

# **Title 1. Administrative Provisions**

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## **Article 1 In General**

### **Chapter 1 General Provisions**

#### **1.1.1.1 Purposes and disclaimer.**

Sec. 1 (a) This Code sets forth the City of Goshen ordinances that regulate individual conduct, public conduct, or regulate activities such as land use, construction or business activities within the corporate limits of the City of Goshen. No attempt is made to reference state statutes that regulate or control individual conduct, public conduct, or other activities except as the state statutes relate to the application or existence of any City ordinance.

(b) This Code does not include City of Goshen ordinances that establish the structure or the procedures of the Common Council, City Court, Clerk Treasurer's office, Mayor's office, the City's various boards and commissions, the City's various departments or the City's utilities.

(c) This Code does not include ordinances that deal with the City's financial affairs. Therefore, this Code does not include budget, appropriation or transfer ordinances. The Code does not include bonding ordinances or ordinances establishing a contractual relationship between the City and other governmental entities, individuals or businesses of any type.

(d) There are separate codes available through the Goshen Planning and Zoning Department that include the City's Zoning Ordinances, Subdivision Control Ordinance and the Signs and Developmental Regulations Ordinance. There is a separate code for Design and Construction Standards for Streets and Utilities available through the Engineering Department.

#### **1.1.1.2 Effective date.**

Sec. 2 (a) This Code is effective for the purposes of Indiana Code 36-1-5-5 and all other purposes upon the date of its adoption by the Goshen Common Council. All required public hearings and notices were held prior to the adoption of this Code and any of the ordinances contained in this codification.

(b) The provisions of this Code restate and reenact the original ordinance or amendments upon which the codification is based.

**1.1.1.3 Code designation.**

Sec. 3 This Code may be designated as the Goshen City Code or Goshen Code.

**1.1.1.4 Severability.**

Sec. 4 The sections, paragraphs, sentences, clauses, and phrases of this Code are severable. If any phrase, clause, sentence, paragraph, or section of this Code is declared unconstitutional, invalid, or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality, invalidity, or unenforceability does not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

**1.1.1.5 Effect of repeal of ordinance.**

Sec. 5 When any ordinance repealing a former ordinance, clause, or provision is repealed, such repeal does not revive any former ordinance, clause or provision.

**1.1.1.6 Effect of ordinance information.**

Sec. 6 The presence of an ordinance number and date of passage is intended to denote the derivation of the Code section. The presence of an ordinance number is a declaration and determination by the Goshen Common Council that such section is a restated or re-enactment of a previously enacted ordinance and is deemed re-ordained by the passage of this Code.

## **Chapter 2 Document Organization**

**1.1.2.1 Codification of ordinances.**

Sec. 1 This Code is a codification of the ordinances of the City of Goshen, Indiana of general application which regulate individual and public conduct or regulate business or activities within the City of Goshen.

**1.1.2.2 Numbering system.**

Sec. 2 (a) The sections within each chapter contain headings to facilitate usage of the Code. The source of each section is indicated by the ordinance number and date of adoption appearing in parenthesis. The absence of such a note indicates the section is new and was adopted with adoption of this Code.

(b) The first number refers to the Title number. The number following the first period refers to the Article number within that Title. The number following the second period refers to the Chapter within that Title and Article. The last number refers to the Section within that Title, Article and Chapter as follows: 1.2.3.4 refers to Title 1, Article 2, Chapter 3, Section 4.

## **Chapter 3 Enforcement of Code**

### **1.1.3.1 Application.**

Sec. 1 Any part of this Code which does not specifically provide a mechanism for the enforcement within this Code, including a penalty provision, notice provision, right to hearing and appeal, shall be enforced in a manner consistent with this Code chapter.

(Ord. 3507 § 1, 5-12-1992)

### **1.1.3.2 Initiation of enforcement.**

Sec. 2 (a) The City Ordinance Compliance Officer, any police officer, or the department head or the department head's designee whose department handles the enforcement of any part of this Code or any other ordinance shall commence the enforcement process by providing all persons against whom the section of this Code or any other ordinance is to be enforced, with a written notice of the violation detailing the nature of the violation and the City Code or ordinance violated.

