2024-35

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 THE CITY OF
MISHAWAKA, INDIANA.

WELLHEAD PROTECTION LAND USE RESTRICTIONS

WHEREAS, in 1966 the City of Mishawaka adopted the Zoning Ordinance to regulate uses and development within the City, and

WHEREAS, the City has recently completed multiple water infrastructure improvement projects expending over 50 million dollars, and

WHEREAS, these improvements include the rehabilitation and expansion of a storage tank on Ireland Road, the construction of a new water tower at the Gumwood Wellfield, the replacement of a 100 year old storage tank and system improvements at Virgil Street adjacent to the Eberhart-Petro Golf Course, the construction of a new wellfield along Juday Creek that will replace the Gumwood Wellfield, new Water Treatment Facility at Juday Creek, and

WHEREAS, in 2024 a rezoning petition was received to place an additional gas station and convenience store within the 1-year time of travel (the time required for groundwater to move from a specified point to a well) of the newly completed Juday Creek Wellfield, and

WHEREAS, the request was ultimately approved, the hearing process identified that the issues surrounding wellhead protection and providing for safe drinking water needed to be further addressed, and

WHEREAS, a need was identified for additional public education and increased availability of wellhead protection maps online, and

WHEREAS, both the Administration and Council members identified a need and desire for ordinance modifications to both increase and formally codify restrictions regarding development within wellhead protection areas, and

WHEREAS, St. Joseph County has adopted Chapter 52-Water Regulations of the St. Joseph County Code that outlines provisions to help insure safe drinking water, and

WHEREAS, included in the Water Regulations of the St. Joseph County Code is are two sub-categories- Well Drilling and Water Supply System, and Wellhead Protection, and

WHEREAS, the St. Joseph County Health Department is the administrative entity that is responsible for issuing local permits for wells, and

WHEREAS, the Wellhead Protection provisions of the county is oriented to a permit process that is designed to regulate the minimum setback distances for new wells and was not drafted to regulate uses or developmental standards which is predominantly a function of zoning, and

WHEREAS, St. Joseph County within its Wellhead protection requirements defines threats to groundwater as follows: (1) The presence of a hazardous substance or regulated substance in the vadose zone in sufficient quantity or concentration to present a reasonable likelihood that it will damage groundwater; and/or (2) The presence at a facility of any of the following activities or conditions involving hazardous or regulated substances in a manner either not in compliance with applicable federal, state or local requirements, or in a manner which represents an unreasonable risk of release to groundwater, or to soil in a quantity sufficient to present a reasonable likelihood that it will damage groundwater: Water Regulations 49 (a) An underground storage tank; (b) An above-ground storage tank; (c) A drum storage area; (d) A waste pile, including one consisting of contaminated soil awaiting removal; (e) A surface impoundment; (f) A rail or truck-loading or transfer area; and/or (g) An outdoor storage or disposal area exposed to precipitation, and

WHEREAS, the City desires to expand on this definition for the purposes of regulating the storage and distribution of chemicals, materials, uses, and storage methods that are potential threats to groundwater, and

WHEREAS, the City's water system is a public water system that is further reviewed and regulated by the Indiana Department of Environmental Management (IDEM), and

WHEREAS, the City's water system, as a public water system, is subject to continued environmental rule changes by the federal government that continues to increase the standards for public water quality where private wells are not regulated in the same way, and

WHEREAS, the ongoing environmental rule changes by the federal government include but are not limited to lead, copper, and Per- and polyfluoroalkyl substances (PFAS), arsenic, manganese, and

WHEREAS, with the increasing standards for public water, the vulnerability of groundwater infiltration, the higher cost of treatment and filtration, and the potential that exists to force the closure of wells and wellfields from contamination, and

WHEREAS, the City desires to further regulate development within both the one-year and five year time of travel surrounding municipal wellfields.

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", be, and the same is hereby amended as follows:

Add the following:

DIVISION 8. – Wellhead Protection Land Use Restrictions

Sec. 137-870. – Prohibited Uses

The commercial bulk storage and distribution of chemicals, materials, uses, and storage methods identified in Sec. 137-872 shall be prohibited within the one-year time of travel for public wellfields. Maps of the one-year and five-year time of travel shall be as adopted by the City in accordance with the Safe Drinking Water Act and the Indiana Wellhead Protection Rule (327 IAC 8-4.1) which mandates the delineation of maps that identifies the time of travel and a wellhead protection program for each well or wellfield providing groundwater to a Community Public Water System.

Sec. 137-871- Conditional uses.

The commercial bulk storage and distribution of chemicals, materials, uses, and storage methods identified in Sec. 137-872 may be conditionally approved by the board of zoning appeals outside of the one-year time of travel but within the five-year time of travel for public wellfields. Maps of the one-year and five-year time of travel shall be as adopted by the City in accordance with the Safe Drinking Water Act and the Indiana Wellhead Protection Rule (327 IAC 8-4.1) which mandates the delineation of maps that identifies the time of travel and a wellhead protection program for each well or wellfield providing groundwater to a Community Public Water System.

Sec. 137-872- Identified chemicals, materials, uses, and storage methods

- a) Petroleum or petroleum-based products, including fuels, fuel additives, lubricating oils, motor oils, hydraulic fluids, and other similar petroleum based products
- b) Antifreeze, transmission fluids, brake fluids, and coolants
- c) Solvents (raw or spent), including cleaning solvents, degreasing solvents, stripping compounds, dry cleaning solvents, painting solvents, and/or hydrocarbon or halogenated hydrocarbon solvents
- d) Inks, printing and photocopying chemicals, and waste rags used for solvent-based cleaning
- e) Organic pigments

- f) Liquid storage batteries
- g) Non-aerosol, non-latex based paints, primers, thinners, dyes, stains, wood preservatives, varnishing and cleaning compounds, paint sludges, and paint filters
- h) Corrosion and rust prevention solutions
- i) Industrial and commercial cleaning supplies, including drain cleaners
- j) Sanitizers, disinfectants, bactericides, and algaecides
- k) Pesticides, herbicides, and fertilizers
- l) Acids and bases with a pH less than or equal to 2 or greater than or equal to 12.5
- m) Aqueous metals
- n) Road salt
- o) Any other regulated substance in a quantity sufficient to present a reasonable likelihood that it has or is likely to damage groundwater or surface water, and stored, transferred or used in a manner either not in compliance with applicable federal, state or local requirements; or in a manner which represents an unreasonable risk of release to the soil, groundwater or surface water
- p) A drum storage area
- q) Waste pile, including one consisting of contaminated soil awaiting removal
- r) Waste or material surface impoundment that contains waste containing free liquids or other material susceptible to ground infiltration
- s) Rail or truck-loading or transfer area;
- t) Auto salvage facility;
- u) An outdoor storage or disposal area with material susceptible to ground infiltration when exposed to precipitation

Sec. 137-873- Underground Storage Tanks.

Underground storage tanks (UST) shall be prohibited within the one-year time of travel for public wellfields. Underground Storage tanks shall include any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of any regulated substances or petroleum, and the volume of which (including the volume of underground pipes connected thereto) is 10% or more beneath the surface of the ground. For the purposes of this section this shall not include:

- a) Farm or residential tanks of 185 gallons or less capacity used for storing fuel for noncommercial purposes;

- b) Tank used for storing heating oil for consumptive use on the premises where stored;
- c) Septic tank; as regulated, approved, and permitted by the St. Joseph County, Indiana, Board of Health
- d) Pipeline facility (including gathering lines) regulated under: 1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671 et seq.); 2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001 et seq.); or 3. Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in divisions (1)(d)1. or (1)(d)2. of this definition.
- e) Surface impoundment, pit, pond or lagoon;
- f) Storm water or wastewater collection system as may be approved by the City of Mishawaka Engineering Department as part of a final site plan.
- g) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, Water Regulations 50 shaft or tunnel) if the storage tank is situated upon or above the surface of the floor.

Sec. 137-874- Conflicting Ordinances

The Wellhead Protection Land Use Restrictions identified herein shall be deemed as additional requirements to minimum legal requirements identified by zoning districts or other local codes and ordinances, also including other governmental entities. In case of conflicting requirements, the most restrictive shall apply.

Section 2. 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 _____, 2024, at _____ o'clock _____.M.

Gregg Hixenbaugh - President

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this _____ day of _____,
2024, at _____ o'clock _____.M.

Deborah S. Block, IAMC, MMC, City Clerk

APPROVED by me this _____ day of _____, 2024, at
_____ o'clock _____.M.

David A. Wood, Mayor

1st Reading
2nd Reading
Passed
Failed
Continued To

Deborah S. Block, IAMC, MMC

PROPOSED ORDINANCE NO. 2024-36

NOV 26 2024

ORDINANCE NO. _____

City Clerk
Mishawaka, IN

AN ORDINANCE AMENDING ORDINANCE 5868 FIXING THE SALARIES OF ALL EMPLOYEES OF THE CITY OF MISHAWAKA EXCEPT, MISHAWAKA PARK DEPARTMENT, ELECTED OFFICIALS AND THE MISHAWAKA UTILITIES FOR THE CITY OF MISHAWAKA, INDIANA, FOR THE YEAR BEGINNING JANUARY 1, 2024.

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

Section 1. Ordinance number 5868 passed by the Common Council of the City of Mishawaka, Indiana, on the 16th of October 2023 is hereby amended as follows:

CENTRAL SERVICES/MVH CERTIFICATIONS

ANNUAL

TANKER	50
CDL B	200
CDL A	400

Section 2. This ordinance shall be in full force and effect from and after its signing and attestation.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on

this _____ day of _____ 2024 at _____ o'clock, __. m.

Gregg A. Hixenbaugh, Presiding Officer

ATTEST:

Deborah S. Block, IAMCA, MMC, City Clerk

PRESENTED BY ME, to the Mayor on this _____ day of December 2024, at _____ o'clock, __.m.

Deborah S. Block, IAMCA, MMC, City Clerk

APPROVED BY ME this _____ day of December 2024, at _____ o'clock, __m.

David A. Wood, Mayor



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF FINANCE
Rebecca S. Maguire, Controller
Kayla Yoder, Deputy Controller

Date: November 25, 2024
To: Honorable Members of the Common Council
From: Rebecca Maguire – Controller
Re: Salary ordinance amendments

For first reading we have Teamster Tanker and CDL A & B certifications to add to the 2024 and 2025 salary ordinances. These were added to the 2023 salary ordinance by amendment and were not programmed into the regular ordinances.

They have been proactively added to the 2026 draft document.

Thank you for your consideration. Please contact me with any questions.

c: David A. Wood, Mayor
Tim Ryan, Street Commissioner

1st Reading
2nd Reading
Passed
Failed
Continued To

Deborah S. Block, IAMC, MMC

NOV 26 2024

City Clerk
Mishawaka, IN

PROPOSED ORDINANCE NO. 2024 - 37

ORDINANCE NO. _____

AN ORDINANCE AMENDING ORDINANCE 5907AA FIXING THE SALARIES OF ALL EMPLOYEES OF THE CITY OF MISHAWAKA EXCEPT, MISHAWAKA PARK DEPARTMENT, ELECTED OFFICIALS AND THE MISHAWAKA UTILITIES FOR THE CITY OF MISHAWAKA, INDIANA, FOR THE YEAR BEGINNING JANUARY 1, 2025.

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

Section 1. Ordinance number 5907AA passed by the Common Council of the City of Mishawaka, Indiana, on the 28th of October 2024 is hereby amended as follows:

CENTRAL SERVICES/MVH CERTIFICATIONS

ANNUAL

TANKER	50
CDL B	200
CDL A	400

Section 2. This ordinance shall be in full force and effect from and after its signing and attestation.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on

this _____ day of December 2024 at _____ o'clock, ____ m.

Gregg A. Hixenbaugh, Presiding Officer

ATTEST:

Deborah S. Block, IAMCA, MMC, City Clerk

PRESENTED BY ME, to the Mayor on this _____ day of December 2024, at _____ o'clock, ____ m.

Deborah S. Block, IAMCA, MMC, City Clerk

APPROVED BY ME this _____ day of December 2024, at _____ o'clock, __.m.

David A. Wood, Mayor

1st Reading
2nd Reading
Passed
Failed
Continued To

Deborah S. Block, IAMC, MMC

NOV 26 2024

City Clerk
Mishawaka, IN

PROPOSED ORDINANCE NO. 2024-38

ORDINANCE NO. _____

AN ORDINANCE DECLARING AN EMERGENCY AND
TRANSFERRING AND REAPPROPRIATING FUNDS
WITHIN THE BUDGET ADOPTED FOR THE
CALENDAR YEAR ENDING DECEMBER 31, 2024

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

Section 1. An emergency exists which requires the transfer and reappropriation of funds within the Central Services Department in the General Fund budget adopted for the fiscal year ending December 31, 2024.

Section 2. There is hereby transferred and reappropriated the sum of \$30,000.00 as follows:

General Fund

From: Central Services Department

Supplies

1101-22-422-02 Gas, Oil, etc. \$30,000.00

Total \$30,000.00

To: Central Services Department

Other Services and Charges

1101-22-436-01 Repairs and Maintenance \$30,000.00

Total \$30,000.00

Section 3. This ordinance shall be in full force and effect from and after its passage, signing and attestation.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on this

_____ day of _____, 2024 at _____ o'clock, _____. m.

Gregg Hixenbaugh, Presiding Officer

ATTEST:

Deborah S. Block, IAMCA, MMC, City Clerk

PRESENTED BY ME to the Mayor this _____ day of _____, 2024 at
_____ o'clock, _____. m.

Deborah S. Block, IAMCA, MMC, City Clerk

APPROVED BY ME this _____ day of _____, 2024 at _____ o'clock,
_____. m.

David A. Wood, Mayor



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

CENTRAL SERVICES DEPARTMENT
Tim Ryan, Street Commissioner

October 28, 2024

Mishawaka Common Council
City Hall
100 Lincolnway West
Mishawaka, IN 46544

RE: Proposed Ordinance 2024-

Honorable Council Members:

At this time, we find the need to request a transfer of Central Services funds as follows:

FROM: Central Services Department

Operating Supplies

1101-22-422-02 Gas, Oil, Etc.

\$30,000

Total: \$30,000

TO: Central Services Department

Repairs and Maintenance

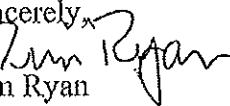
1101-22-436-01 Building Repair/Equipment/Maint.

\$30,000

Total: \$30,000

If you have any questions concerning this transfer, please call or visit my office.

