

Title 6. Land Use and Development

Article 1 Building Code

Chapter 1 Buildings and Building Regulations

6.1.1.1 Title.

Sec. 1 This Code article, and all supplemental or amendatory revisions, shall be known as the "BUILDING CODE OF THE CITY OF GOSHEN, INDIANA," and may be cited as such.

(Ord. 3714, § 1, 4-9-1996)

6.1.1.2 Purpose.

Sec. 2 The purpose of this Code article is to provide minimum standards for the protection of life, health, environment, public safety and general welfare, and for the conservation of energy in the design and construction of buildings and structures.

(Ord. 3714, § 2, 4-9-1996)

6.1.1.3 Authority.

Sec. 3 The Building Commissioner is authorized and directed to administer and enforce all of the provisions of this Code article. Whenever in this Code article, it is provided that anything must be done to the approval of or subject to the direction of the Building Commissioner or any other officer of the City of Goshen, this shall be construed to give such officer only the discretion of determining whether this Code article has been complied with, and no such provision shall be construed as giving any officer discretionary powers as to what this Code article shall be or power to require conditions not prescribed by this Code or other ordinances or to enforce this Code article in an arbitrary or discriminatory manner.

(Ord. 3714, § 3, 4-9-1996)

6.1.1.4 Scope.

Sec. 4 The provisions of this Code article apply to the construction, alteration, repair, location, use, occupancy, and maintenance of all buildings and structures, other than industrialized building systems or mobile structures certified under Indiana Code 22-15-4 in the City of Goshen.

(Ord. 3714, § 4, 4-9-1996)

6.1.1.5 Adoption of rules by reference.

Sec. 5 (a) Building rules of the Indiana Fire Prevention and Building Safety Commission as set out in the following articles of Title 675 of the Indiana Administrative Code (IAC) are incorporated by reference into this Code article and shall be construed to include all amendments as of the date the rule is written and any later amendments thereto:

- 1) 675 IAC 13 – BUILDING CODES.
- 2) 675 IAC 14 – ONE AND TWO FAMILY DWELLING CODES.
- 3) 675 IAC 16 – PLUMBING CODES
- 4) 675 IAC 17 – ELECTRICAL CODES
- 5) 675 IAC 18 – MECHANICAL CODE
- 6) 675 IAC 19 – ENERGY AND CONSERVATION CODES
- 7) 675 IAC 20 – SWIMMING POOL CODE
- 8) 675 IAC 22 – FIRE PREVENTION CODES

(b) Copies of adopted building rules, codes and standards are on file in the office of the Building Department.

(Ord. 3714, § 5, 4-9-1996)

6.1.1.6 Application for permits.

Sec. 6 (a) No construction, alteration or repair of any building or structure, including plumbing, electrical work, mechanical work, ventilation work or air conditioning shall be commenced until a permit is issued for the proposed work. If upon the examination of the application for a permit the Building Commissioner finds that the proposed work complies with all requirements of this Code article, a permit shall be issued authorizing the applicant to proceed with such work.

(b) Before issuing a permit, the Building Commissioner may require the applicant to file a set of detailed plans and specifications, a copy of which may be retained in the office of Building Commissioner. Any changes from the approved plans or specifications shall be made only after a revised copy has been submitted to and approved by the Building Commissioner. In addition, a copy of a Construction Design Release, issued by the State Building Commissioner and the State Fire Marshall pursuant to Indiana Code 22-15-3-1 shall be provided to the Building Commissioner before

issuance of a permit for construction covered by such design release.

(Ord. 3714, § 6, 4-9-1996)

6.1.1.7 Permit required.

Sec. 7 (a) A permit shall be obtained before beginning construction, alteration or repair of any building or structure, including the erection of a fence, except where the cost of construction is less than amount as established by the ordinance and the construction does not alter the perimeter of the building or the structural integrity of the building. A permit shall be required before beginning construction of any building or structure in excess of 120 square feet or for the placement of a mobile home, regardless of cost. No permit shall be required for outside painting or re-roofing that is not redecked.

(b) A permit shall be obtained for new or altered electrical, mechanical or plumbing systems that cost more than an amount as established by the ordinance except that a permit shall be obtained for the installation of a water softener, regardless of the cost.

(c) Permits for electrical, mechanical or plumbing work shall be issued only to persons that have a valid City of Goshen or State of Indiana license. However, an owner of a property who does not have the applicable license may take out a permit in the owner's name, provided that the work is performed by the property owner or an employee of the property owner from whom the property owner withholds state and federal income taxes and social security taxes, and provided that the property owners right to take out permits has not been revoked pursuant to the provisions of this Code article.

(d) It shall be the joint obligation of the property owner and contractor to obtain all necessary permits. Failure to obtain permits when required will subject both the property owner and the contractor to the penalties established by this Code article.

(e) The application for a permit shall be on forms furnished by the Building Commissioner and all fees required by applicable fee ordinances shall be paid to the City of Goshen Building Department.

(Ord. 3714, § 7, 4-9-1996)

6.1.1.8 Permit duration.

Sec. 8 A permit shall expire one (1) year from the date of issue. A permit shall become void if the permit-required work is not commenced within six (6) months of issuance.

(Ord. 3714, § 8, 4-9-1996)

6.1.1.9 Other ordinances.

Sec. 9 All work done under any permit shall be in full compliance with all other ordinances or amendments to this Code, and all required fees shall be paid as prescribed by applicable fee ordinances.

(Ord. 3714, § 9, 4-9-1996)

6.1.1.10 Fees.

Sec. 10 (a) Permits required by this Code article shall be issued upon prior payment of inspection fees.

(b) All fees received by the City of Goshen Building Department pursuant to this Code article shall be deposited with the Clerk-Treasurer of the City of Goshen to be deposited in the general fund of the City.

(c) The fees to be charged by and paid to the City of Goshen Building Department for various permits, inspections, licenses, registrations and examinations required pursuant to this Code article shall be as prescribed by the ordinance.

(Ord. 3714, § 10, 4-9-1996; Ord. 4211, §§2 and 3, 4-13-2004)

6.1.1.11 Review of application.

Sec. 11 Prior to the issuance of any building permit the Building Department shall:

- 1) Review all building permit applications to determine full compliance with the provisions of this Code article.
- 2) Review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding.
- 3) Review all building permit applications for major repairs within the flood plain area having special flood hazards to determine that the proposed repair:
 - (A) used construction materials and utility equipment that are resistant to flood damage, and
 - (B) used construction methods and practices that will minimize flood damage.
- 4) Review all building permit applications for new construction or substantial improvements within the flood plain area having special flood hazards to assure that the proposed construction (including prefabricated and mobile homes):

- (A) is protected against flood damage,
- (B) is designed (or modified) and anchored to prevent flotation, collapse, or lateral movement of the structure, flood damage, and
- (C) used construction methods and practices that will minimize flood damage.

(Ord. 3714, § 11, 4-9-1996)

6.1.1.12 Inspection.

Sec. 12 After the issuance of any building permit, the Building Commissioner shall make, or shall cause to be made, inspections of the work being done as are necessary to insure full compliance with the provisions of this Code article and the terms of the permit. Reinspection of work found to be incomplete or not ready for inspection are subject to assessment of reinspection fees as prescribed by the ordinance.