(b) The written notice shall specify the action required to bring the violation into compliance and the deadline for compliance should be at least ten (10) days after the date of the written notice.

(Ord. 3507 § 2, 5-12-1992)

### **1.1.3.3 Commencement of complaint.**

Sec. 3 If the violator has not fully complied with the applicable section of this Code or other ordinance within the specified deadline, the City may enforce the section of this Code or other ordinance by filing a complaint in a court of competent jurisdiction within the City of Goshen specifying the nature of the violation, the section of this Code or other ordinance of the City of Goshen violated and whether an injunction against the violation is sought and/or a fine requested. A person named in any such complaint shall be entitled to a hearing before the court at which the Indiana Rules of Civil Procedure shall govern the hearing process.

(Ord. 3507 § 3, 5-12-1992)

### **1.1.3.4 Penalties.**

Sec. 4 (a) After a hearing at which the court finds that a section of this Code or any other City ordinance has been violated, the court may enjoin the violator from doing any act inconsistent with the Code section or ordinance or order the violator to take any affirmative act needed to eliminate a violation of the Code section or ordinance.

(b) The court may order the violator to reimburse the City for its reasonable expenses in enforcing the section of this Code or other ordinance including reasonable attorney fees. Such award shall not exceed the amount of One thousand Dollars (\$1,000.00).

(c) The court may impose a fine up to Five hundred Dollars (\$500.00) and shall order the violator to pay court costs.

(Ord. 3507 § 4, 5-12-1992)

#### **1.1.3.5 Appeal of court decision.**

Sec. 5 An appeal of the court's determination shall be made in accordance with the Indiana Trial Rules governing civil appeals.

(Ord. 3507 § 5, 5-12-1992)

#### **1.1.3.6 Alternative procedure.**

Sec. 6 (a) A person who receives an enforcement letter from the City of Goshen may appeal such enforcement action to the Goshen Board of Public Works and Safety by requesting a hearing. Such request must be made prior to the City commencing a legal proceeding in a court of competent jurisdiction. Upon receiving such request, a hearing shall be scheduled before the City of Goshen Board of Public Works and Safety within ten (10) days of the written request unless a later date is agreed to by the person requesting the appeal and the City of Goshen. The person requesting the appeal will be entitled to appear at the hearing, be represented by counsel, call and cross-examine witnesses, require the production of evidence, and have the City's cooperation in having subpoenas issued, served and executed.

(b) The City may request a hearing be held before the City of Goshen Board of Public Works and Safety instead of initiating an action in a court of competent jurisdiction. The City of Goshen Board of Public Works and Safety may order any action to be taken necessary to eliminate any violation of the section of this Code or other ordinance and may prohibit any action which would constitute a violation of the section of this Code or other ordinance. The Board, may not, however, impose a fine or order payment of the cost of enforcement.

(Ord. 3507 § 6, 5-12-1992)

#### **1.1.3.7 Appeal of action of Board of Public Works and Safety.**

Sec. 7 Any action taken by the Board of Public Works and Safety is subject to the review by any court of competent jurisdiction within Elkhart County. A person requesting a judicial review must file

the verified complaint including the findings of fact and action taken by the City of Goshen Board of Public Works and Safety. The complaint must be filed within sixty (60) days after the date the action was taken. Any appeal will be heard by the court de novo. The court may affirm, modify or reverse the action taken by the City of Goshen Board of Public Works and Safety.

(Ord. 3507 § 7, 5-12-1992)

## Article 2 Ordinance Violations Bureau

### Chapter 1 Ordinance Violations Bureau

#### 1.2.1.1 Establishment and Administration of Ordinance Violations Bureau.

Sec. 1 An ordinance violations bureau is established.