Sincerely,


Tim Ryan
Street Commissioner

1st Reading
2nd Reading
Passed
Failed
Continued To

Deborah S. Block, AMC, MMC

NOV 26 2024

City Clerk
Mishawaka, IN

PROPOSED ORDINANCE NO. 2024 -39

ORDINANCE NO. _____

AN ORDINANCE DECLARING AN EMERGENCY AND
TRANSFERRING AND REAPPROPRIATING FUNDS
WITHIN THE BUDGET ADOPTED FOR THE
CALENDAR YEAR ENDING DECEMBER 31, 2024

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

Section 1. An emergency exists which requires the transfer and reappropriation of funds within the Park and Recreation Department budget in the Park and Recreation Fund adopted for the fiscal year ending December 31, 2024

Section 2. There is hereby transferred and reappropriated the sum of \$100,000.00 as follows:

Park and Recreation Fund

From: <u>Personal Services</u>		
2204-50-411-03	Temporary	85,000.00
<u>Supplies</u>		
2204-50-429-15	Program Supplies	10,000.00
2204-50-429-16	Golf Course Concessions	<u>5,000.00</u>
		\$100,000.00
To: <u>Other Services and Charges</u>		
2204-50-436-01	Repairs and Maintenance	15,000.00
2204-50-436-90	Service Contracts	<u>85,000.00</u>
		\$100,000.00

Section 3. This ordinance shall be in full force and effect from and after its passage, signing and attestation.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana, on

This _____ day of _____, 2024 at _____ o'clock, _____. M.

Gregg Hixenbaugh, Council President

ATTEST;

Deborah S. Block, IAMCA, MMC, City Clerk

PRESENTED BY ME to the Mayor this _____ day of

_____, 2024 at _____ o'clock, _____. M.

Deborah S. Block, IAMCA, MMC, City Clerk

APPROVED BY ME this _____ day of _____, 2024

at _____ o'clock, _____. M.

David A. Wood, Mayor



CITY OF MISHAWAKA



DAVID A. WOOD, MAYOR

PARKS AND RECREATION DEPARTMENT
ADMINISTRATION OFFICE

Date: December 2, 2024
To: Mishawaka Common Council
From: Phil Blasko, Superintendent of Parks
Re: Transfer of Park Department Funds

Mr. President and Honorable Council Members:

After examining the operating budget and estimated expenditures for through the end of the year for the Parks and Recreation Department, a total of **\$100,000** will need to be transferred into two specific lines. See below:

436.01	Repairs & Maintenance	\$15,000
436.90	Service Contracts	\$85,000

To accommodate the transfer of additional funds into the above accounts, we have scrutinized our operating fund accounts and determined the transfers can come from three accounts. See Below:

411.03	Temporary	\$85,000
429.15	Program Supplies	\$10,000
429.16	Golf Course Concessions	\$5,000

Thank you for your consideration of this matter. Your approval will continue to allow the Parks and Recreation Department to operate efficiently and professionally to serve our customers and the City of Mishawaka. Should you have any questions, please do not hesitate to contact me at (574) 258-1664 or pblasko@mishawaka.in.gov.

Respectfully submitted,

Phil Blasko, Superintendent of Parks

cc: Honorable Mayor Dave Wood
Rebecca Maguire, City Controller

1st Reading
2nd Reading
Passed
Failed
Continued To

Deborah S. Block, IAMC, MMC

NOV 26 2024

City Clerk
Mishawaka, IN

PROPOSED ORDINANCE NO. 2024 – 40

ORDINANCE NO. _____

AN ORDINANCE DECLARING AN EMERGENCY AND
DETERMINING THE EXPENDITURE OF ADDITIONAL FUNDS
AND TRANSFER IN THE AMERICAN RESCUE PLAN
CORONAVIRUS LOCAL RECOVERY GRANT FOR THE YEAR
ENDING DECEMBER 31, 2024

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

Section 1. An emergency exists which requires the appropriation of additional funds for the fiscal year ending December 31, 2024, in addition to that set out in detail in the published budget.

Section 2. There is hereby appropriated from the American Rescue Plan Coronavirus Local Fiscal Recovery Grant fund in the sum of \$129,667.00 for assignment as follows:

Section 3. An emergency exists which requires the transfer and reappropriation of funds within the American Rescue Plan Coronavirus Local Fiscal Recovery Grant budget adopted for the fiscal year ending December 31, 2024.

Section 4. There is hereby transferred and reappropriated the sum of \$12,295.00 as follows:

ARP Coronavirus Local Fiscal Recovery Grant

Additional:

Other Services and Charges

2403-50-459-03	Misc expenditures	<u>\$129,667.00</u>
	Total:	\$129,667.00

Transfer:

From:

Other Capital Outlays

2403-50-443-93	Fire Station Improvements	<u>\$12,295.00</u>
	Total:	\$12,295.00

To:

Other Services and Charges

2403-50-459-03	Misc Expenditures	<u>\$12,295.00</u>
	Total:	\$12,295.00

Section 3. This Ordinance shall be in full force and effect from and after its passage, signing, and attestation.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana
on this _____ day of December 2024 at _____ o'clock, _____. m.

Gregg Hixenbaugh, President

ATTEST:

Deborah S. Block, IAMCA, MMC, City Clerk

PRESENTED BY ME to the Mayor of the City of Mishawaka, Indiana
on this _____ day of December 2024 at _____ o'clock, _____. m.

Deborah S. Block, IAMCA, MMC, City Clerk

APPROVED BY ME this _____ day of December 2024 at
_____ o'clock, _____. M.

David A. Wood, Mayor



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF FINANCE
Rebecca S. Maguire, Controller
Kayla Yoder, Deputy Controller

Date: November 25, 2024

To: Honorable Members of the Common Council

From: Rebecca Maguire – Controller

Re: **Additional Appropriation and Transfer of the American Rescue Plan Act (ARPA) funds**

For your approval on first reading is an additional appropriation to budget the last of the ARPA funding. The amendment to the plan will follow at the next meeting as it is a resolution. \$129,667 of replacement revenue will be used for Battell Park Rock Garden Restoration and Enhancement plus an additional amount of \$13,531 being transferred from the Fire Department's allocation that was not needed. The project is estimated at \$180,000 with the difference being paid for by TIF. Below are the details of the project provided by Ken Prince.

Battell Park Rock Garden Restoration and Enhancements:

The Rock Garden, built in Battell Park, was planned and constructed by the Works Progress Administration (WPA) between August 1936 and June 1937. After the rock garden in Michigan City was constructed by the Federal Emergency Relief Administration (FERA) in Washington Park in 1935, the rock garden in Battell Park was constructed within a natural ravine. The Battell Park Rock Garden is the only inclined or terraced rock garden constructed within the State of Indiana. The rock garden consists of three cascading pools and a terraced waterfall area that empties into the St. Joseph River. Landscape areas line the sides of the pools and fieldstone rock planters are spaced evenly throughout the terraced waterfall area. Decades ago, the landscape garden areas were planted with trees and lawn to reduce maintenance. Inadvertently, the tree root structures have expanded and are now damaging the rock walls. The project removes the trees and restores the now lawn areas back to garden plantings. Additional hose bibs/valve boxes will be provided so that hoses can be used for irrigation without disturbing the original stonework. Ornamental lighting will be provided just outside the original stonework areas to light the garden for both security and night access during park hours. Work also includes extending fiber communication cables and security cameras in multiple locations in Battell Park, including the north end of the rock garden.

Please contact me or Ken Prince with any questions.

c: David A. Wood – Mayor
Ken Prince – Executive Director of Economic Development

1st Reading

NOV 26 2024

2nd Reading

Passed

PROPOSED ORDINANCE NO. 2024-41City Clerk
Mishawaka, IN

Failed

Continued To

ORDINANCE NO. _____

**AN ORDINANCE DECLARING AN EMERGENCY AND
DETERMINING THE EXPENDITURE OF ADDITIONAL
FUNDS FOR THE YEAR ENDING DECEMBER 31, 2024**

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

Section 1. An emergency exists which requires the appropriation of additional funds for the fiscal year ending December 31, 2024, in addition to that set out in detail in the published budget.

Section 2. There is hereby appropriated from the General Fund in the sum of \$367,675.00 and the CEDIT Fund in the sum of \$250,000.00 for assignment as follows:

General Fund

PERSONAL SERVICES

Salaries and Wages

Controller

1101-02-411-02	Bookkeeper	\$40,700.00
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Human Resources

1101-04-411-02	Safety Director	\$55,700.00
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Code Enforcement

1101-14-411-01	Department Head	\$5,650.00
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1101-14-411-63	Longevity	\$4,425.00
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Fire Department

1101-19-411-60	Overtime	\$250,000.00
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**OTHER SERVICES AND
CHARGES**

Professional Services

Human Resources

1101-04-431-04	Professional Services	<u>\$11,200.00</u>
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Total	\$367,675.00
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CEDIT Fund

**OTHER SERVICES AND
CHARGES**

Professional Services
2209-50-431-09

Clinic Services

\$250,000.00

Total: \$250,000.00

Section 3. This Ordinance shall be in full force and effect from and after its passage, signing, and attestation.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana

on this _____ day of December 2024 at _____ o'clock, _____. m.

Gregg Hixenbaugh, President

ATTEST:

Deborah S. Block, IAMCA, MMC, City Clerk

PRESENTED BY ME to the Mayor of the City of Mishawaka, Indiana

on this _____ day of December 2024 at _____ o'clock, _____. m.

Deborah S. Block, IAMCA, MMC, City Clerk

APPROVED BY ME this _____ day of December 2024 at _____ o'clock, _____. m.

David A. Wood, Mayor



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

DEPARTMENT OF FINANCE
Rebecca S. Maguire, Controller
Kayla Yoder, Deputy Controller

Date: November 25, 2024
To: Honorable Members of the Common Council
From: Rebecca Maguire – Controller
Re: **Additional Appropriations General and CEDIT funds**

For approval on first reading for December 2nd there are a few items relating to personal services and one CEDIT item.

As discussed in the budget meetings, we had two new positions added to the General Fund that were put in place after the 2024 budget approval. One is another Bookkeeper position in the Controller's Office. Having lost two positions to retirement it was time to add one back due to the increase in the office workload due to the many projects the City and Utilities have undertaken.

The second is the Safety Director. This position was moved from the Electric Department's budget with increased responsibilities and expectations.

The Code Department requires an increase to its budget to cover the shortfall from the previous Director's payout of benefit time at his retirement and the new Director's longevity bonus. Longevity time is based on years of service with the City. Many times, a department's budget can cover these expenses internally, but Code has a smaller budget than most.

For the Fire Department, the Overtime account line will be over budget at year-end. The line needs to cover overtime through the end of the year.

For the Human Resources Department, a temporary office assistant was hired part-time through an outside agency. Typically, the Temporary Help account line would cover this expense, but these funds were being used for part-time help scanning documents in numerous departments.

Lastly, funds are needed in the Clinical Services line. This line should have been increased for the 2024 budget but was overlooked. This line pays the

expenses at the Employee Health Clinic and the monthly fee. Public Safety and the Utilities also share in these costs.

Please contact me with any questions.

c: David A. Wood, Mayor
Susan Kile, Human Resources Director
Ken Witkowski, Code Enforcement Director
Bryon Woodward, Fire Chief

1st Reading
2nd Reading
Passed
Failed
Continued To

Deborah S. Block, IAC, MMC

NOV 26 2024

City Clerk
Mishawaka, IN

PROPOSED ORDINANCE NO. 2024-42

ORDINANCE NO. _____

**AN ORDINANCE OF THE COMMON COUNCIL FOR THE CITY OF MISHAWAKA
ESTABLISHING A MERIT SYSTEM FOR THE MISHAWAKA POLICE
DEPARTMENT**

WHEREAS, I.C. 36-8-3.5 (*Police and Fire Merit Systems*) sets forth the requirements for the establishment of a police department merit system for eligible departments throughout the State of Indiana; and

WHEREAS, pursuant to the definition of an eligible police department set forth in I.C. 36-8-3.5-5.5 (b), the Mishawaka Police Department ("MPD") is an eligible police department for purposes of the statute; and

WHEREAS, pursuant to the terms of I.C. 36-8-3.5-5.5 (d) & (e), a merit system for the MPD would be established by statute, effective January 1, 2025, unless, not later than December 31, 2024, a majority vote by both the Common Council for the City of Mishawaka ("Common Council") and the active, full-time members of the MPD either established its own merit system or rejected the establishment of a police merit system; and

WHEREAS, the Common Council believes that the establishment of a police merit system is in fact in the best interests of the City of Mishawaka ("City"), as well as its citizens, and its police officers.

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

Section 1. Pursuant to the terms of I.C. 36-8-3.5-3, the Common Council hereby approves the establishment of a merit system for the Mishawaka Police Department, effective January 1, 2025. As required by the terms of I.C. 36-8-3.5-4, the establishment of this police merit system must also be approved by a majority of the active full-time paid members of the MPD in a referendum. Consistent with the terms of I.C. 36-8-1-9, an "active member of the MPD" shall be defined as the Police Chief and any other sworn officer then appointed to the MPD.

Section 2. Within sixty (60) days of the adoption of this Ordinance by the Common Council, the Board of Public Works and Safety for the City of Mishawaka ("BPWS") shall facilitate a referendum vote by the active members of the MPD that complies with the requirements of I.C. 36-8-3.5-4. Should a majority of the active members of the MPD vote to approve the establishment of the police merit system, the merit system takes effect on January 1, 2025.

Section 3.

- A. The police merit system established by this Ordinance shall be administered by the Mishawaka Police Department Merit Commission ("Merit Commission"). The Common Council generally authorizes the Merit Commission to exercise all the powers and duties set out in I.C. 36-8-3.5, including, but not limited to, the power of selection and appointment (subject to the applicable pension statutes), promotion and demotion, and disciplinary action or dismissal of the members of the MPD, except as said powers and

duties are otherwise limited under the terms of Indiana law. Furthermore, the Common Council specifically adopts the terms of the following statutes and authorizes the Merit Commission to operate only in a manner that complies with the terms of each statute:

1. I.C. 36-8-3.5-12 (*Department Members; Appointment; Qualifications; Application; General Aptitude Test; Ratings; Eligibility List; Vacancies; Physical Agility Test; Probation*);
 2. I.C. 36-8-3.5-13 (*Promotions; Rules; Requisites; Eligibility List*);
 3. I.C. 36-8-3.5-14 (*Promotions; Competitive Examinations; Procedures*);
 4. I.C. 36-8-3.5-15 (*Performance Ratings; Rules; Appeal*);
 5. I.C. 36-8-3.5-16 (*Promotions; Certification of Eligible Members; Probation; Procedures*); and
 6. I.C. 36-8-3.5-17 (*Disciplinary Actions; Grounds; Hearing; Notice; Requisites; Procedures; Appeal*).
 7. I.C. 36-8-3.5-21 (*Temporary Leave of Absence; Seniority; Reinstatement*)
- B. The Mayor shall retain the sole authority to appoint and remove a member of the MPD who is assigned to an upper-level policymaking position, pursuant to the terms of I.C. 36-8-3.5-11. Pursuant to I.C. 36-8-1-12, an upper-level policymaking position shall be defined as the Chief of Police and the next two (2) ranks and pay grades immediately below the Chief. The removal of a member of the MPD from an upper-level policy making position shall be considered a removal from rank only and not from employment with the MPD. Following the removal, the Commission shall reassign the member within the MPD in accordance with the requirements of I.C. 36-8-3.5-11 (d).
- C. Pursuant to the terms of I.C. 36-8-3.5-19, the Chief of Police, without a hearing, shall retain the authority to reprimand in writing or suspend without pay (for a maximum of five (5) working days) a member of the MPD. Within forty-eight (48) hours of this disciplinary action, the Chief shall notify the Merit Commission in writing of the disciplinary action and the reasons for the action. The member of the MPD subject to this disciplinary action may, within forty-eight (48) hours of receiving notice of the reprimand or suspension, request in writing that the Merit Commission review the matter and either uphold or reverse the Chief's decision. Should the Merit Commission, at its sole discretion, decide to hold a hearing for purposes of this review, the Merit Commission shall conduct this hearing and render its decision in manner that comports with the requirements of I.C. 36-8-3.5-19 (b).