(Ord. 3714, § 12, 4-9-1996)

6.1.1.13 Inspection assistance.

Sec. 13 The Chief of the Fire Department, or his designated representative, shall assist the Building Commissioner in the inspection of fire suppression, detection and alarm systems, and shall provide reports of such inspections to the Building Commissioner.

(Ord. 3714, § 13, 4-9-1996)

6.1.1.14 Entry.

Sec. 14 Upon presentation of proper credentials, the Building Commissioner or his duly authorized representative may enter any building, structure or premises in the City of Goshen to perform any duty imposed upon him by this Code. Such entry, unless prior arrangements have been made, shall be between 7:00 a.m. and 6:30 p.m., Monday through Saturday.

(Ord. 3714, § 14, 4-9-1996)

6.1.1.15 Stop order.

Sec. 15 Whenever any work is being done contrary to the provisions of this Code article the Building Commissioner may order the work stopped by notice in writing served on any persons engaged in doing or causing such work to be done. Such persons shall, without delay, stop such work until authorized by the Building Commissioner to proceed.

(Ord. 3714, § 15, 4-9-1996)

6.1.1.16 Certificate of occupancy.

Sec. 16 No certificate of occupancy for any building or structure constructed, altered or repaired after the adoption of this Code shall be issued unless such building or structure was constructed, altered or repaired in compliance with the provisions of this Code article. It shall be unlawful to occupy any such building or structure unless a full, partial, or temporary certificate of occupancy has been issued by the Building Commissioner.

(Ord. 3714, § 16, 4-9-1996)

6.1.1.17 Workmanship.

Sec. 17 All work on the construction, alteration and repair of any building or structure shall be performed in a good and workmanlike manner according to accepted standards and practices in the trade.

(Ord. 3714, § 17, 4-9-1996)

6.1.1.18 Violations.

Sec. 18 Any person, partnership, corporation or other entity commits a violation of this Code article if it does any of the following:

- 1) Erects, constructs, enlarges, alters, repairs, improves, removes, converts, demolishes or equips any building or structure in the City of Goshen in violation of the provisions of this Code or any code adopted by reference in this Code article.
- 2) Permits another person or entity to erect, construct, enlarge, alter, repair, improve, remove, convert, demolish or equip any building or structure in the City of Goshen in violation of the provisions of this Code or any code adopted by reference in this Code article.
- 3) Fails to obtain a permit required under this Code article prior to the commencement of the construction, alteration or repair of any building or structure.
- 4) Fails to comply with any valid order of the Building Commissioner within the time period prescribed by the Building Commissioner.
- 5) Fails to perform any duty established by this Code article.
- 6) Takes any action prohibited by this Code article.

(Ord. 3714, § 18, 4-9-1996)

6.1.1.19 Right of appeal.

Sec. 19 All persons shall have the right to appeal the Building Commissioner's decision. The appeal will initially be heard by a five member panel known as the Board of Building Appeals. The Fire Chief of the City of Goshen shall be one member of the panel and shall act as Secretary to the panel. Two members are to be appointed to two-year terms by the Mayor of the City of Goshen, and two members are to be appointed to two-year terms by the Common Council. All shall be qualified in the area of building construction by reasons of their education and/or experience. Members will serve with no remuneration from the City of Goshen. Appeals will be heard first through the Board of Building Appeals and then the Fire Prevention and Building Safety Commission of Indiana in accordance with the provisions of Indiana Code 22-13-2-7 and Indiana Code 4-21.5-3-7. Any appeal from the Building Commissioner's decision shall be made within fifteen (15) days of that decision.

(Ord. 3714, § 19, 4-9-1996)

6.1.1.20 Remedies.

Sec. 20 The City may bring an action for injunctive relief to enforce all applicable building codes adopted in this Code article by reference, to secure compliance with any order made by the Building Commissioner, or to prosecute a violation of this Code article in any court of competent jurisdiction within Elkhart County, Indiana.

(Ord. 3714, § 20, 4-9-1996)

6.1.1.21 Penalties.

Sec. 21 (a) A person, partnership, corporation or other entity who violates the provisions of this Code article is subject to the following:

- 1) A Five hundred Dollar (\$500.00) fine for each violation. Each day that a violation continues shall constitute a separate violation.
- 2) The revocation of the right to take out permits within the City of Goshen for a period of up to two (2) years for the violation of this Code article, provided that a court of competent jurisdiction has found the same person, partnership, corporation or other entity to have violated a provision of this Code article within the previous two (2) years.

(b) 6.1.1.21 (a), 2) of this Code shall not be construed to limit, in any way, the City of Goshen's right to take action to revoke a license under any other applicable section of this Code, amendments thereto, other City ordinance or state statute.

(Ord. 3714, § 21, 4-9-1996)

6.1.1.22 Suspension or revocation.

Sec. 22 The Building Commissioner may, in writing, suspend or revoke a permit issued under the provisions of this Code article whenever the permit is issued in error on the basis of incorrect information supplied or if it is issued in violation of any ordinance, regulation or any provision of this Code article or amendments thereto.

(Ord. 3714, § 22, 4-9-1996)

Article 2 Licensing of Contractors

Chapter 1 Mechanical & Electrical Contractors

6.2.1.1 Licensing and registering required; display.

Sec. 1 (a) Any individual acting in the capacity of an electrical contractor, class A mechanical contractor or class B mechanical contractor in the City of Goshen, Indiana is required to first obtain the appropriate license and register annually with the City of Goshen Building Department.

(b) Any license granted under this Code article shall be prominently displayed at the licensee's principal place of business.

(Ord. 3757, § 2, 2-4-1997)

6.2.1.2 Application for license and licensing and requirements.

Sec. 2 (a) Any individual desiring to be licensed as an electrical contractor, class A mechanical contractor or class B mechanical contractor in the City of Goshen must file with the City of Goshen Building Department a written application, on the form provided by the Building Department, that contains information considered necessary to determine the qualifications of the applicant.

(b) Any individual at least 18 years of age and that satisfies the further requirements of this Code article may be licensed by the City of Goshen as an electrical contractor, class A mechanical contractor or class B mechanical contractor, as appropriate.

(c) Any individual desiring to be licensed as an electrical contractor, class A mechanical contractor or class B mechanical contractor in the City of Goshen, Indiana is eligible for such a license upon the successful completion of an examination as provided for in this Code article.

(d) To qualify for an electrical contractor, class A mechanical contractor or class B mechanical contractor licensing examination, the applicant must provide to the City of Goshen Building

Department evidence of the applicant's training, experience and past work record.

(e) If the applicant holds an electrical contractor license, class A mechanical contractor license or class B mechanical contractor license in another locality, the appropriate license may be granted in the City of Goshen without examination, provided that the requirements for the licensing of an electrical contractor, class A mechanical contractor or class B mechanical contractor in the other locality are equal to or greater than the requirements in force in the City of Goshen.