(Ord. 3846 § 1, 8-4-1998)

#### 1.2.1.2 Violations Clerk; Duties

Sec. 2 (a) The Clerk of the City Court serves as the Violations Clerk, who administers the Bureau.

(b) The Clerk of the City Court shall accept written appearances, waivers of trial, admissions of violations, and payment of civil penalties of not more than Two hundred fifty Dollars (\$250.00), subject to the schedule set forth in 1.2.1.3.

(Ord. 4411 § 2, 2-6-2007)

#### 1.2.1.3 Schedule of Civil Penalties

Sec. 3 (a) Upon the admission of a violation, the following civil penalties shall be assessed:

- 1) Parking Violations, ..... \$125.00  
first offense
- 2) Parking Violations, ..... \$175.00  
second offense within one (1) year
- 3) Parking Violations, ..... \$250.00  
third offense and subsequent offenses within one (1) year
- 4) All other Code Violations, ..... \$150.00  
first offense
- 5) All other Code Violations, ..... \$200.00  
second offense within one (1) year

- 6) All other Code Violations,.....\$250.00  
third offense and subsequent offenses within one (1) year

(b) On January 1, 2009, the monetary penalties prescribed in 1.2.1.3 (a) 1), 2), 4) and 5) shall each increase by Twenty-five Dollars (\$25.00), respectively.

(Ord. 4411 § 3, 2-6-2007)

#### **1.2.1.4 Right to Trial; Denial of Violation, Failure to Satisfy Civil Penalty Assessed**

Sec. 4 (a) Nothing in this Code article shall be construed to limit the rights of trial to a person charged with a Code violation. If a person charged with a Code violation wants to exercise the right to trial, the person shall appear before the Violations Clerk and deny the violation or enter a written denial with the Violations Clerk.

(b) If a person denies a Code violation, fails to satisfy a civil penalty assessed by the Violations Clerk after having entered an admission of violation, or fails to deny or admit the violation, the Violations Clerk shall report this fact to the Legal Department, who may then initiate proceedings in court against the person for the alleged Code violation.

(Ord. 4411 § 4, 2-6-2007)

## **Article 3 Access to Public Records**

### **Chapter 1 Access to Public Records**

#### **1.3.1.1 Request to inspect or copy public record.**

Sec. 1 (a) Any person may inspect and copy the public records of the City during the regular business hours, unless such records are otherwise excepted from disclosure requirements as provided under Indiana Code 5-14-3-4.

(b) A request for inspection or copying must:

- 1) Identify with reasonable particularity the record being requested; and
- 2) Be in writing on or in a form provided by the City, unless such a requirement is otherwise waived by the department or office receiving the request.

(c) The City department or office which is in possession of a public record and has reasonable access to a machine capable of reproducing the record must provide at least one copy of the record to the person based on the City's current fee schedule. The compilation and copying of any such public documents will be provided within a reasonable period of time after the request is made, but may not unreasonably interfere with the operations of the City department or office. If the City

department or office does not have reasonable access to a machine capable of reproducing the record, the person is only entitled to inspect and manually transcribe the record.

(Ord. 3930, § 2, 12-7-1999)

### **1.3.1.2 Fees.**

Sec. 2 (a) Pursuant to Indiana Code 5-14-3-8, a City department or office may not charge any fee under this Code article to inspect a public record; or to search for, examine or review a record to determine whether the record may be disclosed.

(b) City departments and offices shall charge a uniform fee as established by the Goshen Common Council and as may be amended from time to time for the certification, copying, or facsimile machine transmission of public records.

(c) Notwithstanding subsection (a) or (b), a City department or office shall collect any certification, copying, facsimile machine transmission, or search fee that is specified by statute or is ordered by a court.

(d) The City department or office in possession of a public record shall require payment of the fees in advance. If the exact fee cannot be determined at the time the request is made, an estimated fee shall be paid in advance and the balance due prior to delivery of the public documents. Any overpayment of fees will be refunded to the person making the request at the time of delivery.