Section 4.

- A. Pursuant to the terms of I.C. 36-8-3.5-6, the Merit Commission shall consist of five (5) Commissioners, who shall be appointed by no later than March 1, 2025, as follows:
1. Two (2) Commissioners, who must be of different political parties, appointed by the Mayor of the City of Mishawaka;
 2. One (1) Commissioner appointed by the Common Council; and
 3. Two (2) Commissioners, who must be of different political parties, elected by the active members of the MPD.
- B. To serve as a member of the Merit Commission, a Commissioner must be:
1. A legal resident of the City of Mishawaka for the three (3) consecutive years immediately preceding the Commissioner's term;
 2. A person of good moral character; and
 3. At least twenty-one (21) years of age.
- C. An individual is ineligible to serve as a member of the Merit Commission if he or she:
1. Is an active member of a police or fire department or agency; or

- 2. Receives any remuneration from the City as salary.
- D. Not more than two (2) of the Commissioners may be past members of a police or fire department or agency.
- E. The term of office of a Commissioner is four (4) years. However, one (1) Commissioner initially appointed by the Mayor and one (1) Commissioner initially elected by the active members of the MPD shall serve only for a term of two (2) years.
- F. The appointing or elected authority shall fill a vacancy on the Commission within thirty (30) days. If the vacancy relates to a Commissioner elected by the active members of the MPD, the Merit Commission shall conduct a new election that complies with the terms of I.C. 36-8-3.5-8. The individual so elected or appointed shall serve for the remainder of the unexpired term.
- G. A Commissioner appointed by the Common Council or the Mayor serves at the pleasure of the appointing authority and may be removed at any time. A Commissioner elected by the active members of the MPD shall be subject to a recall vote as set out in I.C. 36-8-3.5-7 (d).

Section 5.

- A. The Merit Commission shall conduct regular monthly meetings, and such special meetings as are necessary to transact the business of the Merit Commission.
- B. Not later than thirty (30) days after their selection, the members of the Merit Commission shall adopt rules to govern the Merit Commission, including the time and place of its regular monthly meetings and special meetings. Additionally, within ninety (90) days after their selection, the members of the Merit Commission shall adopt rules governing: (1) the selection and appointment of persons to be employed as members of the department, subject to applicable pension statutes; (2) promotions and demotions of members of the department; and (3) disciplinary action or dismissal of members of the department (the "Section 10 Rules"). All rules adopted by the Merit Commission must be consistent with the general requirements of Indiana law, as well as the terms of the Indiana statutory provisions listed in Section 3 (A) above, as applicable. Prior to the adoption of the proposed Section 10 Rules by the Merit Commission, the Merit Commission must conduct a public hearing with advance notice pursuant to the requirements of I.C. 36-8-3.5-10. No such public hearing is required for the adoption of non-Section 10 Rules governing the Merit Commissioners.
- C. The presence of a majority of the Commissioners shall constitute the quorum necessary to transact the business of the Merit Commission. A majority vote of all the Commissioners is necessary to transact the business of the Merit Commission.
- D. Each year, the Commissioners shall select a president, vice president, and secretary from among their members.
- E. The Merit Commission shall keep a permanent record of its proceedings.
- F. The Merit Commission shall submit a proposed annual budget to the City as other such budgets are submitted. The Common Council shall include in its budget an amount sufficient for the necessary expenses of the Merit Commission.
- G. Subject to the recommendation of the BPWS and subsequent approval by the Common Council, the City shall pay a *per diem* to each Commissioner for each day of actual service to the Merit Commission.

Section 6 . Pursuant to the terms of I.C. 36-8-3.5-5.5 (i), after January 1, 2029, and before January 31, 2029, the Common Council and the active full-time paid members of the MPD shall vote to either retain or dissolve the police merit system established by this Ordinance. If at least a majority

of either the Common Council or the active full-time paid members of the MPD vote to dissolve the merit system, the police merit system is dissolved.

Section 7. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 8. This Ordinance shall be in full force and effect from and after its passage, attestation, and any legal publication required under Indiana law.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana

on this _____ day of December 2024 at _____ o'clock, _____. m.

Gregg Hixenbaugh, President

ATTEST:

Deborah S. Block, IAMCA, MMC, City Clerk

PRESENTED BY ME to the Mayor of the City of Mishawaka, Indiana

on this _____ day of December 2024 at _____ o'clock, _____. m.

Deborah S. Block, IAMCA, MMC, City Clerk

APPROVED BY ME this _____ day of December 2024 at _____ o'clock, _____. m.

David A. Wood, Mayor

PROPOSED ORDINANCE NO. 2024- 43

ORDINANCE NO. _____

**AN ORDINANCE OF THE COMMON COUNCIL FOR THE CITY OF MISHAWAKA
ESTABLISHING A MERIT SYSTEM FOR THE MISHAWAKA FIRE DEPARTMENT**

WHEREAS, I.C. 36-8-3.5 (*Police and Fire Merit Systems*) sets forth the requirements for the establishment of a police department merit system for eligible departments throughout the State of Indiana; and

WHEREAS, pursuant to the definition of an eligible police department set forth in I.C. 36-8-3.5-5.5 (b), the Mishawaka Fire Department (“MFD”) is an eligible police department for purposes of the statute; and

WHEREAS, pursuant to the terms of I.C. 36-8-3.5-5.5 (d) & (e), a merit system for the MFD would be established by statute, effective January 1, 2025, unless, not later than December 31, 2024, a majority vote by both the Common Council for the City of Mishawaka (“Common Council”) and the active, full-time members of the MFD either established its own merit system or rejected the establishment of a fire merit system; and

WHEREAS, the Common Council believes that the establishment of a fire merit system is in fact in the best interests of the City of Mishawaka (“City”), as well as its citizens, and its police officers.

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

Section 1. Pursuant to the terms of I.C. 36-8-3.5-3, the Common Council hereby approves the establishment of a merit system for the Mishawaka Fire Department, effective January 1, 2025. As required by the terms of I.C. 36-8-3.5-4, the establishment of this fire merit system must also be approved by a majority of the active full-time paid members of the MFD in a referendum. Consistent with the terms of I.C. 36-8-1-9, an “active member of the MFD” shall be defined as the Fire Chief and any other sworn officer then appointed to the MFD.

Section 2. Within sixty (60) days of the adoption of this Ordinance by the Common Council, the Board of Public Works and Safety for the City of Mishawaka (“BPWS”) shall facilitate a referendum vote by the active members of the MFD that complies with the requirements of I.C. 36-8-3.5-4. Should a majority of the active members of the MFD vote to approve the establishment of the fire merit system, the merit system takes effect on January 1, 2025.

Section 3.

- A. The fire merit system established by this Ordinance shall be administered by the Mishawaka Fire Department Merit Commission (“Merit Commission”). The Common Council generally authorizes the Merit Commission to exercise all the powers and duties set out in I.C. 36-8-3.5, including, but not limited to, the power of selection and appointment (subject to the applicable pension statutes), promotion and demotion, and disciplinary action or dismissal of the members of the MFD, except as said powers and

duties are otherwise limited under the terms of Indiana law. Furthermore, the Common Council specifically adopts the terms of the following statutes and authorizes the Merit Commission to operate only in a manner that complies with the terms of each statute:

1. I.C. 36-8-3.5-12 (*Department Members; Appointment; Qualifications; Application; General Aptitude Test; Ratings; Eligibility List; Vacancies; Physical Agility Test; Probation*);
 2. I.C. 36-8-3.5-13 (*Promotions; Rules; Requisites; Eligibility List*);
 3. I.C. 36-8-3.5-14 (*Promotions; Competitive Examinations; Procedures*);
 4. I.C. 36-8-3.5-15 (*Performance Ratings; Rules; Appeal*);
 5. I.C. 36-8-3.5-16 (*Promotions; Certification of Eligible Members; Probation; Procedures*); and
 6. I.C. 36-8-3.5-17 (*Disciplinary Actions; Grounds; Hearing; Notice; Requisites; Procedures; Appeal*).
 7. I.C. 36-8-3.5-21 (*Temporary Leave of Absence; Seniority; Reinstatement*)
- B. The Mayor shall retain the sole authority to appoint and remove a member of the MFD who is assigned to an upper-level policymaking position, pursuant to the terms of I.C. 36-8-3.5-11. Pursuant to I.C. 36-8-1-12, an upper-level policymaking position shall be defined as the Chief of Fire and the next two (2) ranks and pay grades immediately below the Chief. The removal of a member of the MFD from an upper-level policy making position shall be considered a removal from rank only and not from employment with the MFD. Following the removal, the Commission shall reassign the member within the MFD in accordance with the requirements of I.C. 36-8-3.5-11 (d).
- C. Pursuant to the terms of I.C. 36-8-3.5-19, the Chief of Fire, without a hearing, shall retain the authority to reprimand in writing or suspend without pay (for a maximum of five (5) working days) a member of the MFD. Within forty-eight (48) hours of this disciplinary action, the Chief shall notify the Merit Commission in writing of the disciplinary action and the reasons for the action. The member of the MFD subject to this disciplinary action may, within forty-eight (48) hours of receiving notice of the reprimand or suspension, request in writing that the Merit Commission review the matter and either uphold or reverse the Chief's decision. Should the Merit Commission, at its sole discretion, decide to hold a hearing for purposes of this review, the Merit Commission shall conduct this hearing and render its decision in manner that comports with the requirements of I.C. 36-8-3.5-19 (b).

Section 4.

- A. Pursuant to the terms of I.C. 36-8-3.5-6, the Merit Commission shall consist of five (5) Commissioners, who shall be appointed by no later than March 1, 2025, as follows:
1. Two (2) Commissioners, who must be of different political parties, appointed by the Mayor of the City of Mishawaka;
 2. One (1) Commissioner appointed by the Common Council; and
 3. Two (2) Commissioners, who must be of different political parties, elected by the active members of the MFD.
- B. To serve as a member of the Merit Commission, a Commissioner must be:
1. A legal resident of the City of Mishawaka for the three (3) consecutive years immediately preceding the Commissioner's term;
 2. A person of good moral character; and
 3. At least twenty-one (21) years of age.
- C. An individual is ineligible to serve as a member of the Merit Commission if he or she:
1. Is an active member of a police or fire department or agency; or

- 2. Receives any remuneration from the City as salary.
- D. Not more than two (2) of the Commissioners may be past members of a police or fire department or agency.
- E. The term of office of a Commissioner is four (4) years. However, one (1) Commissioner initially appointed by the Mayor and one (1) Commissioner initially elected by the active members of the MFD shall serve only for a term of two (2) years.
- F. The appointing or elected authority shall fill a vacancy on the Commission within thirty (30) days. If the vacancy relates to a Commissioner elected by the active members of the MFD, the Merit Commission shall conduct a new election that complies with the terms of I.C. 36-8-3.5-8. The individual so elected or appointed shall serve for the remainder of the unexpired term.
- G. A Commissioner appointed by the Common Council or the Mayor serves at the pleasure of the appointing authority and may be removed at any time. A Commissioner elected by the active members of the MFD shall be subject to a recall vote as set out in I.C. 36-8-3.5-7 (d).

Section 5.

- A. The Merit Commission shall conduct regular monthly meetings, and such special meetings as are necessary to transact the business of the Merit Commission.
- B. Not later than thirty (30) days after their selection, the members of the Merit Commission shall adopt rules to govern the Merit Commission, including the time and place of its regular monthly meetings and special meetings. Additionally, within ninety (90) days after their selection, the members of the Merit Commission shall adopt rules governing: (1) the selection and appointment of persons to be employed as members of the department, subject to applicable pension statutes; (2) promotions and demotions of members of the department; and (3) disciplinary action or dismissal of members of the department (the "Section 10 Rules"). All rules adopted by the Merit Commission must be consistent with the general requirements of Indiana law, as well as the terms of the Indiana statutory provisions listed in Section 3 (A) above, as applicable. Prior to the adoption of the proposed Section 10 Rules by the Merit Commission, the Merit Commission must conduct a public hearing with advance notice pursuant to the requirements of I.C. 36-8-3.5-10. No such public hearing is required for the adoption of non-Section 10 Rules governing the Merit Commissioners.
- C. The presence of a majority of the Commissioners shall constitute the quorum necessary to transact the business of the Merit Commission. A majority vote of all the Commissioners is necessary to transact the business of the Merit Commission.
- D. Each year, the Commissioners shall select a president, vice president, and secretary from among their members.
- E. The Merit Commission shall keep a permanent record of its proceedings.
- F. The Merit Commission shall submit a proposed annual budget to the City as other such budgets are submitted. The Common Council shall include in its budget an amount sufficient for the necessary expenses of the Merit Commission.
- G. Subject to the recommendation of the BPWS and subsequent approval by the Common Council, the City shall pay a *per diem* to each Commissioner for each day of actual service to the Merit Commission.

Section 6 . Pursuant to the terms of I.C. 36-8-3.5-5.5 (i), after January 1, 2029, and before January 31, 2029, the Common Council and the active full-time paid members of the MFD shall vote to either retain or dissolve the police merit system established by this Ordinance. If at least a majority

of either the Common Council or the active full-time paid members of the MFD vote to dissolve the merit system, the police merit system is dissolved.

Section 7. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 8. This Ordinance shall be in full force and effect from and after its passage, attestation, and any legal publication required under Indiana law.

PASSED BY THE COMMON COUNCIL of the City of Mishawaka, Indiana

on this _____ day of December 2024 at _____ o'clock, _____. m.

Gregg Hixenbaugh, President

ATTEST:

Deborah S. Block, IAMCA, MMC, City Clerk

PRESENTED BY ME to the Mayor of the City of Mishawaka, Indiana

on this _____ day of December 2024 at _____ o'clock, _____. m.

Deborah S. Block, IAMCA, MMC, City Clerk

APPROVED BY ME this _____ day of December 2024 at _____ o'clock, _____. m.

David A. Wood, Mayor

PROPOSED ORDINANCE NO. 2024-44
ORDINANCE NO. _____

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

WHEREAS, the City of Mishawaka ("City") and the Mishawaka Fraternal Order of Police Lodge 91 ("FOP") previously entered into a Collective Bargaining Agreement (CBA") that expires on December 31, 2024; and

WHEREAS, representatives of the City and the FOP have reached a tentative agreement regarding the extension of the term of the CBA until December 31, 2025, and the revision of various provisions set forth in the CBA; and

WHEREAS, on _____, 2024, the Board of Public Works and Safety for the City of Mishawaka approved the terms of the revised CBA.