(Ord. 3757, § 3, 2-4-1997)

6.2.1.3 Examinations.

Sec. 3 (a) Except as otherwise provided in 6.2.1.2 (e) of this Code, applicants for a license as an electrical contractor, class A mechanical contractor or class B mechanical contractor must pass an examination administered by the City of Goshen Building Commissioner. The contents of the examination must, for each license category, test the current level of skills required of individuals to be licensed in that category.

(b) A passing score shall be considered a score of 75 percent or better.

(c) Examinations will be administered at least two times each year at times, dates and locations as the City of Goshen Building Commissioner may prescribe. A notice will be posted in the City of Goshen Building Department and the Clerk-Treasurer's Office at least 30 days prior to the application deadline for taking the examination.

(d) An examination fee in the amount as established by the ordinance shall accompany an application to take an examination for each licensing category.

(e) No refund of the examination fee will be made to an applicant after the application deadline.

(Ord. 3757, § 4, 2-4-1997)

6.2.1.4 Licensing approval.

Sec. 4 (a) The applications of all new applicants scoring 75 percent or better on the licensing examination shall be submitted to the Board of Public Works and Safety for approval, along with any other information regarding the applicant's training, experience and past work record.

(b) The applications of all new applicants holding an electrical contractor, class A mechanical contractor or class B mechanical contractor license in another locality shall be submitted to the Board of Public Works and Safety for approval, along with any other information regarding the applicant's training, experience and past work record. The application must include written verification from the

other locality that the applicant has met the requirements for the licensing of an electrical contractor, class A mechanical contractor or class B mechanical contractor in the other locality, and those requirements are equal to or greater than the requirements in force in the City of Goshen.

(c) If the Board of Public Works and Safety approves the application for the licensing of any individual to act in the capacity of an electrical contractor, class A mechanical contractor or class B mechanical contractor, the Board shall authorize the Building Commissioner to issue an initial license, as appropriate, and register the applicant.

(d) All new applicants seeking licensing under this Code article are required to pay an initial licensing fee in the amount as established by the ordinance.

(e) All new applicants seeking licensing under this Code article are required to file with the City of Goshen an approved surety bond as established in 6.2.16 of this Code.

(Ord. 3757, § 5, 2-4-1997)

6.2.1.5 License renewal and registration requirements.

Sec. 5 (a) Every license and registration issued under this Code article shall expire December 31 of each year.

(b) Any licensee in good standing shall have the right, without further examination or approval of the Board of Public Works and Safety, to renew their license and registration by filing an application with the City of Goshen Building Department no later than 15 days prior to the expiration of their current license and registration. Upon receipt of the application for renewal, payment of the required renewal fee in the amount as established by the ordinance, and the filing of an approved surety bond, as required by 6.2.1.6 of this Code, the Building Commissioner shall issue to the applicant a renewal license and registration in the license category the applicant previously held.

(c) In the event any licensee fails to renew their license by February 28, the licensee may no longer act in the capacity of an electrical contractor, class A mechanical contractor or class B mechanical contractor in the City of Goshen, Indiana, and shall be considered a new applicant for purposes of this Code article.

(Ord. 3757, § 6, 2-4-1997)

6.2.1.6 Surety bond required.

Sec. 6 (a) Any individual desiring to be licensed as an electrical contractor, class A mechanical contractor or class B mechanical contractor in the City of Goshen shall furnish a surety bond in the

amount of Five thousand Dollars (\$5,000.00), to be approved by the Board of Public Works and Safety, guaranteeing the faithful compliance of all ordinances, codes and laws regulating work and services provided by electrical contractors, class A mechanical contractors or class B mechanical contractors with an agreement to pay all costs, damages and expenses that may result from the negligence of the licensee in failing to comply with any ordinances, codes or statutes.

(b) All surety bonds shall expire on December 31.

(Ord. 3757, § 7, 2-4-1997)

6.2.1.7 Suspension, revocation or restriction of license.

Sec. 7 Any license issued pursuant to this Code article may be suspended, revoked or otherwise restricted by the Board of Public Works and Safety if:

- 1) A licensee has employed or knowingly cooperated in fraud or deceit in order to obtain a license to practice as an electrical contractor, class A mechanical contractor or class B mechanical contractor.
- 2) A licensee has engaged in fraud, deceit or other misconduct in the course of providing services to clients in the City of Goshen.
- 3) A licensee has violated any ordinance, code or law regulating work and services provided by electrical contractors, class A mechanical contractors or class B mechanical contractors.
- 4) A licensee ceases to be an electrical contractor, class A mechanical contractor or class B mechanical contractor.

(Ord. 3757, § 8, 2-4-1997)

6.2.1.8 Violations.

Sec. 8 (a) It shall be a violation of this Code article for any individual to act in the capacity of an electrical contractor, class A mechanical contractor or class B mechanical contractor in the City of Goshen, Indiana without first obtaining the appropriate license and registering with the City of Goshen Building Department.

(b) It shall be a violation of this Code article for any individual that fails to renew the individual's license and continues to act in the capacity of an electrical contractor, class A mechanical contractor or class B mechanical contractor in the City of Goshen, Indiana after the license has expired.

(c) It shall be a violation of this Code article for any individual to continue to act in the capacity of an electrical contractor, class A mechanical contractor or class B mechanical contractor in the City of

Goshen, Indiana after the individual's license has been suspended or revoked.

(Ord. 3757, § 9, 2-4-1997)

6.2.1.9 Enforcement and penalties.

Sec. 9 (a) If the Building Commissioner believes that the license of any electrical contractor, class A mechanical contractor or class B mechanical contractor should be suspended, revoked, or otherwise restricted, the Building Commissioner may request that the Board of Public Works and Safety take action by issuing an order to:

- 1) Suspend the licensee's license;
- 2) Revoke the licensee's license; or
- 3) Restrict the licensee's license as deemed appropriate by the Board of Public Works and Safety.

(b) The Board of Public Works and Safety may take action only after a notice is given to the individual whom the order is specifically directed, and a hearing is conducted at least ten days after the date notice is deemed to be given.

- 1) Notice to the individual shall be deemed sufficient if given by:
 - (A) sending a copy of the order by registered or certified mail to the residence, place of business or employment of the individual to be notified with return receipt requested;
 - (B) delivering a copy of the order personally to the individual to be notified; or
 - (C) leaving a copy of the order at the residence or usual place of abode of the individual to be notified and mailing a copy of the notice by first class mail.
- 2) At the hearing, the individual to whom an order has been issued shall be given the opportunity to appear at the hearing with or without counsel, present evidence, cross-examine witnesses and present arguments.
- 3) Any individual aggrieved by any action of the Board of Public Works and Safety in suspending, revoking, or otherwise restricting the individual's license and certificate of registration may appeal the decision to any court of competent jurisdiction in Elkhart County, Indiana within 30 days from the date of the Board's action.
- 4) The City of Goshen may bring action to enforce the provisions of this Code article by filing a complaint in any court of competent jurisdiction within Elkhart County, Indiana.

- 5) Any individual violating any provisions of this Code article may be fined an amount not to exceed Two thousand five hundred Dollars (\$2,500.00), in addition to any court costs. Each day that a violation occurs or continues shall be deemed a separate offense of this Code article.