(e) A City department head or office manager shall have the authority to waive any fee when the total fee is less than One Dollar (\$1.00).

(Ord. 3930, § 3, 12-7-1999)

### **1.3.1.3 Establishment of Public Records Perpetuation Fund; deposit of fees.**

Sec. 3 (a) A non-reverting Public Records Perpetuation Fund is established.

(b) All fees received from a person by a City department or office pursuant to this Code article shall be deposited into the Public Records Perpetuation Fund, except for the following;

- 1) Fees collected by Goshen City Court for the facsimile transmission of documents shall be deposited to the Clerk's record Perpetuation Fund established pursuant to Indiana Code 33-19-6-1.5 and Ordinance 3680 as may be amended from time to time.
- 2) Fees collected by the Goshen Police Department for a copy of an accident report shall be deposited to the Local Law Enforcement Continuing Education fund established pursuant to Indiana Code 5-2-8-2.

- 3) Fees collected by the Goshen Utilities for copying and delivery of a public record shall be deposited into the Utility Miscellaneous Revenue Fund.

(c) The money in the Public Records Perpetuation Fund may be used without appropriation for the preservation of records and the improvement of record keeping systems and equipment.

(Ord. 3930, § 4, 12-7-1999)

#### **1.3.1.4 Unauthorized alteration of a public record; penalty.**

Sec. 4 (a) It shall be unlawful for any person having or obtaining access to a public record to alter the content of the public record from its original state without the prior written authorization from the City.

(b) Any person violating subsection (a) shall be subject to a fine not exceeding Two thousand five hundred Dollars (\$2,500.00) for each offense. A complaint for violation seeking the imposition of a fine may be filed with any court of competent jurisdiction in Elkhart County.

(Ord. 3930, § 5, 12-7-1999)

#### **1.3.1.5 Other ordinances and policies.**

Sec. 5 All other City policies or parts of policies inconsistent or conflicting with any part of this Code article are hereby repealed to the extent of such inconsistency or conflict.

(Ord. 3930, § 6, 12-7-1999)

## **Article 4 Surcharge for a Dishonored Check, Draft, Order, or Like Instrument**

### **Chapter 1 Surcharge for a Dishonored Check, Draft, Order or Like Instrument**

#### **1.4.1.1 Application.**

Sec. 1 This Code article shall apply to any person who tenders a check, draft, order or like instrument to any department or office of the City of Goshen, including Goshen Utilities.

(Ord. 4000, § 1, 2-13-2001)

#### **1.4.1.2 Surcharge.**

Sec. 2 If a check, draft, order or like instrument tendered to the City of Goshen is dishonored or returned unpaid for any reason, the City may charge and collect from the maker or drawer, or the

person for whose benefit the instrument was given, an amount not to exceed Twenty Dollars (\$20.00) plus an amount equal to the actual charge by the depository institution for each returned or dishonored instrument. The charge shall not be considered an interest charge, a finance charge, a time-price differential, or any charge of a similar nature.

(Ord. 4000, § 2, 2-13-2001)

**1.4.1.3 Notice; collection by City; referral of dishonored checks to Prosecuting Attorney.**

Sec. 3 (a) When a surcharge is imposed under 1.4.1.2, the City shall notify the maker or drawer, or the person for whose benefit the instrument was given, to inform them that the instrument was dishonored or returned unpaid and that the person has ten (10) days after the date the notice is mailed to pay the total amount due, including the surcharge, in either cash, by certified check, or other guaranteed payment.

(b) If the person fails to make payment within the ten (10) day period, the City may refer the matter to a collection agency for collection, or the City may file a civil action in a court of competent jurisdiction for the amount due to the City, including any surcharges, court costs and reasonable attorney's fees.

(c) In addition, if the City is unable to obtain payment of a dishonored check, the City shall refer the matter to the prosecuting attorney for prosecution pursuant to Indiana Code 36-1-8-13.

(Ord. 4000, § 3, 2-13-2001)

**– End of Title 1 –**