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

Section 1. The attached Collective Bargaining Agreement between the City of Mishawaka and the Mishawaka Fraternal Order of Police, Lodge 91, that was approved by the Board of Public Works and Safety for the City of Mishawaka, on _____, 2024, is hereby approved by the Common Council for the City of Mishawaka.

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 _____, 2024, at _____ o'clock P.M.

Common Council
City of Mishawaka, Indiana

Gregg Hixenbaugh, President

ATTEST:

Deborah S. Block, IAMCA, MMC, City Clerk

Presented by me, the undersigned City Clerk of the City of Mishawaka, Indiana, to the Mayor of the City of Mishawaka, Indiana, for approval on the _____ day of _____, 2024 at _____ o'clock a.m.

Deborah S. Block, IAMCA, 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 _____, 2024.

David A. Wood, Mayor
City of Mishawaka, Indiana



CITY OF MISHAWAKA



Mishawaka Police Department
100 Lincolnway West
Mishawaka, IN 46544

David A. Wood, Mayor
Alex Arendt, Chief

November 25, 2024

Mishawaka Common Council
Mayor David Wood

Re: Collective Bargaining Agreement between the City of Mishawaka and Fraternal Order of Police Lodge #91

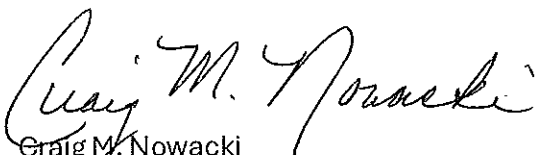
Mr. President and Honorable Council Members:

The City of Mishawaka and the Fraternal Order of Police Lodge #91 has come to an agreement for the contract for the year 2025. This contract being presented also contains memorandums of understanding that have been absorbed into the contract that were previously agreed to by the City of Mishawaka and FOP Lodge #91.

Some of the highlights of the memorandums of understanding being brought into the Collective Bargaining Agreement are as follows:

- 12-Hour Shift Structure (Pittman Schedule: Day Shift: 6:30 a.m. - 6:30 p.m. and Night Shift: 6:30 p.m. - 6:30 a.m.) for Uniform Patrol Division and 9-Hour Shift Schedule for Investigative Division.
- Understanding for Emergency Overtime call in procedures for Uniform Patrol.
- Minimum Shift Strength being raised to 12 officers a shift but not lessening to 10 depending on court or sick time.
- Non-Patrol Officers being utilized in case of a SWAT callout until emergency overtime can be acquired to fill in permanently.
- Several articles in the CBA had language changed to reflect days off hours rather than whole days due to different time models 12-hour shift versus Investigative Division 9-hour shift.

Respectfully submitted,


Craig M. Nowacki
Uniform Division Chief, Police



COLLECTIVE BARGAINING AGREEMENT

Between

CITY OF MISHAWAKA, INDIANA

And

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

Dated January 1, 2025 - December 31, 2025

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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 a 2-week alternating schedule that is based off the Pittman Schedule. There shall be two (2) rotations that are on opposing days. A Rotation 1 working day shall be a Rotation 2 day off and vice versa.

Week	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1	Work	Work	Off	Off	Work	Work	Work
2	Off	Off	Work	Work	Off	Off	Off

- B. The hours of the Traffic Bureau officers will be flexible to ensure the orderly function of the Traffic Bureau. Accordingly, the daily working hours and weekly rotation of the Traffic Bureau officers shall be set by mutual agreement of the Chief of Police and the Traffic Bureau Captain. No more Than two thousand one hundred eighty-four hours (2,184) 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 two thousand one hundred eighty-four hours (2,184) per year, consistent with division work schedules and the efficient operation of the Police Department. Such employees shall work an average of forty-five (45) hours per week.
- D. A regular workday shall consist of Twelve (12) hours, which time shall include sixty (60) minutes for a meal subject to call. Coffee breaks shall also be allowed subject to call.

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) consecutive hours in a twenty-four (24) hour period. No police officer shall be permitted to trade for more than 480 hours 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, and shall be made through the scheduling software;
 2. The trade is for the employee's personal benefit and not the City's benefit;
 3. 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 initiate a substitution request via the scheduling software for supervisor approval.
- C. Police officers may work any of their off days, i.e. days off, vacation, random days, etc.
- 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 be comprised of two shifts: Day Shift and Night Shift. Each Shift will contain two opposing workday rotations and shall be defined as Rotation One and Rotation Two. The hours of each shift shall be as follows:

Day Shift	6:30 a.m. to 6:30 p.m.
Night Shift	6:30 p.m. to 6:30 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 nine (9) 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 one hundred eighty-four (2,184).

- 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 races, 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.

Officers signing for the overtime shall be responsible to verify whether they have received the overtime assignment through the department scheduling software.

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:

When there is a need for Emergency Overtime at the commencement of a shift that is greater than four (4) hours in duration, the following shall apply:

1. A mass scheduling alert shall be sent out indicating the number of hours needed for the assignment of the shift needing overtime. If no officer accepts the extra duty assignment, then officers exercising vacation shall be contacted with uniform preference given.
2. If no officer accepts the overtime, two overtime assignments shall be created.
 - a. A four-hour overtime assignment (See Emergency Extra Duty call in procedures for an overtime assignment that is for four hours or less at the commencement of the shift).
 - b. An additional assignment to fill the remaining hours.

3. A mass blast shall be sent out for the remaining hours needed. If no officer accepts the assignment for the remaining hours needed, then officers exercising vacation shall be contacted and offered the assignment, with uniform preference given.
4. If no officer has accepted the overtime assignment for the remaining hours, the City may contact the chiefs and offer the overtime assignment. If no chief accepts the overtime assignment, then the lowest officer in seniority from the uniform extra duty list shall be contacted and ordered in. The City shall continue up the seniority list from least to most senior until an officer is contacted. If no officer is contacted, then the City shall call officers on the combined extra duty officer in the same manner from least to most senior.

For Emergency Overtime assignments that commence at the beginning of a shift, and last longer than four (4) hours, officers shall not receive preceding shift preference, but can sign up through the mass blast providing they do not exceed 16 consecutive hours worked.

When there is a need for Emergency Overtime at the commencement of a shift that is four (4) hours or less in duration, the following shall apply:

1. Officers working the preceding shift shall be contacted and offered the extra duty assignment.
2. If no officer from the preceding shift accepts the extra duty assignment, a mass scheduling alert will be sent out.
3. If no officer accepts the extra duty assignment from the mass scheduling alert, then officers exercising vacation shall be contacted with uniform preference given.
4. If no officer accepts the extra duty assignment from contacting officers on vacation, then the officer least in seniority from the preceding shift shall be ordered to stay and work. The officer ordered to stay may contact a chief to offer the extra duty assignment.

When there is a need for Emergency Overtime after the commencement of a shift due to an officer scheduled to leave on compensatory time, the following shall apply:

1. A mass scheduling alert shall be sent out indicating the number of hours needed for the assignment of the shift needing overtime.
2. If no officer accepts the extra duty assignment, then officers exercising vacation shall be contacted with uniform preference given.
3. If no officer accepts the overtime, then the officer scheduled to leave shall be ordered to stay and be paid at the appropriate rate.

4. The officer ordered to stay may contact a chief to offer the extra duty assignment.

When there is a need for Emergency Overtime after the commencement of a shift due to an officer illness, injury, or family emergency; the following procedures shall apply:

1. A mass scheduling alert shall be sent out indicating the number of hours needed for the assignment of the shift needing overtime.
2. If no officer accepts the extra duty assignment, then officers exercising vacation shall be contacted with uniform preference given.
3. If no officer has accepted the assignment, then a chief may be contacted and offered the overtime assignment.
4. If no chief has accepted the overtime assignment, then the lowest officer in seniority from the uniform extra duty list shall be contacted and ordered in. The City shall continue up the seniority list from least to most senior until an officer is contacted. If no officer is contacted, then the City shall call officers on the combined extra duty officer in the same manner from least to most senior.

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.

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. A mass scheduling alert will be sent out to supervisors with uniform preference given, and if no supervisor accepts the opening, the supervisor or the officer in charge may contact the chiefs and offer the supervisor overtime assignment. 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.

(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. 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. 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 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 a 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 or as a result of duties that arise while engaged in the take home car policy 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 via a mass blast overtime assignment offering when necessary (with uniform preference). 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.

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 workday, 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 ten (10) officers for shift strength to an officer being in court, emergency extra duty will be called in as follows:

When there is a need for Emergency Overtime after the commencement of a shift due to an officer scheduled to leave for a court appearance, the following shall apply:

1. A mass scheduling alert shall be sent out for a minimum of three (3) hours needed for the assignment of the shift needing overtime.
2. If no officer accepts the extra duty assignment, then officers exercising vacation shall be contacted with uniform preference given.
3. If no officer has accepted the overtime assignment, then the lowest officer in seniority from the uniform extra duty list shall be contacted and ordered in. The City shall continue up the seniority list from least to most senior until an officer is contacted. If no officer is contacted, then the City shall call officers on the combined extra duty officer in the same manner from least to most senior.
4. The officer ordered to stay may contact a chief to offer the extra duty assignment.

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.

The minimum overtime shift would be three (3) hours. If overtime due to

court would extend past three (3) hours, then the overtime would be compensated to the officer at hour-for-hour extra duty pay at the prevailing overtime rate.

- 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 paycheck 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 workday (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 (Uniform Preference) 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 60 hours/(5) days of vacation and 12 hour / 1 (one) random/personal day.

2. Police officers having completed two (2) years of service, but less than three (3) years, shall receive 108 hours/(9) days of vacation and 24 hours / two (2) random/personal days.

3. Police officers having completed three (3) years of service, but less than five (5) years, shall receive 108 hours/(9) days of vacation and 36 hours / three (3) random/personal days.

4. Police officers having completed five (5) years of service, but less than ten (10) years, shall receive 156 hours/(13) days of vacation and 36 hours / three (3) random/personal days.

5. Police officers having completed ten (10) years of service, but less than fifteen (15) years, shall receive 204 hours/(17) days of vacation and 48 hours / four (4) random/personal days.

6. Police officers having completed fifteen (15) years of service, but less than twenty (20) years, shall receive 264 hours/(22) days of vacation and 60 hours / five (5) random/personal days.

7. Police officers having completed twenty (20) years of service, but less than twenty-five (25) years, shall receive 312 hours/(26) days of vacation and 72 hours / six (6) random/personal days.

8. Police officers having completed more than twenty-five (25) years of service shall receive 312 hours/(26) days of vacation and 84 hours / seven (7) random/personal days.

B. Vacation shall be selected in each division by seniority per shift.

C. In the event a police officer, while off duty as a result of 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 six (6) 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 144 hours 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 four (4) of their unused random days valued at their then applicable daily rate of pay.
- E. Officers may voluntarily choose to exchange up to four 48 hours of Random or Personal Day hours 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 48 hours of 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 must be picked in consecutive workday blocks for the officer's workday rotation (1 or 2) on their assigned shift. Vacations may be picked for a minimum of 2 consecutive workdays up to 7 consecutive workdays in the first round. Vacations picked in the second round, and all further selections can be picked for a minimum of 2 consecutive workdays up to 5 consecutive workdays. Work blocks cannot be split for vacation picks. 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 four (4) days to pick vacation selection. If such police officer fails to pick within the four (4) 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 vacation may choose to take his/her selection as random days or personal days if hired after January 01, 2023. Hours of vacation time will be converted equally into the officer's random day or personal day bank.

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 their first and second 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

Captain (1)
Lieutenant (2)
Sergeant (6)

Night Shift

Captain (1)
Lieutenant (2)
Sergeant (6)

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 480 hours, 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, three (3) 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.

ARTICLE XVII

DEPARTMENT STRENGTH

Section 1 - Department Strength

It is agreed between the parties that the police work force will be maintained at regular strength at all times. Whenever the force is reduced below the regular scheduled level, due to sickness, vacation, leave or any other reason, the Chief of Police or Division Chief of Police will then refer to the extra duty schedule for the next officer in line to work.

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

Section 2 - Minimum Strength

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

Day Shift 6:30 a.m. to 6:30 p.m.

Sunday-Saturday: a minimum of twelve (12) officers on motorized patrol.

Night Shift 6:30 p.m. to 6:30 a.m.

Sunday-Saturday: a minimum of twelve (12) officers on motorized patrol.

B. The "desk" position may be utilized as a light duty position if necessary. The City shall retain the right to place officers at the "desk" position outside of records hours if needed.

C. Emergency overtime will only be required if shift strength falls below ten (10). In the event that there is a need for additional manpower, refer to Article 17, Section 2 (E).

- 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.

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.

Section 5 – SWAT Call Out

Upon the occurrence of an emergency SWAT call out that requires a response from an officer assigned to the Uniform Division, the City shall have the right to immediately assign another on duty officer not subject to the minimum shift requirements established by this Agreement to fill the resulting vacancy as is necessary to maintain the minimum shift strength requirements established by Article XVII. Thereafter, the City shall immediately implement the Emergency Overtime assignment procedures for filling a vacancy within the Uniform Division that are set forth in Article VII, Section 2 (Extra Duty Pay). Once the City has filled the vacancy created by the SWAT call out, the City will return the on duty officer assigned to temporarily fill the vacancy to his or her normal assigned duties. This provision will not be used to otherwise circumvent the normal Emergency Overtime assignment procedures established by the terms of this Agreement.

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 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 2024 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.

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 maintained in accordance with state and federal statutes.
- 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 affect promotional opportunities which grievance shall then be processed in accordance with grievance procedures.

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 one shift of 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
 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. Canine handlers shall be compensated for off duty care of police dogs in accordance with federal guidelines.
- 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 _____ day of _____ 202____.

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

Richard Freeman

The City of Mishawaka, by Chief of Police

Alexander Arendt, Chief of Police

PROPOSED ORDINANCE NO. 2024-31

ORDINANCE NO. _____

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

WHEREAS, the contract negotiating committees for the City of Mishawaka, Indiana and the International Brotherhood of Teamsters Local No. 364 have mutually reached an agreement on amendments to the Collective Bargaining Agreement expiring the 31st day of December 2024; and

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

WHEREAS, on the 4th day of November, 2024, the City of Mishawaka, Indiana, acting by and through its Board of Public Works & Safety, approved the new Collective Bargaining Agreement with the International Brotherhood of Teamsters Local No. 364 and the Mishawaka Common Council approved the contract by passing Ordinance 5768 on December 20, 2021. This Ordinance replaces Ordinance 5768 with corrections.

WHEREAS, Ordinance No. 1666 requires all Corrections to the 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 Correction to the Collective Bargaining Agreement executed the 4th day of November, 2024, effective January 1, 2025, between the Board of Public Works & Safety of the City of Mishawaka, Indiana and the International Brotherhood of Teamsters Local No. 364 and the Mishawaka Common Council 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 _____, 2024, at _____ o'clock _____ M.