(Ord. 3757, § 10, 2-4-1997)

6.2.1.10 Definitions.

Sec. 10 The following terms and phrases shall apply in the interpretation and enforcement of this Code article:

- 1) CLASS A MECHANICAL CONTRACTOR. A class A mechanical contractor within the meaning of this Code article is considered any individual who, for hire, does himself or herself or by employing others to do the same on his or her behalf, erects, installs, alters, repairs, relocates, replaces, maintains, designs or performs any other work to any heating, ventilating, cooling, refrigeration system and other miscellaneous heat-producing appliances, including all appurtenances, apparatus or equipment used in connection therewith. A mechanical contractor, however, may not make the electrical connection from the warm air heating unit, air-conditioning unit, or wet/dry heat pump into the main service box.
- 2) CLASS B MECHANICAL CONTRACTOR. A class B mechanical contractor within the meaning of this Code article is considered any individual who, for hire, does himself or herself or by employing others to the same on his or her behalf, installs, alters, repairs, relocates, replaces, maintains or performs any other work to any heating, ventilating or cooling system, including all appurtenances, apparatus or equipment used in connection therewith exclusively in any mobile home dwelling unit. A mechanical contractor, however, may not make the electrical connection from the warm air heating unit, air-conditioning unit, or wet/dry heat pump into the main service box.
- 3) ELECTRICAL CONTRACTOR. An electrical contractor within the meaning of this Code article is considered any individual who, for hire, does himself or herself or by employing others to do the same on his or her behalf, installs, alters, repairs, replaces, designs or performs any other work to an electrical system.
- 4) LICENSEE. A licensee within the meaning of this Code article is considered any individual who holds an electrical contractor license, class A mechanical contractor license or class B mechanical contractor license, and is registered with the City of Goshen Building Department pursuant to this Code article.

(Ord. 3757, § 2, 2-4-1997)

Article 3 Neighborhood Preservation

Chapter 1 Neighborhood Preservation Minimum Standards

6.3.1.1 Minimum standards for all structures.

Sec. 1 No building, accessory building, garage, or other structure, whether used for residential, commercial, industrial or other purposes, shall fail to comply with the following requirements:

- 1) Every supplied facility, piece of equipment, or utility which is required under this shall be so constructed or installed that it will function safely and effectively, and shall be maintained in satisfactory working condition.
- 2) Every foundation, floor, wall, ceiling, and roof shall be reasonably weather tight and rodent proof; shall be capable of affording privacy; and shall be kept in good repair.
- 3) The roof and flashing shall be sound, tight and not have defects that admit rain. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the building. Roof drains, gutters, and down spouts shall be maintained in good repair and free from obstructions. Roof water shall not be discharged in a manner that creates a hazard on the premises or adjacent property.
- 4) Every window, exterior door, and basement hatchway shall be reasonably weather tight and rodent proof, and shall be kept in sound working condition and good repair. All glazing materials shall be maintained free from cracks and holes.
- 5) Every inside and outside stair, every porch, and every appurtenance thereto shall be so constructed as to be safe to use and capable of supporting the load that normal use may cause to be placed thereon, and shall be kept in sound condition and good repair. Metal fire escapes shall be maintained in a rust free condition.
- 6) Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.
- 7) All wood and metal surfaces, including but not limited to, window frames, doors, door frames, cornices, porches and trim shall be maintained in good condition. Peeling, flaking, and chipped paint shall be eliminated and surfaces repainted.
- 8) All cornices, belt courses, corbels, terra cotta trim, wall facings and similar decorative features shall be maintained in good repair with proper anchorage and in a safe condition.

- 9) All canopies, marquees, signs, metal awnings, fire escapes, standpipes, exhaust ducts, and similar overhang extensions shall be maintained in good repair and be properly anchored so as to be kept in a sound condition. When required, all exposed surfaces of metal or wood shall be protected from the elements against decay or rust by periodic application of weather-coating materials, such as paint or similar surface treatment.
- 10) Any pipes, ducts, conductors, fans or blowers shall not discharge gases, steam, vapor, hot air, grease, smoke, odors, or other gaseous or particulate wastes directly upon abutting or adjacent public or private property or that of another tenant.
- 11) All additions or improvements to any building or structure must be made in accordance with the City of Goshen Building Code.
- 12) All premises shall be graded and maintained to prevent the erosion of soil and to prevent the accumulation of stagnant water thereon or within any structure located thereon.
- 13) All sidewalks, walkways, stairs, driveways, parking spaces and similar areas shall be kept in a proper state of repair and maintained free from hazardous conditions.
- 14) Any portion, member or appurtenance of a building shall not be likely to fail, to become detached, dislodged or to collapse and thereby injure persons or damage property.
- 15) The building or structure shall not be manifestly unsafe for the purpose for which it is being used.
- 16) The building or structure shall not be in such a condition that it is likely to partially or completely collapse due to:
 - (A) dilapidation, deterioration, or decay;
 - (B) faulty construction;
 - (C) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; or
 - (D) the deterioration, decay or inadequacy of its foundation.
- 17) Exterior walls or other vertical structural members shall not list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.
- 18) The building or structure, exclusive of the foundation, shall not show thirty-three percent (33%) or more damage or deterioration of its supporting member or members or fifty percent

(50%) damage or deterioration of its non-supporting members, enclosings, or outside walls or coverings.

- 19) The building or structure shall not have less than sixty-six percent (66%) of the strength, fire resisting qualities or characteristics, or weather resisting qualities or characteristics required by law in the case of newly constructed building of like area, height or occupancy in the same location.
- 20) The building shall not be so damaged by fire, earthquake, flood or any other cause that the structural strength and stability is materially less than it was before the catastrophe, and is less than the minimum requirements for new buildings of similar structure, purpose or location.
- 21) The building or structure shall not be so damaged by fire, wind, earthquake or flood that it has become so dilapidated and deteriorated as it becomes freely accessible to persons.
- 22) The building or structure shall not, because of obsolescence, dilapidated condition, deterioration, damage, lack of sufficient fire resistive construction, electrical wiring, gas connection, or heating apparatus, become a fire hazard.
- 23) A portion of the building or structure shall not remain on the real estate more than three (3) months after demolition or destruction.
- 24) Swimming pools shall be maintained in a clean and sanitary condition, and in good repair.
- 25) Private swimming pools containing water more than twenty-four inches (24") in depth shall be completely surrounded by a fence or barrier at least sixty inches (60") in height above the finished ground level measured on the side of the barrier away from the pool. Gates and doors in such barriers shall be self-closing and self-latching. Where the self-latching device is less than fifty-four inches (54") above the bottom of the gate, the release mechanism shall be located on the pool side of the gate. Self-closing and self-latching gates shall be maintained such that the gate will positively close and latch when released from an open position of six inches (6") from the gatepost. No existing pool enclosure shall be removed, replaced or changed in a manner that reduces its effectiveness as a safety measure.