Gregg Hixenbaugh
Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this ____ day of _____, 2024, at
_____ o'clock _____.M.

Deborah S. Block, IAMCA, MMC, City Clerk

APPROVED by me this _____ day of _____, 2024, at _____ o'clock
_____.M

David A. Wood, Mayor



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

CENTRAL SERVICES DEPARTMENT
Tim Ryan, Street Commissioner

November 18, 2024

Mishawaka Common Council
100 Lincolnway West
Mishawaka, Indiana 46544

Mr. President and Honorable Members of the Council:

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

I plan to attend the meeting to speak in favor of approval and to be available to answer questions at the pre-Council meeting that evening. Feel free to contact me prior to the meeting at 574-850-4058 or at tryan@mishawaka.in.gov.

Thank you in advance for your consideration.

Sincerely,

Tim Ryan
Central Services Superintendent

RESOLUTION NO. 2024-04

MISHAWAKA BOARD OF PUBLIC WORKS AND SAFETY

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

WHEREAS, the City of Mishawaka and the International Brotherhood of Teamsters Local 364, Local No. 360 have agreed to a Collective Bargaining Agreement for the period of January 1, 2025, to December 31, 2027; and

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

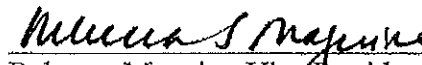
NOW, THEREFORE, BE IT RESOLVED by the Board of Public Works and Safety of the City of Mishawaka that:

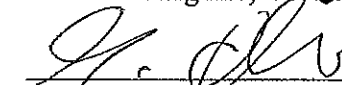
Section 1. The attached Collective Bargaining Agreement between the City of Mishawaka and the International Brotherhood of Teamsters Local 364 is hereby approved, and

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

ADOPTED by the Board of Public Works of the City of Mishawaka, on this 4th day of November 2024.


Kenneth Prince, President


Rebecca Maguire, Vice President


George Obren, Member

ATTEST:


Donna Burkhardt, Clerk of the Board

AGREEMENT

BETWEEN

**CITY OF MISHAWAKA
CENTRAL SERVICES DEPARTMENT**

AND

TEAMSTERS LOCAL UNION NO. 364



Covering the period from January 1, 2025 through December 31, 2027

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**ARTICLES OF AGREEMENT
THE CITY OF MISHAWAKA CENTRAL SERVICES DEPARTMENT
AND TEAMSTER LOCAL UNION NO. 364
01/01/2025 through 12-31-27**

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

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

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

Section 1.

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

ARTICLE 2
DEFINITIONS

The following definitions are a part of this Agreement:

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

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

ARTICLE 3

RIGHTS OF MANAGEMENT

1. Nothing in this Agreement shall permit or authorize the Union or any of its members to officiate in management or in a supervisory capacity. It is agreed that the Employer will not use this prerogative for the purpose of discrimination against the Union.
2. Except where specifically restricted in this Agreement, the parties agree that the Employer shall possess all the customary prerogatives of management including, but not limited to, those enumerated below:
 - A) To hire, promote, suspend, discharge or otherwise discipline employees for violation of rules it deems necessary to impose for the overall benefit of the residents of the City of Mishawaka, its employees and/or its plant operations, or for other proper and just causes.
 - B) Nothing in this Article shall abrogate the employee's rights to the grievance procedure.
 - C) May form a joint committee of management and union representatives to explore combining the Central Services and Sewer Teamster contracts.
 - D) Will allow for a fifteen (15) minute orientation with the union steward and new employee to discuss the union contract and membership in the union.
3. It is not the intent of Management to perform work that is normally performed by the bargaining unit employees except:
 - in emergency situations
 - at the golf course
 - at the pools
 - at the ice rink
 - when Management cannot find adequate coverage for work

ARTICLE 4 HOURS OF WORK

Section 1. Eight (8) consecutive working hours within a twenty-four (24) hour period will constitute a normal workday. Five (5) consecutive workdays, or forty (40) work hours shall constitute a normal workweek. An employee shall be paid time and one-half (1½) for all work done in excess of eight (8) consecutive hours per day and in excess of forty (40) work hours per workweek. Overtime, premium and holiday rates shall not be pyramided. The employer shall pay double time to an employee for working on his seventh day if that day normally would have been the employee's second consecutive day off within a particular shift schedule and for all hours worked in excess of twelve (12) hours per shift.

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

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

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

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

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

Section 4. A) If a job cannot be completed during the regular shift and management decides that the job must be completed on that particular day, the employee who has been working on that job during his

regular shift shall be entitled to overtime prior to senior employees being asked for overtime.

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

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

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

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

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

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

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

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

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

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

ARTICLE 5 **TARDINESS/LEAVING EARLY**

Section 1. The following disciplinary schedule shall be followed:

Number of Tardiness/Leaving Early

One (1)
Two (2)
Three (3)
Four (4)
Five (5)
Six (6)

Disciplinary Step

Verbal Warning
1st Written Warning
2nd Written Warning
1 Day off Without Pay
3 to 5 Days off Without Pay
Termination

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

ARTICLE 6
HOLIDAYS

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

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

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

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

ARTICLE 7
VACATIONS

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

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

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

interest of efficiency.

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

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

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

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

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

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

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

ARTICLE 8 **GROUP INSURANCE**

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

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

ARTICLE 9 **RETIREMENT PROGRAM**

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

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

ARTICLE 10

STEWARDS

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

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

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

ARTICLE 11

SENIORITY

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

A) Bargaining Unit Seniority

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

B) Departmental Seniority

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

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

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

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

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

- A)** When a laid-off employee fails to give notice of his intention to return to work within three (3) working days after the city has sent a certified letter to his last known address requesting his return to work.
- B)** When a laid-off employee gives timely notice of his intention to return to work after the City has requested his return but fails to return to work on the specified date and time of recall.

- C) When an employee resigns his employment with the City.
- D) When an employee is discharged for just cause.
- E) When an employee is laid off for more than twelve (12) months.
- F) When an employee receives total permanent disability compensation.
- G) When an employee retires.

ARTICLE 12

LAYOFF PROCEDURES

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

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

ARTICLE 13

CALL-BACK

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

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

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

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

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

ARTICLE 14
JOB VACANCIES

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

Section 2. Bidding Priorities - Provided the employee who bids for the vacant or newly created job is qualified for the job, current employees will be given priority to fill the job opening as follows:

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

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

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

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

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

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

ARTICLE 15
PAYDAY

Pay will be distributed as prescribed by the City Controller.

ARTICLE 16
FLEXIBLE TIME OFF/LONG TERM DISABILITY

Section 1. Flexible Time Off (FTO)

(A) In recognition of the need for its employees to be away from work, employer agrees to establish and accrue a bank of time off for any personal needs such as personal or family illness, extension of bereavement leave

or vacations, or for any other purpose. Such bank may also be used to satisfy the five (5) day waiting period for Long Term Disability Leave (LTD) described in Section 2. Such bank will not include personal holidays, bereavement leave (unless as an extension), jury or subpoenaed witness duty, LTD leave, leave of absence, or military leave.

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

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

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

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

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

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

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

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

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

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

ARTICLE 17

FUNERAL LEAVE AND LEAVE OF ABSENCE

Section 1. An Employee will be eligible for paid funeral leave for three (3) working days to make

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

Section 2. Employees may be granted leave of absence without pay and without discrimination or loss of seniority rights for justifiable reasons agreed upon by both the Department Head and representatives of the Union. The maximum leave of absence, except in cases of compulsory military service, shall be for no more than twelve weeks; in the event such a leave is requested, the procedures outlined in the Family Medical Leave Act will be followed. Failure to comply with this provision shall result in the complete loss of rights for the employee involved. Seniority will be frozen during leaves of absence, except in cases involving military service and on-the-job injury.

ARTICLE 18

JURY DUTY

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

ARTICLE 19

GRIEVANCE PROCEDURE AND ARBITRATION

Section 1. Procedure to be followed:

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

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

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

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

Fourth Step: There shall be a Joint Grievance Committee (JGC) comprised of two (2) union representatives to be appointed on a case-by-case basis by the Union, and two (2) City representatives

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

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

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

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

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

A) Saturdays, Sundays, and holidays shall not be used in determining days in reference to the grievance procedure.

B) Failure of the Employer to give an answer to the grievance as of the last day to answer shall be considered a denial of the grievance and the employee shall have the right to then proceed to the next step of the grievance procedure.

C) The Employer shall give the Union representative sufficient copies of the written answer in each step of the grievance procedure to distribute to each employee present at the grievance meeting.

D) Unless consolidated by agreement of the Employer and the Union, each grievance shall be considered a separate case.

E) If the Union does not appeal within five (5) working days of each step, the grievance is considered to be void.

F) The time for filing a grievance involving the rate of pay shall begin on the day the employee receives his paycheck containing the grieved pay rate unless it is previously filed.

Section 3. Inasmuch as a grievance procedure has been agreed upon, there shall be no strikes, stoppages of work, slowdowns, sit downs, sympathy strikes or other forms of interference with normal work routines

during the life of this agreement or extension thereof. Both parties recognizing the fact that service to the public is a mutual desire, they will cooperate in all matters relating to labor management.

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

ARTICLE 20 **VALIDITY**

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

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

ARTICLE 21 **SUBCONTRACTING**

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

ARTICLE 22 **DISCHARGE OR SUSPENSION**

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

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

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

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

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

Section 3. Notice of discipline for a minor violation shall be given within three (3) working days from

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

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

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

ARTICLE 23

GENERAL PROVISIONS

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

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

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

2025:	\$625.00
2026:	\$700.00
2027:	\$800.00

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

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

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

The Employer shall pay in advance the cost for all approved training and seminar courses. The Employees shall pay in advance the cost of all other approved forms of instruction with the Employer reimbursing the

Employee for the cost of such instruction upon successful completion of the course.

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

Section 5. Commercial Driver's License - For new employees and for current employees bidding into a job requiring a CDL, the City will pay for the required drug screen and shall not pay for any other costs associated with the CDL. If an employee moves into a new job that does not require a CDL, but wishes to maintain his CDL, the employer shall not be responsible for paying any associated costs.

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

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

2025:	\$1,200.00
2026:	\$800.00
2027:	\$400.00

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

ARTICLE 24 **WORKERS' COMPENSATION**

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

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

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

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

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

ARTICLE 25

DRUG-FREE WORKPLACE

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

ARTICLE 26

LONGEVITY BONUS PLAN

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

Payments shall be made according to the following schedule:

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

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

ARTICLE 27

TEMPORARY JOB TRANSFERS

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

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

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

C) Should overtime be needed, the employer shall at all times offer the overtime to employees who work within the department requiring the overtime according to their specific overtime procedure. In

the event that nobody accepts the overtime from within the department, the employer shall have the right to utilize employees outside of that department subject to all of the conditions contained in this Article.

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

Section 2. Employees temporarily transferred to a higher paying classification or job within the Central Services Department/Fleet Maintenance work group will be upgraded to the pay rate of that classification or job for time spent on the temporary transfer.

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

ARTICLE 28

JOB CLASSIFICATIONS

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

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

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

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

Specialty Pay:

CDL holders:	Tanker endorsement	\$500.00
	Class B CDL holders	\$500.00
	Class A CDL holders	\$750.00
CDL Trainers		\$2,500.00

ARTICLE 29

TENURE OF AGREEMENT

Section 1. This Agreement shall be in full force and effect from January 1, 2025, to and including December 31, 2027.

Section 2. The parties agree to open negotiations with sixty (60) days' prior notice provided on or about July 1 in the years 2025 and 2026 for the purpose of negotiating wages only.

Section 3. The parties agree to open negotiations with sixty (60) days' prior notice provided on or about July 1, 2027 for the purpose of negotiating a new labor agreement, including wages and benefits.

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

By Robert R Warnock III Date: 10-30-2024
Robert Warnock III, President

CITY OF MISHAWAKA BOARD OF PUBLIC WORKS AND SAFETY

By [Signature] Date:
Kenneth B. Prince, President

By Rebecca S Maguire Date:
Rebecca S. Maguire, Vice-President

By [Signature] Date:
George Obren, Member

ATTEST: Donna Burkart
Donna Burkart, Clerk, BPWS

2025 Central Services Wages

Classification	Wages
Group 1	\$24.67
Group 2	\$23.39
Group 3	\$22.45
Mechanic	\$25.95

PROPOSED ORDINANCE NO. 2024-32

ORDINANCE NO. _____

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

WHEREAS, the contract negotiating committees for the City of Mishawaka, Indiana and the International Brotherhood of Teamsters Local No. 364 have mutually reached an agreement on amendments to the Collective Bargaining Agreement expiring the 31st day of December 2024; and

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

WHEREAS, on the 4th day of November, 2024, the City of Mishawaka, Indiana, acting by and through its Board of Public Works & Safety, approved the new Collective Bargaining Agreement with the International Brotherhood of Teamsters Local No. 364 and the Mishawaka Common Council approved the contract by passing Ordinance 5779 on January 17, 2022. This Ordinance replaces Ordinance 5779 with corrections.

WHEREAS, Ordinance No. 1666 requires all Corrections to the 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 Correction to the Collective Bargaining Agreement executed the 4th day of November, 2024, effective January 1, 2025, between the Board of Public Works & Safety of the City of Mishawaka, Indiana and the International Brotherhood of Teamsters Local No. 364 and the Mishawaka Common Council 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 _____, 2024, at ____ o'clock ____ M.

Gregg Hixenbaugh
Presiding Officer

ATTEST:

Deborah S. Block, IAMC, MMC, City Clerk

PRESENTED by me to the Mayor this ____ day of _____, 2024, at
_____ o'clock _____.M.

Deborah S. Block, CMC, City Clerk

APPROVED by me this _____ day of _____, 2024, at _____
o'clock _____.M

David A. Wood, Mayor



CITY OF MISHAWAKA

DAVID A. WOOD, MAYOR

Department of Sewer Maintenance
Thomas Dolly, Department Manager
Ian McAllister, Assistant Manager

November 18, 2024

Mishawaka Common Council
100 Lincolnway West
Mishawaka, Indiana 46544

Mr. President and Honorable Members of the Council:

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

I plan to attend the meeting to speak in favor of approval and to be available to answer questions at the pre-Council meeting that evening. Feel free to contact me prior to the meeting at 574-514-9499 or at tdolly@mishawaka.in.gov.

Thank you in advance for your consideration.

Sincerely,

Tom Dolly
Sewer Division Manager

RESOLUTION NO. 2024-05

MISHAWAKA BOARD OF PUBLIC WORKS AND SAFETY

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

WHEREAS, the City of Mishawaka and the International Brotherhood of Teamsters Local 364, Local No. 360 have agreed to a Collective Bargaining Agreement for the period of January 1, 2025, to December 31, 2027; and

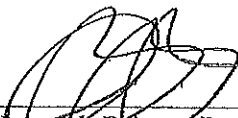
WHEREAS, such Agreement requires the approval of the Mishawaka Board of Public Works and Safety and the Mishawaka Common Council;

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

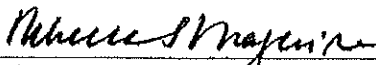
Section 1. The attached Collective Bargaining Agreement between the City of Mishawaka and the International Brotherhood of Teamsters Local 364 is hereby approved, and

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

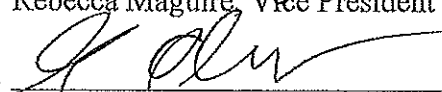
ADOPTED by the Board of Public Works of the City of Mishawaka, on this 5th day of November 2024.



Kenneth P. Prince, President



Rebecca Maguire, Vice President



George Obren, Member

ATTEST:



Donna Burkhardt, Clerk of the Board

AGREEMENT

BETWEEN

**CITY OF MISHAWAKA
SEWER DEPARTMENT**

AND

TEAMSTERS LOCAL UNION NO. 364



Covering the period from January 1, 2025 through December 31, 2027

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**ARTICLES OF AGREEMENT
CITY OF MISHAWAKA SEWER DEPARTMENT
AND TEAMSTER LOCAL UNION NO. 364
01-01-2025 through 12-31-2027**

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

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

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

Section 1.

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

ARTICLE 2
DEFINITIONS

The following definitions are a part of this Agreement:

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

fees until they become regular full-time employees.

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

ARTICLE 3 RIGHTS OF MANAGEMENT

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

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

- A) To hire, promote, suspend, discharge or otherwise discipline employees for violation of rules it deems necessary to impose for the overall benefit of the residents of the City of Mishawaka, its employees and/or its plant operations, or for other proper and just causes.
- B) Nothing in this Article shall abrogate the employee's rights to the grievance procedure.
- C) To share resources (personnel) at all sites and locations within the bargaining unit. This provision only applies to personnel with the qualifications requisite to perform the work to be done. This provision shall not be construed, however, in such a manner as to preclude training or work required in emergencies where qualified bargaining unit employees are unavailable for required work.
- D) May form a joint committee of management and union representatives to explore combining the Central Services and Sewer Teamster contracts.
- E) Will allow for a fifteen (15) minute orientation with the union steward and new employee to discuss the union contract and membership in the union.

ARTICLE 4 HOURS OF WORK

Section 1.

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

Section 2.

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

Section 3.

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

Section 4.

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 5 TARDINESS/LEAVING EARLY

Section 1. The following disciplinary schedule shall be followed:

<u>Number of Tardiness/Leaving Early</u>	<u>Disciplinary step</u>
One (1)	Verbal Warning
Two (2)	1st Written Warning
Three (3)	2nd Written Warning
Four (4)	1 Day off Without Pay
Five (5)	2 Days off Without Pay
Six (6)	3 Days off Without Pay
Seven (7)	Discharge

The number of occurrences accrued during the previous calendar year will be dropped to zero (0) on January 1 of the following year.

After two (2) consecutive days of No Call/No Show, the employee will be discharged.

ARTICLE 6
HOLIDAYS

Section 1. Employees shall be granted ten (10) paid holidays each year in accordance with the City's holiday schedule. The City's holiday schedule will be posted by December 1st of the prior calendar year. In addition, the employees shall have two (2) random holidays each year.

Section 2. Any employee who works on any holiday shall receive their regular hourly rate plus time and one-half (1½) for the amount of hours worked; provided, however, the employees have worked the regularly scheduled day before and after the holiday unless officially excused by the Department Head or his assistants.

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

ARTICLE 7
VACATIONS

Section 1.

- A) Employees hired before January 1, 2011 with less than twenty-five (25) years of service will retain their current vacation time off and thereafter earn vacation under the new schedule. Employees hired before January 1, 2011 with more than twenty-five (25) years of service will retain thirty (30) working days of vacation. Employees hired after January 1, 2011 will earn vacation in accordance with Section 2-598 of the Mishawaka Code of Ordinances.
- B) Employees with the most department seniority shall have priority in selecting their vacation periods. Seniority will prevail for any vacation time selected for the year, as long as the vacation time was selected between January 1 and March 31. After March 31, all vacations will be granted on a first-come, first-awarded basis. However, all vacation periods selected by employees are subject to prior approval by the City. The City may deny a vacation request if the City believes that granting a vacation to an employee will adversely affect the efficient operations of the Department.
- C) An employee shall not take more than two (2) weeks of vacation (10 working days) at one time unless otherwise permitted by the Department Head.
- D) Vacations can be taken in one-half day or one full day increments upon providing the Department Head twenty-four (24) hours' notice.

In computing vacation time to be allowed, years of service shall be deemed to be the calendar year in which the employee will have completed the years of service listed in the above schedule. With the exception of the employee with only one (1) year of service, that employee will receive his/her five (5) days after their anniversary date.

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

Section 3. Bonus Days - A maximum of four (4) bonus days will be awarded on January 1. One (1) bonus day will be earned every three (3) months if an employee has received no more than one occurrence (attendance or disciplinary) in a three (3)-month period. A newly hired employee may earn bonus days

prorated from the date of hire to the next December 31 calculated on the basis of one bonus day for each full three (3)-month period of employment. Such days shall be awarded the next year. An Occurrence is defined as anytime an employee is in violation of departmental rules, fails to punch in or out, leaves before completion of shift without supervisor's approval, or is late.

Bonus days may be taken in one-half (1/2) day increments. Bonus days may be requested at any time, and are granted at the complete discretion of management. Employees must realize, however, that a bonus day request is more likely to be granted the earlier it is requested.

Section 4. No vacation time or bonus days may be carried over to the next year. The employee must make every effort to use his paid time off during the year it is available.

ARTICLE 8 GROUP INSURANCE

- A) The City will provide health insurance to employees and their families at the same cost to the employee as other City departments.
- B) Employees under the age of sixty-five (65) shall receive Fifteen Thousand Dollars (\$15,000) life insurance.

ARTICLE 9 RETIREMENT PROGRAM

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

Section 2. Retiree Health Insurance - The retiree health insurance plan shall be consistent with the policy established in Section 2-160 of the Mishawaka Code of Ordinances.

ARTICLE 10 STEWARDS

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

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

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

ARTICLE 11
SENIORITY

Section 1. Types of Seniority - City employees within a bargaining unit shall obtain seniority on their ninety-first (91st) day of continuous, full-time employment, and such seniority shall be calculated to include the prior ninety (90)-day probationary period when successfully completed.

In the event a probationary employee has been given a thirty (30) or sixty (60) day extension after their ninety (90)-day probationary period to obtain his CDL, the employee will have no bidding rights until the employee has received his CDL. If the employee is unable to obtain his CDL within the agreed extension period, the employee will have no seniority and will be terminated.

There shall be two types Of seniority for Mishawaka Sewer Department employees:

A) Bargaining Unit Seniority

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

B) Departmental Seniority

Departmental seniority shall be computed from the employee's most recent date of hire within the specific department in which he is presently employed.

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

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

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

ARTICLE 12
LAYOFF PROCEDURES

Section 1. If it becomes necessary for the City to lay off employees working in skilled or semiskilled job classifications, the City shall follow departmental seniority in determining which employees within each prescribed job classification to lay off. Employees with the least amount of seniority within each job classification shall be the first employees laid off. However, senior employees so laid off shall have the right to work within their department if qualified in a classification where their seniority warrants.

If a laid-off employee is not qualified in any other skilled or semi-skilled classification, he shall then be able to bid into the general labor job classification within his department and replace the junior employee in that classification. All employees doing so will retain their total departmental seniority.

Section 2. If the City must lay off an employee working in a general labor classification, the City shall lay off those employees with the least departmental seniority. Any laid-off employee shall be placed on a departmental call-back roster and a bargaining unit call-back roster.

ARTICLE 13
CALL-BACK

Section 1. Call-back Roster - In the event that an employee is laid off, the name of that employee will be placed on a departmental call-back roster and a bargaining unit call-back roster. The roster will contain the employee's name, address and telephone number, amount of departmental seniority and bargaining unit seniority, the department from which the employee was laid off, the employee's last job classification and the employee's qualifications.

Section 2. Call-back Procedure - When a job becomes available in the Sewer Department covered by this agreement, and there are employees whose names are on the departmental call-back roster, the employee with the most departmental seniority who is qualified for the job shall be offered the job. Once the departmental seniority list is gone through the bargaining unit seniority list will be used. If there are employees whose names are on the bargaining unit call-back roster, the employee with the most bargaining unit seniority who is qualified for the job shall be offered the job.

Section 3. Employee Call-back Rights and Obligations - Employees whose names are on the call-back roster may refuse to take a job in a department other than the one from which they were laid off without loss of seniority. However, any employee refusing to work in the department from which he was laid off for which he is qualified shall be terminated.

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

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

ARTICLE 14
JOB VACANCIES

Section 1. If there is an apparent vacancy in a job classification covered by this agreement, the City shall post such vacancy within five (5) working days of the occurrence of said vacancy; or post that the vacancy will not be filled at this time. All vacant and newly-created positions covered by this Agreement shall be posted for bid at the department at which the opening exists for a period of three (3) working days. If no employee from that department bids and qualifies for that job opening, then the job opening shall be posted for a period of three (2) working days at all other City bargaining unit work sites and the Human Resources office. There shall be a maximum of two (2) successive bids to fill vacancies caused by the initial bid. Only one (1) later move or transfer within the bargaining unit per employee within a six (6)-month period may be exercised. This provision may be waived by mutual agreement between the City and the Union.

Section 2. Bidding Priorities - Provided the employee who bids for the job opening is qualified for the job, current employees will be given priority to fill the job opening as follows:

- A) First priority will be given to employees with the greatest departmental seniority in the department in which the job exists.
- B) Second priority will be given to employees with the greatest bargaining unit seniority.
- C) Employees will be given consideration in filling posted vacant positions in the Mishawaka Utilities that are open to the public.
- D) Departmental Seniority is not transferable from department to department.

Section 3. Qualifications for Jobs - Employees shall be allowed a reasonable qualifying time with a thirty (30)-day maximum to qualify for the vacancy. The Department Head will determine the qualifications of the employee and will also give specific reasons resulting in disqualification. Any dispute arising from the Department Head's decision is subject to the review of a Qualifications Committee composed of an equal number of representatives of the City and the Union. If an employee is disqualified, he shall be returned to his original job classification without loss of seniority.

Section 4. Promotion - Any unit employee who accepts a non-bargaining unit position within his department will have a thirty (30)-day tryout period before being removed from the Union seniority list. After thirty (30) days of employment such employee's seniority will be frozen for the duration of his service in a non-bargaining unit job. If said employee is permitted by the City to return to the bargaining unit in an open job, he will carry his total bargaining unit service as of his seniority date.

ARTICLE 15
PAYDAYS

Pay will be distributed as prescribed by the City Controller.

ARTICLE 16
FLEXIBLE TIME OFF/LONG-TERM DISABILITY

Section 1. Flexible Time Off (FTO)

- A) In recognition of the need for its employees to be away from work, City agrees to establish and accrue a bank of time off for any personal needs such as personal or family illness, extension of bereavement leave or vacations, or for any other purpose. Such bank may also be used to satisfy the five (5)-day waiting period for Long Term Disability Leave (LTD) described in Section 2. Such bank will not include personal holidays, bereavement leave (unless as an extension), jury or subpoenaed witness duty, LTD leave, leave of absence, or military leave.
- B) FTO accrual shall begin on the first day of employment for full-time employees and may be taken as accrued. Accruals shall be credited to each employee's account on the first day of each month for the prior month's service at the rate of one-half (1/2) day per month and continue at the same rate for each month of credited service.
- C) FTO days will continue to accrue as long as the employee remains in paid status, subject to the limitation listed in (G) of this section.
- D) FTO days may be taken in full or half-day increments. If becoming ill at work and leaving early, employees will be charged with one-half (1/2) FTO day if leaving after mid shift and a full FTO day if leaving before mid shift.
- E) Employees are expected to plan time off, setting aside some time in their personal bank for sickness. Employees are encouraged to keep a minimum of five (5) days in their bank at all times to provide for unexpected short-term sickness or for the required five (5)-day LTD waiting period described in Section 2. If all FTO days or any other paid leave time are not available, any short-term illness will be an excused absence, but without pay. Likewise, any long-term illness will result in a loss of pay for the five (5)-day waiting period. The City retains the right to limit the number of excused absence occurrences as described in this subsection.
- F) Employees should schedule FTO time at least twenty-four (24) hours in advance with the approval of a supervisor. The City recognizes, however, that there will be times, such as days an employee or a dependent is ill or a personal emergency arises that cannot be anticipated. In such cases, it is the responsibility of the employee to inform his/her supervisor as soon as possible prior to the beginning of a workday or shift of such absence and when the employee expects to be able to return to work.
- G) Employees may carry over accrued but unused FTO days from year to year but in no event can they accumulate more than twenty-five (25) FTO days.
- H) All FTO days shall be on the basis of the employee's regular base day's salary.
- I) City will buy back FTO days from any employee, up to a maximum of six (6) FTO days per year. It is the responsibility of the employee to make timely application prior to this buy-back arrangement if so desired. In any event, City will not buy back an amount of FTO days which would reduce the employee's personal bank to less than five (5) days, except as provided in paragraph (J) of this section.
- J) In the event a regular, full-time employee's service to the City is terminated, including termination due to death or retirement, he/she shall be entitled to pay in lieu of FTO days for days due and not yet taken as of the date of such termination, including any FTO days carried over from prior years.

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

ARTICLE 17
FUNERAL LEAVE AND LEAVE OF ABSENCE

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

Section 2. Employees may be granted leave of absence without pay and without discrimination or loss of seniority rights for justifiable reasons agreed upon by both the Department Head and representatives of the Union. The maximum leave of absence, except in cases of compulsory military service, shall be for no more than twelve (12) weeks. In the event such a leave is requested, the procedures outlined in the Family Medical Leave Act will be followed. Failure to comply with this provision shall result in the complete loss of rights for the employee involved. Seniority will be frozen during leaves of absence, except in cases involving military service and on-the-job injury.

ARTICLE 18
JURY DUTY

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

ARTICLE 19
GRIEVANCE PROCEDURE AND ARBITRATION

Section 1. Procedure to be followed:

The City and the Union recognize that, from time to time, grievances, disputes and complaints may arise over matters within the purview of this Agreement. Therefore, whenever the Union or any employee feels that the City has acted erroneously or improperly in interpreting and applying any of the provisions of this Agreement, then the Union or the employee may invoke the provisions of Article 19. Except in the first step, all grievances and answers shall be in writing. The grievance shall be processed only outside working hours or by mutual agreement in a manner hereinafter set forth.

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

Second Step: If the grievance is not settled in the First Step, the employee alone, or the employee and the union representative, may submit the grievance to the head of the Department within five (5) working days

after the answer is given in the First Step. The Department Head shall give his answer within five (5) working days after receiving the grievance.