(Ord. 4068, § 3, 5-14-2002, Ord. 4380 § 1, 8-15-2006)

6.3.1.2 Minimum standards for basic equipment and facilities.

Sec. 2 No person shall occupy as owner-occupant or let to another for occupancy, any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the following requirements:

- 1) Every dwelling unit shall contain a kitchen sink in good working condition and properly

- connected to a water system and sewer system, if available; if no sewer is available, to a septic tank system approved by the City of Goshen.
- 2) Every dwelling unit, except as otherwise permitted under 6.3.1.2, (a), #4) of this Code shall contain a room which affords privacy to a person within said room, and which is equipped with a flush toilet and a bathroom sink in good working condition, properly connected to a water and sewer system if available; if no sewer is available, to a septic system approved by the City of Goshen.
 - 3) Every dwelling unit, except as otherwise permitted under 6.3.1.2, (a), #4) of this Code shall contain within a room which affords privacy to a person within said room, a bathtub or a shower in good working condition and properly connected to a water and sewer system if available; if no sewer is available, to a septic tank system approved by the City of Goshen.
 - 4) The occupants of a dwelling containing not more than two (2) dwelling units may share a single flush toilet, a single bathroom sink, and a single bathtub or shower if:
 - (A) neither of the two (2) dwelling units contains more than two (2) rooms; provided, that for the purposes of this subsection, a kitchenette or an efficiency kitchen with less than sixty (60) square feet floor area shall not be counted as a room; and
 - (B) the habitable area of each of the dwelling units shall equal not more than two hundred fifty (250) square feet of floor area; and
 - (C) such toilet, bathroom sink and bathtub or shower shall be in good working condition and properly connected to water and sewer systems if available; if no sewer is available, to a septic tank system approved by the City of Goshen.
 - 5) Every kitchen sink, bathroom sink, and bathtub or shower required under the provisions of 6.3.1.2, (a), 1), 2), 3), and 4) of this Code shall be properly connected with both hot and cold water lines when used for rental or lease occupancy.
 - 6) Every dwelling when used for rental or lease occupancy shall have supplied water-heating facilities which are properly installed, maintained in a safe and good working condition, properly connected with the hot water lines required under the provisions of 6.3.1.2, (a), 5) of this Code and are capable of heating water to such temperature as to permit an adequate amount of water to be drawn at every required kitchen sink, bathroom sink, bathtub or shower at a temperature of not less than 100 degrees F. Such supplied water heating facilities shall be capable of meeting the requirements of this subsection when the dwelling unit heating facilities required under the provisions of 6.3.1.3, (a), 8) of this Code are not in operation.

- 7) Every dwelling unit shall be supplied with adequate solid waste disposal facilities and storage containers as required by the City's Solid Waste Ordinance as may be amended from time to time.
- 8) Every dwelling unit shall have the correct house or apartment number displayed in numerals that are at least two and one-half (2½") inches high and placed in such a manner that they are reasonably visible to the street.

(Ord. 4068, § 4, 5-14-2002)

6.3.1.3 Minimum standards for light, ventilation, egress and heating.

Sec. 3 No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the following requirements:

- 1) Every window, other than a fixed window, shall be easily operable and capable of being held in position by window hardware.
- 2) Every habitable room shall have at least one (1) window or skylight facing directly to the outdoors. The minimum total window area, measured between stops, for every habitable room shall be eight percent (8%) of the floor area of such room. Whenever walls or other portions of structures face a window of any such room and such light-obstruction structures are located less than three feet (3') from the window and extend to a level above that of the ceiling of the room, such a window shall not be included as contributing to the required minimum total window area. Whenever the only window in a room is a skylight-type window in the top of such room, the total window area of such skylight shall equal at least fifteen percent (15%) of the total floor area of such room
- 3) Every habitable room shall have at least one (1) window or skylight which can be easily opened, or such other device as will adequately ventilate the room. The total of operable window area in every habitable room shall be equal to at least forty-five percent (45%) of the minimum window area size or minimum skylight-type window size, as required in 6.3.1.3, (a), 2) of this Code, except where there is supplied some other device affording adequate ventilation and approved by the Inspection Officer.
- 4) Every bathroom and toilet room shall comply with the light and ventilation requirements for habitable rooms contained in 6.3.1.3, (a), 2) and 3) of this Code except that no window or skylight shall be required in adequately ventilated bathrooms and toilet rooms equipped with a ventilation system that is approved by the Inspection Officer

- 5) During that portion of each year from May 1st through October 31st for protection against mosquitoes, flies, and other insects, every door opening directly from a dwelling unit to outdoor space shall have supplied screens; and every window or other device opening to outdoor space, used or intended to be used for ventilation, shall likewise be supplied with screens unless the entire dwelling unit is adequately air conditioned.
- 6) Every basement or cellar window used or intended to be used for ventilation, and every other opening to a basement which might provide an entry for rodents and/or insects shall be supplied with a screen or such other device as will effectively prevent their entrance.
- 7) Every dwelling unit shall have at least one (1) safe, unobstructed means of egress leading to a safe and open space at ground level; and every bedroom shall have at least one (1) operable egress window or exterior door. The sill height of an egress window shall not be higher than forty-four inches (44") above the floor. The minimum opening area for an egress window shall be five and seven-tenths (5.7) square feet, except the minimum opening area for an egress window on the first-floor shall be five (5) square feet. The minimum clear opening height of all egress windows shall be twenty-two inches (22").
- 8) Every dwelling shall have heating facilities which are properly installed, maintained in safe and good working condition, and are capable of safely and adequately heating all habitable rooms, bathrooms, and rooms in every dwelling unit located therein to a temperature of at least 65 degrees F, and whenever the outside winter conditions are at least 0 degrees F.
- 9) Every public hall and stairway in every dwelling containing three (3) or more dwelling units shall be adequately lighted at all times. Every public hall and stairway in structures devoted solely to dwelling occupancy and containing not more than three (3) dwelling units shall be supplied with conveniently located light switches controlling an adequate lighting system which may be turned on when needed instead of full-time lighting.

(Ord. 4068, § 5, 5-14-2002)

6.3.1.4 Safe and sanitary maintenance.

Sec. 4 No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the following requirements:

- 1) The exterior doors, including any exterior basement entrance, and every exterior window shall be supplied with a lock. The owner must supply locks and the owner and occupant shall have the right to the keys for entry to the leased space.

- 2) Every plumbing fixture and water and waste pipe shall be properly installed and maintained in good sanitary working condition, free from defects, leaks, and obstructions.
- 3) Every toilet room floor and bathroom floor surface shall be constructed and maintained so as to be reasonably impervious to water and so as to permit such floor to be easily kept in a clean and sanitary condition.
- 4) No owner, operator, or occupant shall cause any service, facility, equipment or utility which is required under this Code article to be removed from, shut off from, or discontinued from any occupied dwelling let or occupied by him or her, except for such temporary interruption as may be necessary when actual repairs or alterations are in process, or during temporary emergencies when discontinuance of service is approved by the Inspection Officer. Provided, however, that this subsection is not intended to require an owner to continue to serve utilities or heat to a premises occupied by a tenant who has not paid his or her rent or utilities.
- 5) Each dwelling unit shall have its own metering system for natural gas, water, electricity or any other utility provided in the dwelling. If this requirement is not met, the owner of the dwelling must have the utilities that are not metered separately in his or her own name.