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

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

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

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

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

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

- A) Saturdays, Sundays and holidays shall not be used in determining days in reference to the grievance procedure.
- B) Failure of the City to give an answer to the grievance as of the last day to answer shall be considered a denial of the grievance and the employee shall have the right to then proceed to the next step of the grievance procedure.
- C) The City shall give the Union representative sufficient copies of the written answer in each step of the grievance procedure to distribute to each employee present at the grievance meeting.
- D) Unless consolidated by agreement of the City and the Union, each grievance shall be considered a separate case.

- E) If the Union does not appeal within five (5) days of each step, the grievance is considered to be void.
- F) The time for filing a grievance involving the rate of pay shall begin on the day the employee receives his paycheck containing the grieved pay rate, unless it is previously filed.

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

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

ARTICLE 20 VALIDITY

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

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

ARTICLE 21 SUBCONTRACTING

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

ARTICLE 22 DISCHARGE OR SUSPENSION

- A) (1) The City shall not discharge nor suspend any employee without just cause, but in respect to discharge or suspension the City shall give at least one (1) warning notice of the complaint against such employee to the employee, in writing, and a copy of the same to the Union and Steward; provided, however, the employee has not committed one of the following acts or omissions performed while on duty:
 - (a) Dishonesty
 - (b) Recklessness Misconduct
 - (c) Carrying of unauthorized passengers
 - (d) Fighting
 - (e) Failure to perform first echelon maintenance

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

(2) The warning notice herein provided shall not remain in effect for a period of more than six (6) months from date of said warning notice.

- B) (1) Discharge must be by proper written notice to the employee and the Union. Any employee may have recourse to the grievance procedure upon his discharge or suspension. Should such procedure prove that an employee was discharged without cause, he shall be reinstated and compensated at his usual rate of pay while he has been out of work because of such discharge or suspension.
- (2) The parties shall mutually agree to additional rules regarding just cause for discharge and disciplinary action.
- C) No employee will be required to speed up work in violation of minimum safety standards.
- D) Uniform rules and regulations with respect to disciplinary action may be drafted and posted for seven (7) working days. Such approved uniform rules and regulations shall prevail in the application and interpretation of this Article.

ARTICLE 23

GENERAL PROVISIONS

Section 1. Uniforms –

- A) The City shall provide a sufficient amount of rainwear and boots to employees for use during inclement weather. The City shall also furnish uniforms and gloves to be worn by the employees during all working hours. A total of eleven (11) uniforms will be furnished per year.

- B) Each employee shall have an allowance to be spent on work boots according to the following schedule:

Employed with Sewer Department on or before December 31, 2025: \$525;

Employed with Sewer Department after December 31, 2025, but before December 31, 2026: \$350;

Employed with Sewer Department after December 31, 2026 but before December 31, 2027: \$175.

The purchase price of each properly-documented purchase of work boots will be deducted from the employee's allowance, with the remainder available for future work boot purchases through the end of the term of this contract. Upon termination of employment with Sewer Department, the employee forfeits any remaining allowance.

- C) The City will provide seasonal apparel (winter jacket, lightweight jacket, hooded sweatshirt).
- D) The City will allow for the exchange and replacement or repair of apparel damaged in the line of duty with the approval of the Department Manager.
- E) Employees shall be held responsible for any damage they cause to their uniform as well as any uniforms they lose. However, no employee shall be required to pay for uniform damage caused by normal wear and tear, nor shall they be held responsible for damaged or missing uniforms the condition of which was created by forces outside of their control.

Section 2. Revoked or Suspended License - In the event an employee has his Commercial Driver's License revoked or suspended due to negligence, driving under the influence of alcohol or narcotics, or driving while intoxicated, he shall be placed in the lowest job classification and pay rate within that department for no more than one hundred twenty (120) days or until the Commercial Driver's License has been reinstated, whichever occurs first. Upon reinstatement of his Commercial Driver's License, the employee will be returned to his former job classification and pay rate. If the license is not reinstated within that time period, the employee shall be terminated.

Section 3. Training –

- A) A wastewater collection system operator certification program shall be established for the purpose of developing better-informed and qualified employees. Job related training must be available during non-working hours and approved by the Department Manager. Tuition, books and required materials shall be paid for by the Department if the employee completes and passes the course of study; however, there shall be no wages nor compensation paid for the attendance at such course, whether passed or not. Upon satisfactory completion of each class level of the course, a certification bonus shall be added to the qualifying employee's base wage.
- B) Employees in a job classification which has more than one (1) grade level shall not be advanced to the next grade level until they have been evaluated. Such employees shall be evaluated at least as often as every 1,040 hours of work completed.

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

Section 5. CDL - For new employees and for current employees bidding into a job requiring a CDL, the City will pay for the required drug screen and may allow the employee to use a City vehicle to take the driver's test. In the event that the City decides not to allow the employee to use a City vehicle, the City shall reimburse a maximum of \$50 to the employee for the rental of a BMV vehicle for the test. This reimbursement may only be requested once during the tenure of the employee. If an employee moves into a new job that does not require a CDL, but wishes to maintain his CDL, the City shall not be responsible for paying any associated costs.

Section 6. Cross-Training – The City will provide cross-training for employees either during regular working hours or outside of regular working hours as the workload permits. Pay will not be upgraded in cross-training situations.

ARTICLE 24
WORKER'S COMPENSATION

Section 1. In the event an employee is absent due to an injury sustained on the premises which is determined to be compensable under Worker's Compensation laws, the following applies:

- A) Employees must bridge the first five (5) workdays with any leave time available to them at the time.
- B) Employees will be paid the difference between the daily rate paid through Worker's Compensation and the employee's daily salary less seven (7) days of absence. In the event the employee is absent twenty-two (22) or more days, the City's subsidy to the employee's Worker's Compensation pay will terminate until an amount equal to the Worker's Compensation check for the first seven (7) Worker's Compensation days of absence has been paid to the City. Upon receipt of such reimbursement the City's subsidy will be in accordance with Article 16 Flexible Time Off/Long Term Disability.
- C) The City's physician must validate their employee's absence during any of the first seven (7) days. In the event that Worker's Compensation is to be used it shall be the responsibility of the employee to follow all of the established procedures for applying for Worker's Compensation.

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

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

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

ARTICLE 25
DRUG-FREE WORKPLACE

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

ARTICLE 26
LONGEVITY BONUS PLAN

The following Longevity Bonus Plan will be provided to the Sewer Department employees according to the following terms. This schedule is based upon years of service and does not have an upper limit. Longevity pay shall be distributed annually on the first payday following each individual employee's anniversary date, as part of his regular paycheck.

Payments shall be made according to the following schedule:

<u>Years of Service</u>	<u>Annual Increment</u>	<u>Bonus</u>
1	\$15.00	\$15.00
2	\$25.00	\$40.00
3	\$35.00	\$75.00
4	\$45.00	\$120.00
5	\$55.00	\$175.00
6	\$80.00	\$255.00
7	\$80.00	\$335.00
8	\$80.00	\$415.00
9	\$80.00	\$495.00
10	\$80.00	\$575.00

An additional \$85.00 will be added for each year of service after the tenth year.

ARTICLE 27
TEMPORARY JOB TRANSFERS

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

- A) When an employee is temporarily transferred to a job in a higher-paying classification, he shall be upgraded to the pay rate of that classification for time spent on that job.
- B) An employee temporarily assigned a job with a lower rate shall not be downgraded in pay.
- C) Should overtime be needed, the City shall at all times offer the overtime to employees who work within the Department requiring the overtime according to their specific overtime procedure. In the event that nobody accepts the overtime from within the Department, the City shall have the right to utilize employees outside of the Department, subject to all of the conditions contained in this Article.
- D) Should overtime be necessary for a temporarily transferred employee, the employee who has performed the work during regular hours will continue to work the overtime assignment if additional manpower is needed after exhausting the overtime list procedure in the affected department.

ARTICLE 28
JOB
CLASSIFICATIONS

Advanced Operator – this classification includes:

- (a) Vector Combination Truck Operator
- (b) Aquatech Combination Truck Operator
- (c) Camera Truck

OperatorGIS Coordinator

Repairman

Utility

Operator

General Laborer II

General Laborer I

General Laborer

Specialty Pay:

CDL holders: Tanker endorsement	\$1,000.00
Class B	\$500.00
Class A	\$750.00
WW Col 1	\$500.00
WW Col 2	\$500.00
NASSCO	\$1,000.00
GS1 Intro	\$1,000.00
GS1WK Flows	\$1,000.00
GS1 Basic Certificate	\$750.00
GS1 Start	\$750.00

ARTICLE 29
TENURE OF AGREEMENT

Section 1. This Agreement shall be in full force and effect from January 1, 2025 to and including December 31, 2027.

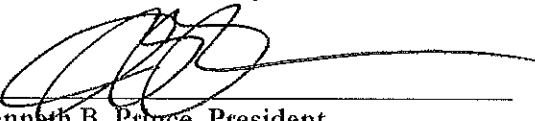
Section 2. The parties agree to open negotiations with sixty (60) days' prior notice provided on or about July 1, 2025 for the purpose of negotiating wages only.

Section 3. The parties agree to open negotiations with sixty (60) days' prior notice provided on or about July 1, 2026 for the purpose of negotiating wages only.

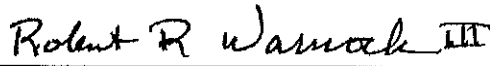
Section 4. The parties agree to open negotiations with sixty (60) days' prior notice provided on or about July 1, 2027 for the purpose of negotiating a new labor agreement, including wages and benefits.

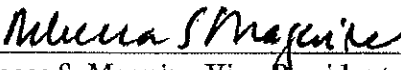
Approved this Day of , 2024.

BOARD OF PUBLIC WORKS AND SAFETY
for and on behalf of the
CITY OF MISHAWAKA, INDIANA

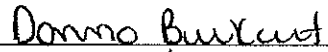
By 
Kenneth B. Prince, President

CHAUFFEURS, TEAMSTERS AND HELPERS
LOCAL UNION NO. 364 affiliated with the
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

By  10-30-2024
Robert R. Warnock, III, President

By 
Rebecca S. Maguire, Vice-President

By 
George Obren, Member

ATTEST: 
Donna Burkhardt, Clerk, BPWS

2025 WAGES

<u>Classification</u>	<u>Wages</u>
Advanced Op. Video	\$28.06
Advanced Op. Combo	\$28.67
GIS Coordinator	\$27.15
Locator/Construct Insp	\$27.15
Repairman	\$26.88
Utility Operator	\$26.31
General Laborer II	\$24.43
General Laborer I	\$24.19
General Laborer	\$21.02

NOV 14 2024

City Clerk
Mishawaka, IN

PROPOSED ORDINANCE NO. 2024-33

ORDINANCE NO. _____
AS AMENDED

AN ORDINANCE AMENDING ORDINANCE NUMBER 5898AA WHICH
ESTABLISHED A DESIGNATED OUTDOOR REFRESHMET AREA

WHEREAS, Indiana Code 7.1-3-31 authorizes the establishment of a Designated Outdoor Refreshment Area;

WHEREAS, the Common Council believes it is in the best interests of the City to **amend and expand** their Designated Outdoor Refreshment Area in the City's downtown, as authorized by Indiana Code 7.1-3-31 *et seq.*, which Area is shown on the attached Map- Exhibit A.

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

Section 1. All definitions in Ind. Code 7.1-3-31 *et seq.* shall apply to this Ordinance.

Section 2. The Common Council hereby adopts the **revised Map** of the City of Mishawaka Downtown Designated Outdoor Refreshment Area attached hereto as Exhibit A and incorporated herein by reference.

Section 3. That the following area is designated as the City of Mishawaka Downtown Designated Outdoor Refreshment Area (hereinafter "Downtown DORA"):

LEGAL DESCRIPTION (**Being amended to include the traditional Mishawaka Downtown area**)
– A PART OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 1 IN THE MILL AT IRONWORKS AS RECORDED UNDER INSTRUMENT NUMBER 1735080 IN THE OFFICE OF RECORDER OF ST. JOSEPH COUNTY, INDIANA; THENCE NORTH ALONG THE EAST RIGHT-OF-WAY LINE OF HILL STREET TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE EAST ALONG THE SOUTH RIGHT-OF-WAY LINE OF IRONWORKS AVENUE, A DISTANCE OF 450' MORE OR LESS TO A WEST WALL OF COMMERCIAL TENANT SPACES AT 235 IRONWORKS AVENUE, SUITES C, D, AND E, CURRENTLY OCCUPIED BY SUN KING BREWERY; THENCE SOUTH ALONG SAID WEST WALL, A DISTANCE OF 50' MORE OR LESS TO A SOUTH WALL OF SAID COMMERCIAL TENANT SPACES; THENCE EAST ALONG SAID SOUTH WALL, A DISTANCE OF 13' MORE OR LESS TO A WEST WALL OF COMMERCIAL TENANT SPACES AT 235 IRONWORKS AVENUE, SUITES C, D, AND E; THENCE SOUTH ALONG SAID WEST WALL, A DISTANCE OF 180' MORE OR LESS TO A NORTH WALL OF A COMMERCIAL TENANT SPACE

AT 235 IRONWORKS AVENUE, SUITE A, CURRENTLY OCCUPIED BY SOCIAL CANTINA; THENCE WEST ALONG SAID NORTH WALL, A DISTANCE OF 10' MORE OR LESS TO A WEST WALL OF SAID COMMERCIAL TENANT SPACE; THENCE SOUTH ALONG SAID WEST WALL AND THE EAST EDGE OF PAVEMENT OF A ENTRANCE DRIVE TO A PUBLIC PARKING GARAGE, A DISTANCE OF 90' MORE OR LESS TO THE NORTHERN EDGE OF PAVEMENT OF W. FRONT STREET; THENCE NORTHEASTERLY ALONG SAID NORTHERN EDGE OF PAVEMENT, A DISTANCE OF 400' MORE OR LESS TO THE SOUTHERLY PROJECTED EAST LINE OF LOT 2 IN IRON WORKS PHASE II AS RECORDED UNDER INSTRUMENT NUMBER 0833003 IN SAID OFFICE OF RECORDER; THENCE NORTH ALONG THE WEST RIGHT-OF-WAY LINE OF NORTH MAIN STREET TO A NORTHEAST CORNER OF OUTLOT A IN SAID THE MILL AT IRONWORKS; THENCE NORTHWESTERLY ALONG A LINE PARALLEL TO AND 30' MORE OR LESS SOUTH OF THE SOUTH BANK OF THE ST. JOSPEH RIVER, A DISTANCE OF 185'; THENCE NORTH PARALLEL WITH SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 7' MORE OR LESS TO THE SOUTH EDGE OF PAVEMENT OF THE RIVERWALK; THENCE WESTERLY ALONG SAID SOUTH EDGE OF PAVEMENT OF THE RIVERWALK, A DISTANCE OF 690' MORE OR LESS TO A NORTHERLY PROJECTED WEST LINE OF SAID OUTLOT A; THENCE SOUTH ALONG SAID PROJECTED WEST LINE, A DISTANCE OF 5' MORE OR LESS TO A SOUTH LINE OF SAID OUTLOT A ALSO BEING THE NORTH RIGHT-OF-WAY OF N. HILL STREET; THENCE WESTERLY ALONG SAID NORTH RIGHT-OF-WAY LINE OF N. HILL STREET, AND THE NORTH LINE OF LOT 2 IN SAID THE MILL AT IRONWORKS, A DISTANCE OF 260' MORE OR LESS TO A POINT 90' WEST OF THE WEST RIGHT-OF-WAY LINE OF N. HILL STREET; THENCE SOUTH PARALLEL TO SAID WEST RIGHT-OF-WAY LINE OF N. HILL STREET, A DISTANCE OF 550' MORE OR LESS TO THE SOUTH EDGE OF A SIDEWALK NORTH OF W. FRONT STREET; THENCE EAST ALONG SAID SOUTH EDGE OF A SIDEWALK, A DISTANCE OF 250' MORE OR LESS TO THE SOUTHERLY PROJECTED WEST LINE OF SAID LOT 1 IN THE MILL AT IRONWORKS; THENCE NORTH ALONG SAID PROJECTED WEST LINE, A DISTANCE OF 12' MORE OR LESS TO THE POINT OF BEGINNING. SAID DESCRIBED TRACT CONTANING 11.89 ACRES, MORE OR LESS.