(Ord. 4068, § 6, 5-14-2002)

6.3.1.5 Minimum space, use and location requirements.

Sec. 5 No person shall occupy as owner-occupant or let to another for occupancy any dwelling or dwelling unit, for the purpose of living therein, which does not comply with the following requirements:

- 1) Every dwelling unit shall contain at least one hundred fifty (150) square feet of floor space for the first occupant thereof, and at least one hundred (100) additional square feet of floor space to be calculated on the basis of total habitable room area.
- 2) A habitable room, other than a kitchen, shall not be less than seven (7) feet in any plan dimension. Kitchens shall have a clear passageway of not less than three (3) feet between counter fronts and appliances or counter fronts and walls.
- 3) At least one-half of the floor area of every habitable room shall have a ceiling height of at least seven (7) feet; and the floor area of that part of any room where the ceiling height is less than five (5) feet shall not be considered as part of the floor area of the room for the purpose of determining the maximum permissible occupancy thereof.

- 4) In every dwelling unit of two (2) or more rooms, every room occupied for sleeping purposes by an occupant shall contain at least seventy (70) square feet of floor space, and every room occupied for sleeping purposes by more than one (1) occupant shall contain at least fifty (50) square feet of floor space for each occupant thereof.
- 5) No dwelling or dwelling unit containing two (2) or more sleeping rooms shall have such room arrangements that access to a sleeping room can be had only by going through another sleeping room or a bathroom or toilet room, if said arrangements are deemed to be unsafe.
- 6) No basement space shall be used as a habitable room or dwelling unit unless:
 - (A) the floor and walls are impervious to leakage of underground and surface run-off water and are insulated against dampness;
 - (B) the total window area in each room is equal to at least the minimum window area sizes as required in 6.3.1.3, (a), 2) of this Code;
 - (C) such required minimum window area is located entirely above the grade of the ground adjoining such window area; and
 - (D) the total operable window area in each room is equal to at least the minimum as required under 6.3.1.3, (a), 3) of this Code, except where there is supplied some other device affording ventilation which is approved by the Inspection Officer.

(Ord. 4068, § 7, 5-14-2002)

6.3.1.6 Responsibilities of owners and occupants.

Sec. 6 (a) Every owner of a dwelling containing two (2) or more dwelling units shall be responsible for maintaining in a clean and sanitary condition the shared or public areas of the dwelling and premises thereof.

(b) Every occupant of a dwelling or dwelling unit shall:

- 1) Keep in a clean and sanitary condition that part of the dwelling, dwelling unit, and premises thereof which he or she occupies and controls.
- 2) Keep all plumbing fixtures therein in a clean and sanitary condition, and shall be responsible for the exercise of reasonable care in the proper use and operation thereof.
- 3) Be responsible for hanging all screens and double doors, storm doors, and windows whenever the same are required under the provisions of this Code article, except where the owner has agreed to supply such service.

- 4) Be responsible for the extermination of any insects, rodents, or other pests therein or on the premises, and every occupant of a dwelling unit in a dwelling containing more than one (1) dwelling unit shall be responsible for such extermination whenever his dwelling unit is the only one infested. Notwithstanding the foregoing provisions of this subsection, whenever infestation is caused by failure of the owner to maintain a dwelling in a rat proof or reasonably insect proof condition, extermination shall be the responsibility of the owner. Whenever infestation exists in two (2) or more of the dwelling units in any dwelling, or in the shared or public parts of any dwelling of two (2) or more dwelling units, extermination thereof shall be the responsibility of the owner.
- 5) Dispose of all his or her solid waste, appliances, furniture and bulky items in a sanitary manner. This provision does not relieve the owner of the responsibility to maintain his or her property in a clean and sanitary condition.
- 6) Dispose of all his or her solid waste which might provide food for rodents in a clean and sanitary manner by placing it in solid waste disposal facilities or solid waste storage containers required by 6.3.1.2, (a), 7) of this Code. It shall be the responsibility and duty of the owner of any building containing more than one (1) dwelling unit to supply the required solid waste disposal facilities and solid waste containers as provided in 6.3.1.2, (a), 7) of this Code. In all other cases, it shall be the responsibility of the occupant to furnish such facilities or containers.

(Ord. 4068, § 8, 5-14-2002)

6.3.1.7 Hotels and rooming houses.

Sec. 7 No person shall operate a hotel or rooming house, or shall occupy or let to another for occupancy any rooming unit in any hotel or rooming house, except in compliance with the provisions of every section of this Code article, except the provisions of 6.3.1.2 and 6.3.1.6 of this Code. In addition to the provisions set forth in this Code article for all rental properties, the following requirements must be met:

- 1) At least one flush toilet, bathroom sink, and bathtub or shower properly connected to the water and sewer systems of the City and in good working condition shall be supplied for every eight (8) persons, or fractions thereof, residing within a hotel or rooming house, including members of the operator's family whenever they share the use of such facilities; provided, that in a hotel or rooming house where rooms are let to males, flush urinals may be substituted for not more than one-half the required number of toilets. All other facilities shall

be so located within the building as to be reasonably accessible from the common hall or passageway to all persons sharing such facilities. Every bathroom sink, and bathtub or shower shall be supplied with hot water at all times. No such facilities shall be located in a basement.

- 2) The operator of every hotel or rooming house shall change supplied bed linens and towels therein at least once each week, and prior to the letting of any room to any occupant, the operator shall be responsible for the maintenance of all supplied bedding in a clean and sanitary manner.
- 3) Every room occupied for sleeping purposes by one (1) person shall contain at least seventy (70) square feet of floor space and every room occupied for sleeping purposes by more than one (1) person shall contain at least fifty (50) square feet of floor space for each occupant thereof.
- 4) Every rooming unit shall have a safe, unobstructed means of egress leading to a safe and open space at ground level as required by the laws of the State of Indiana and the Code of the City.
- 5) The operator of every hotel or rooming house shall be responsible for the sanitary maintenance of all walls, floors and ceilings and the maintenance and sanitary condition of every other part of the hotel or rooming house, including where the entire structure or building is leased or occupied by the operator.

(Ord. 4068, § 9, 5-14-2002)

6.3.1.8 Smoke detectors.

Sec. 8 (a) All leased or rental dwelling units, including hotels and any other buildings of mixed occupancy having any residential units, shall be equipped with approved smoke detectors.

(b) A leased or rental dwelling unit is defined as any building that contains living quarters for one (1) or more occupants, and shall include hotels, and any other buildings of mixed occupancy and shall hereinafter be referred to as leased or rental units.

(c) Every owner, manager or agent of any rental unit shall install, in every dwelling unit or rooming unit, not less than one (1) approved smoke detector on the ceiling, not less than six (6) inches from any wall, or on a wall, located from six (6) to twelve (12) inches from the ceiling, and within fifteen (15) feet of all rooms used for sleeping purposes.

(d) Every owner, manager, or agent of any rental unit shall install not less than one (1) approved

smoke detector on the uppermost ceiling, not less than six (6) inches from any wall, or on a wall, located from six (6) to twelve (12) inches from the uppermost ceiling of all interior stairwells.

(e) All approved smoke detectors required in this Code section shall be an ionization or photoelectric type, either battery powered or 110 volt AC, and shall comply with all the requirements of the National Fire Protection Association Chapter (NFPA) 72. Smoke detectors shall bear the label of nationally recognized standards testing laboratory that indicates that the smoke detectors have been tested and listed under the requirements of NFPA 72.

(f) The provisions of this Code section shall not be required in buildings which contain an approved automatic sprinkler system throughout.

(g) At every change of tenant in a rental unit, it shall be the responsibility of the owner, manager or agent to test and ascertain that the approved smoke detectors are in operable condition. It is the tenants' responsibility to replace batteries, as needed, while they occupy the unit, and report to the owner, manager, or agent any repairs needed by any smoke detectors.

(h) It shall be unlawful for any person, except in the case of fire or for the purpose of repair or maintenance, to remove or tamper with fire extinguishers, fire escapes, fire hoses, nozzles, or other fire control or fire extinguishing equipment, including smoke detector systems, in or about any building or other premises in the City of Goshen.

(Ord. 4068, § 10, 5-14-2002)

6.3.1.9 Minimum standards for commercial and industrial properties.

Sec. 9 No person having a substantial property interest in any building that is used for commercial or industrial purposes shall allow the building to fail to comply with the following requirements:

- 1) Any door, aisle, passageway or other means of exit must be a sufficient width or size to provide a safe and adequate means of exit in the case of fire or panic.
- 2) The walking surface of any aisle, passageway, stairway or other means of exit shall not be so warped, worn, loose, torn or otherwise unsafe to prevent a safe and adequate means of exit in the case of fire or panic.
- 3) The stress in any materials, or member, or any portion thereof, shall not be more than one and one-half times the working stress or stresses allowed for new buildings of similar structure, purpose or location.

(Ord. 4068, § 11, 5-14-2002)

6.3.1.10 Application for registration receipt.

Sec. 10 (a) No owner of real estate within the City of Goshen shall permit the real estate to be leased for any purpose that includes any person using the premises as their living quarters until a registration receipt covering each rental unit in the building has been obtained.

(b) A registration receipt shall be obtained by applying for the receipt at the Goshen City Building Department and by paying a biennial registration fee for each rental dwelling unit or an annual registration fee for each hotel or rooming house. The initial registration fee shall be submitted at the time application is made. At the time application is made, the owner of the real estate shall supply the Building Department with the name of the owner, address of the owner, street address of the property being registered, the nature of the rental building or unit, the use to which the property shall be put, and any other information which the Building Department may require to aid the Building Department in carrying out the purpose of this Code section.

(c) After application for a registration receipt has been submitted to the Building Department, an Inspection Officer shall conduct an inspection of each rental unit to ascertain that the facility conforms to all requirements of this Code article, any other applicable ordinance, and all applicable laws of the State of Indiana. The owner or the owner's representative shall be entitled to seventy-two (72) hours written notice from the Inspection Officer prior to conducting the inspection. In the event that the owner, or the tenant if occupied, refuses to allow the Inspection Officer to conduct the inspection, the Inspection Officer shall apply for a warrant to make the inspection in accordance with Indiana Code 36-7-9-16.

(d) After an inspection which shows that the rental unit conforms to all applicable ordinances and statutes, the Building Department shall issue to the owner of every registered rental unit an inspection certificate.

(e) Each registration receipt shall be valid for a period of two (2) years, except those registration receipts for a hotel or rooming house which receipts shall be valid for only one (1) year. Each registration receipt shall be renewed by its expiration date by submitting the registration fee to the Building Department. In the event that the registration fee is not paid within thirty (30) days after its expiration date, a late fee will be assessed and the renewal will be backdated to its prior expiration date. Any registration receipt issued shall be valid for the biennial or annual period, as applicable, commencing on the anniversary date of the original expiration date and not as of the date of payment. Payment of the registration fee shall not be considered a defense to any action filed by the City of Goshen to enforce the provisions of this Code article if such action was filed prior to payment of the registration fee.

(f) The registration receipt applies to the rental unit and not to the owner of the property. However, within thirty (30) days of the sale of the equitable or legal title to any property registered under this Code section, any person acquiring equitable or legal title shall notify the Building Department of their name and address. No new registration fee shall be due until the expiration date of the current registration receipt.

(g) Each owner of a rental unit warrants at each change of tenant that the rental unit meets the registration and inspection requirements set forth in this Code article. This warrant is implied in the very act of renting the unit and liability for it may not be removed by any act or agreement, either written or verbal, of either the owner or the prospective tenant.

(Ord. 4271, § 12, 12-7-2004)

6.3.1.11 Inspection.

Sec. 11 (a) The Inspection Officers are authorized and directed to make inspections to determine the condition of dwellings, dwelling units, rooming units, any other building or structure, and premises located within the City of Goshen in order that they may perform their duties of safeguarding the health and safety of the occupants and the general public.

- 1) The Inspection Officers are authorized to enter, examine and survey, at all reasonable times, all rental units. The owner or the owner's representative, and/or occupant of every rental unit shall give the Inspection Officer free access to such rental unit and its premises at all reasonable times for the purpose of such inspection, examination and survey, provided, however, that such Inspection Officer has, prior to entry thereof, positively identified himself or herself as a person authorized pursuant to this Code section to enter upon said premises. At the time of each inspection, all pets must be controlled so that the Inspection Officer can move about the dwelling and surrounding property without interruption.
- 2) The owner or the owner's representative shall be entitled to seventy-two (72) hours written notice from the Inspection Officer prior to conducting the inspection, examination or survey. The owner or the owner's representative shall be responsible for notifying the occupant of the rental unit of the inspection when he or she receives notice of the intent to inspect from the Inspection Officer.
- 3) This provision shall not be construed to limit or restrain the right of the Inspection Officer to make an inspection of any other building or premises pursuant to any of the provisions of Indiana Code 36-7-9-1 et al.

(b) Every rental unit operated and maintained in the City shall be inspected by the Building

Commissioner or his designee at least one (1) time every four (4) years. The inspection shall be made to ascertain that the facility conforms to all requirements of this Code article, any other ordinance of the City, and all statutes of the State of Indiana regarding such facilities.

(c) Every occupant of a rental unit shall give the owner thereof or the owner's representative access to any part of such dwelling or rental unit or its premises at all reasonable times for the purpose of making such repairs or alterations as are necessary to effect compliance with the provisions of this Code article.

(d) The Building Department shall issue to the owner of every registered and inspected rental unit an inspection certificate as proof that the unit passed inspection. The inspection certificate shall be valid until the next inspection.

(e) At each change of occupancy, every owner or the owner's representative shall provide the occupant with a copy of the inspection certificate. The copy shall become part of warranty of habitability of the premises provided for in 6.3.1.10 (g) of this Code. In the case of hotel or rooming house, the inspection certificate shall be posted in a conspicuous place within the facility.