Except all residential property is excluded.

Section 4. The Common Council hereby adopts the **amended** Map of the City of Mishawaka Downtown Designated Outdoor Refreshment Area attached hereto as Exhibit B and incorporated herein by reference. This map reflects designated permittee and event vendor locations within the Downtown DORA as follows:

- A. Sun King Brewing, 235 Ironworks Avenue, Suite C, Mishawaka, Indiana 46544;
- B. Ball Band Biergarten, 230 Ironworks Avenue, Mishawaka, Indiana 46544;
- C. Mishawaka Public House, 330 N. Hill Street, Mishawaka Indiana 46544;
- D. Ironworks Event Center, 414 N. Hill Street, Mishawaka, Indiana 45644;
- E. Social Cantina, 235 Ironworks Avenue, Suite A, Mishawaka, Indiana 46544;
- F. Future – Mill at Ironworks, Phase II
- G. Future – Mill at Ironworks, Phase II
- H. Temporary Event Vendor Chicory

New DORA map and boundary to be inclusive of these establishments (pending)

- I. Jesus Latin Grill & Tequila Bar - 122 N Hill St, Mishawaka, IN 46544 ·
- J. Doc Pierces - 120 N Main St, Mishawaka, IN 4654
- K. Craft One Half - 112 N Main St, Mishawaka, IN 46544 ·
- L. Vinyl Tap - 117 S Main St, Mishawaka, IN 46544
- M. Phoenix - 101 Lincolnway W, Mishawaka, IN 46544
- N. ZING - 206 N Main St, Mishawaka, IN 46544 ·
- O. Chickory Café - 114 W 1st St, Mishawaka, IN 46544

Section 5. The Common Council finds that the amended, expansion of the established Downtown DORA is consistent with the City of Mishawaka's Zoning Code.

Section 6. The Common Council hereby approves and adopts the minimum signage designating the Downtown DORA attached hereto as Exhibit C and incorporated herein by reference and directs the City to place the signage at the designated locations on Exhibit C. The Common Council further recognizes that additional signage designating the Downtown DORA may be warranted and necessary. Therefore the Council hereby authorizes the City of Mishawaka Board of Public Works and Safety (hereinafter "BPWS") full authority to increase the number of or otherwise change the signage in its sole discretion.

Section 7. The Common Council hereby establishes the following dates and hours of operation for the Downtown DORA:

- A. The Downtown DORA will be only open on the days of the week and hours established under the terms of this ordinance and consistent with the terms of I.C. 7.1-3.1-14. The Downtown DORA shall be in effect following the passage of this Ordinance on Wednesdays, Thursday, and Friday from 4:00 p.m. to 10:00 p.m., with last call at 9:30 p.m.; from 12:00 p.m. to 10:00 p.m. on Saturday with last call at 9:30 p.m.; and from 11:00 a.m. to 4:00 p.m. on Sunday with last call at 3:30 p.m.
- B. By no later than October 31, 2024, the Common Council's Public Health and Safety Committee shall conduct a review and evaluation of the operation of the Downtown DORA. This review and operation will include the consideration of whether the Downtown DORA will continue in operation indefinitely. Additionally, the review and evaluation will include consideration of the expansion of the Downtown DORA to include a larger portion of the Central Business District. The Common Council must take formal action by ordinance to make changes to the Downtown DORA and all such changes must comply with the requirements of Indiana law, particularly Indiana Code 7.1-3-31, as from time to time amended.
- C. The Mayor of the City of Mishawaka, acting in conjunction with the Chief of Police, is authorized to further restrict days and hours of operation and/or to suspend the operation of the Downtown DORA on a temporary basis and as is necessary in order to preserve the public health and safety of the community, subject to the subsequent approval of the Common Council.

- D. Consistent with general principles of Indiana law, the Common Council retains the general authority to terminate the operation of the Downtown DORA at anytime following the passage of an appropriate ordinance.

Section 8. The following retailer permittees have submitted a completed application to the City to participate in the Downtown DORA as a Designated Permittee and the City finds that each of them is an appropriate Designated Permittee and requests that the Indiana Alcohol and Tobacco Commission issue each a “refreshment area designation:

- A. Mishawaka Public House, 330 N. Hill Street, Mishawaka Indiana 46544; and
- B. Social Cantina, 235 Ironworks Avenue, Suite A, Mishawaka, Indiana 46544.

The Common Council hereby authorizes the BPWS to administer the approval of any and all requests for designated permittee status within the Downtown DORA, subject to the requirements of Indiana law. This delegation of authority to the BPWS shall include the approval of a request by a designated permittee to expand operations into an area within the Downtown DORA that is outside of a designated patio area and the approval of a request by a vendor holding a temporary vendor designation to participate in an event or festival held within the Downtown DORA. However, in no event shall the BPWS approve a request by a temporary vendor to establish a permanent presence in the Downtown DORA until and unless the temporary vendor is able to meet the statutory requirements for consideration as a designated permittee.

Section 9. The Common Council finds that nothing in this ordinance prohibits a business, landlord, or other establishment located within the Downtown DORA from prohibiting open containers of alcoholic beverages to enter their premises or from prohibiting alcoholic beverages purchased from another establishment to enter their premises. However, the City of Mishawaka maintains full authority and control over the sidewalks and common area in the Downtown DORA and no individual or entity may prohibit or limit open containers in such public spaces within the Downtown DORA except for the Mishawaka Police Department.

Section 10. Upon receipt of a “refreshment area designation” from the Indiana Alcohol and Tobacco Commission, a designated permittee as defined by Indiana law shall remove all stanchions, fencing, or other means of separation previously required by law from all common areas, sidewalks, and right of way of the City of Mishawaka as provided by Ind. Code 7.1-3-31-15. The failure to remove said enclosures within seventy-two (72) hours of receiving notice from the City shall result in a fine in accordance with the terms of the municipal code.

Section 11. In accordance with Ind. Code 7.1-3-31 *et seq.*:

- A. A person may consume an alcoholic beverage purchased from a designated permittee or vendor anywhere within the refreshment area boundaries, subject to the right of any retailer permittee or business within the refreshment area to refuse to allow individuals to enter the licensed premises or business with an alcoholic beverage.
- B. All designated permittees and vendors may allow a person to exit the designated permittee’s or vendor’s licensed premises with not more than two (2) open containers of an alcoholic beverage at a time. The contents of an open container may not exceed the following:
 - 1. Beer or flavored malt beverage of not more than sixteen (16) ounces;

2. Wine, cider, or hard seltzer of not more than twelve (12) ounces; or
 3. A mixed drink of not more than ten (10) ounces containing not more than two (2) ounces of liquor.
- C. A sign, as required by Ind. Code 7.1-3-31-16, must be posted at each exit of a designated permittee and on the licensed premises of a vendor.
 - D. Designated permittees and vendors operating within the Downtown DORA are required to use only non-breakable plastic bottles, plastic cups, or paper cups for alcoholic beverages consumed outside of licensed premises but within the refreshment area. Furthermore, all such bottles or cups must be affixed with a logo approved by the BPWS that indemnifies the container for use only in the Downtown DORA.
 - E. The BPWS shall approve an appropriate public safety plan for the Downtown DORA. The public safety plan must reflect the Common Council's expectation that the provision of public safety services to the Downtown DORA will not result in the dedication of public safety personnel and resources to the Downtown DORA in a manner that is detrimental to the City of Mishawaka as a whole. In addition, the public safety plan must authorize the Chief of Police in his or her sole discretion to mandate the use of private security resources within the Downtown DORA as is necessary.
 - F. The BPWS shall also approve an appropriate sanitation plan for the Downtown DORA.
 - G. Glass containers may only be allowed in a designated permittee's outdoor dining area and may not be removed into the Downtown DORA.

This Ordinance shall be in full force and effect upon its passage, approval, and publication pursuant to Indiana law.

Passed by the Common Council of the City of Mishawaka, Indiana, on this _____ day of _____, 2024.

Gregg Hixenbaugh, President

ATTEST:

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

Presented to the Mayor this _____ day of _____, 2024.

Deborah S. Block, IAMC, CMO, MMC

City Clerk

Approved this _____ day of _____, 2024.

David A. Wood
Mayor



CITY OF MISHAWAKA

Deborah S. Block, IAC, MMC

NOV 14 2024

City Clerk
Mishawaka, IN

DAVID A. WOOD, MAYOR

OFFICE OF THE MAYOR

Dear President Hixenbaugh and Honorable Members of the Mishawaka Common Council,

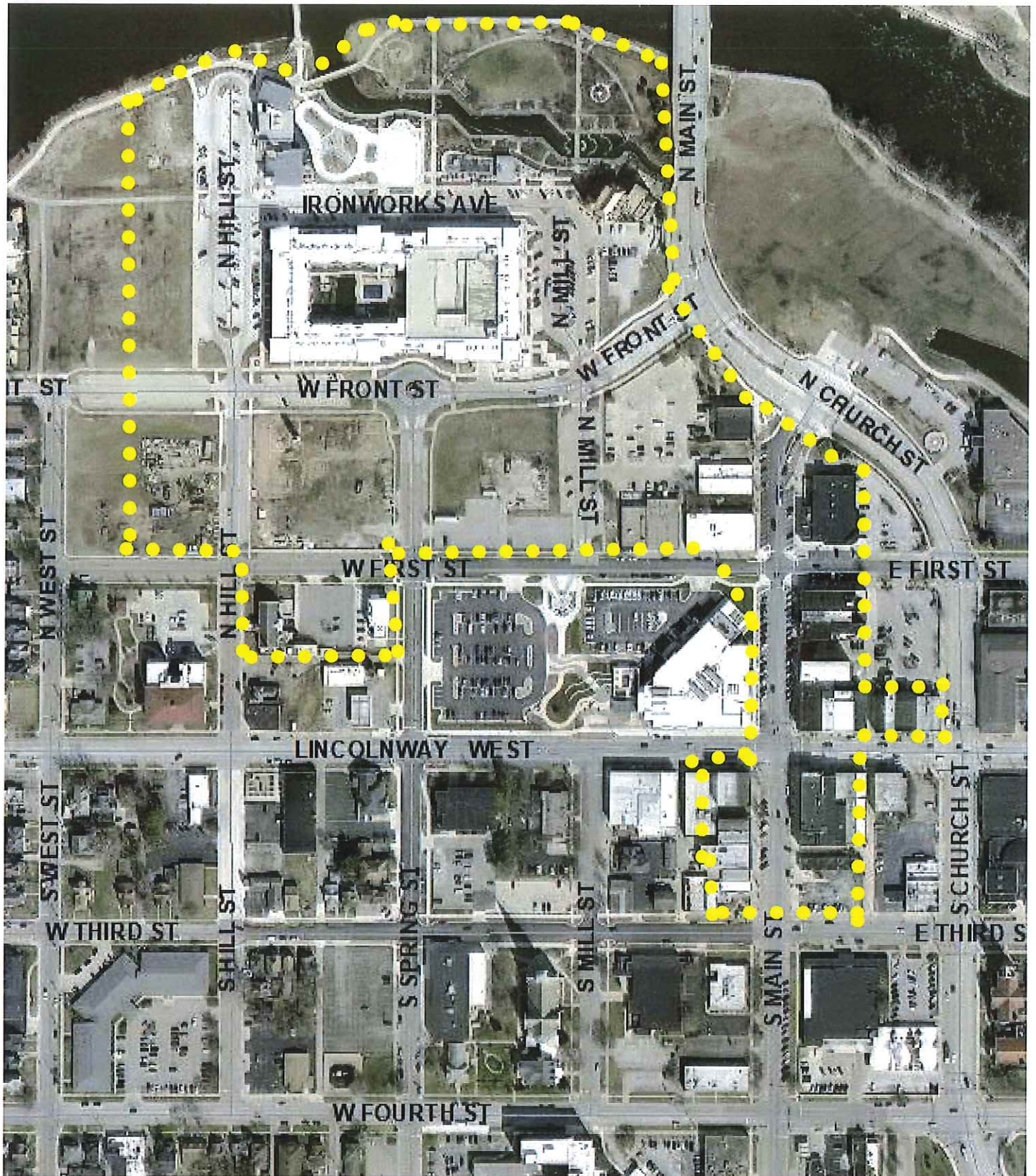
I am writing to recommend an expansion of Mishawaka's existing Designated Outdoor Refreshment Area (DORA) to include the traditional downtown area, based on the positive results we've seen with the current DORA in the Ironworks Plaza area. Since its implementation, the DORA has operated successfully and without incident, providing an enjoyable and safe environment for residents and visitors to engage with local businesses.

The current DORA in Ironworks Plaza has proven to be a valuable asset for drawing people into our community spaces and supporting local commerce. Given the growth and revitalization efforts in our downtown, including enhancements to Beuter Park and the Riverwalk, we see a timely opportunity to extend the DORA to encompass the traditional downtown area. This expansion would allow patrons more flexibility and freedom to explore Mishawaka's parks, shops, restaurants, and while enhancing the vibrancy and appeal of our downtown.

The proposed expansion aligns with the goals of the Mayor's administration to foster a strong, welcoming downtown area. We believe this expansion will further boost local businesses, increase foot traffic, and enhance the experience for both residents and visitors. A new map and boundary are therefore recommended to incorporate these key areas.

In light of the success we have seen with the Ironworks DORA, I respectfully request your support to amend our current ordinance to expand the DORA boundaries to the more traditional downtown area. Thank you for your consideration in continuing to support Mishawaka's growth and prosperity.

Sincerely,
Matthew Lentsch



Potential Designated Outdoor Refreshment Area Boundary

Draft– 6/13/2024