(f) If an Inspection Officer finds that a dwelling, dwelling unit, rooming house, rooming unit, or any other building or structure fails to comply with any standard set forth in this Code article, any other ordinance of the City of Goshen, or any statute of the State of Indiana, he or she shall give notice of the alleged violation to the owner of the dwelling, dwelling unit, rooming house, rooming unit, or any other building or structure. The notice shall be in writing and shall reasonably describe the violation found. The notice shall further specify the date by which the violation must be corrected. The notice shall be served upon the owner or the owner's representative, and the occupant of the dwelling, dwelling unit, rooming house, rooming unit, or any other building or structure.

(g) A building that the Inspection Officer finds to be unsafe shall be repaired so that it meets acceptable standards within fifteen (15) days of the notice described in 6.3.1.11 (f) of this Code. Any other violations shall be repaired within thirty (30) days of the notice of a violation described in 6.3.1.11 (f) of this Code. If the violations cited are not corrected, a reinspection fee shall be levied against the person (either owner or occupant) responsible for correcting the violation cited. Reinspection may continue until the violations are corrected. The reinspection fee may be waived if the Inspection Officer finds that substantial progress has been made with regards to each separate violation noted or that the failure to correct the violation is not within the control of the person responsible for correcting the violation cited.

(h) If a dwelling, dwelling unit, rooming house, rooming unit, or any other building or structure is cited for violations of this Code article, no new violations shall be cited at the time of the reinspection

for the original violation unless such new violations make the property unsafe.

(i) Upon notification that an occupied rental unit has not obtained the necessary registration receipt, the Building Department may inspect such premises upon twenty-four (24) hour notification to the owner of the property, for the purpose of determining if any inspection certificate is required. If access cannot be obtained, the Inspection Officer may obtain an inspection warrant pursuant to the provisions of Indiana Code 36-7-9-16.

(j) Nothing in the preceding subsection should be construed to require an investigation by the Building Department or any City employee prior to the City filing a complaint against the owner of real estate who fails to obtain a required registration receipt.

(Ord. 4271, § 13, 12-7-2004)

6.3.1.12 Enforcement.

Sec. 12 (a) If a cited violation is not corrected within the designated time, and the Building Commissioner finds that the building is unsafe within the meaning of Indiana Code 36-7-9-4, the Building Commissioner may issue an order requiring any of the following:

- 1) Vacating of an unsafe building.
- 2) Sealing an unsafe building against intrusion by unauthorized persons.
- 3) Extermination of vermin in and about the unsafe premises.
- 4) Removal of trash, debris or fire hazardous material in and about the unsafe premises.
- 5) Repair or rehabilitation of an unsafe building to bring it into compliance with standards for building condition or maintenance required for human habitation, occupancy, or use prescribed by a statute or this Code article.
- 6) Removal of part of an unsafe building.
- 7) Removal of an unsafe building.
- 8) Requiring, for an unsafe building that will be sealed for a period of more than ninety (90) days:
 - (A) sealing against intrusion by unauthorized persons and the effects of weather;
 - (B) exterior improvements to make the building compatible in appearance with other buildings in the area; and
 - (C) continuing maintenance and upkeep of the building and premises.

(b) The order supersedes any permit relating to the building or land use, whether that permit is obtained before or after the order is issued.

(c) The order issued pursuant to 6.3.1.12, (a) of this Code; shall contain the following:

- 1) The name of the person to whom the order is issued;
- 2) The legal description or address of the unsafe premises that is the subject of the order;
- 3) The action that the order requires;
- 4) The period of time in which the action is required to be accomplished, measured from the time when the notice of the order is given;
- 5) If a hearing is required, a statement indicating the exact time and place of the hearing, and stating that the person to whom the order was issued is entitled to appear at that hearing with or without counsel, present evidence, cross-examine opposing witnesses, and present arguments;
- 6) If a hearing is not required, a statement that an order under this Code section becomes final ten (10) days after notice is given, unless a hearing is requested in writing by a person holding a fee interest, a life estate interest or an equitable interest of a contract purchaser in an unsafe premises, and the request is delivered to the Building Department before the end of the ten (10) day period;
- 7) A statement briefly indicating what action can be taken by the Building Commissioner if the order is not complied with;
- 8) A statement indicating the obligation created by Indiana Code 36-7-9-27 relating to the notification of subsequent interest holders and the Building Commissioner; and
- 9) The name, address and telephone number of the Building Commissioner.

(d) The order must allow a sufficient time, of at least ten (10) days from the time when the notice of the order is given, to accomplish the required action.

(e) A hearing before the Board of Public Works and Safety must be held relative to each order of the Building Commissioner, except for an order issued under 6.3.1.12, (a), 2), 6.3.1.12 (a) 3) and 6.3.1.12 (a), 4) of this Code. A hearing shall be conducted before the Board of Public Works and Safety for all other orders of the Building Commissioner under this Code section.

(f) The hearing shall be held on a business day no earlier than ten (10) days after notice of the order is given. The Board of Public Works and Safety shall grant a continuance of the scheduled

hearing if requested in writing by a person holding a substantial property interest in the affected real estate, if such request is received not later than five (5) days after the notice is given. Such continuance shall be for a period of not more than fourteen (14) days past the original date of the hearing;

(g) If, at a hearing, a person to whom an order has been issued requests an additional period to accomplish action required by the order, and shows good cause for this request to be granted, the Board of Public Works and Safety may grant the request. However, as a condition for allowing the additional period, the Board of Public Works and Safety may require that the person post a performance bond to be forfeited if the action required by the order is not completed within the additional period.

(h) Notice to the owner and all other holders of a substantial property interest shall be deemed sufficient if the notice is given pursuant to the provisions of Indiana Code 36-7-9-25.

(i) The Board of Public Works and Safety, after having given notice of the time and place of a public hearing by publication in accordance with Indiana Code 5-3-1, shall adopt a schedule setting forth the maximum amount of performance bonds applicable to the various types of ordered action. The Board of Public Works and Safety shall use this schedule to fix the amount of the performance bond required under the previous subsection.

(j) At the conclusion of any hearing before the Board of Public Works and Safety, the hearing authority may make findings and take action to affirm the Building Commissioner's order, rescind the Building Commissioner's order, or modify the Building Commissioner's order. However, unless the person to whom the order was issued or counsel for the person to whom the order was issued is present at the hearing, the Board of Public Works and Safety may not modify the order so that it is more stringent than the Building Commissioner's original order.

(k) The findings made and action taken by the Board of Public Works and Safety shall be in writing and shall be available to the public upon request. However, neither the Building Commissioner nor the Board of Public Works and Safety is required to give any person notice of the findings and action other than those persons having a substantial property interest.

(l) If the Building Commissioner finds it necessary to take emergency action concerning an unsafe premises in order to protect life, public safety or property, he or she may take that action without issuing an order or giving notice to any person having a substantial property interest. However, this emergency action must be limited to removing any immediate danger. Such action shall be taken only when it is not feasible to give notice and hold hearings as provided by 6.3.1.12 (c) of this Code. Any person to whom such emergency action is directed shall comply therewith but shall be afforded a

hearing before the Board of Public Works and Safety as soon as possible.

(m) The Board of Public Works and Safety may recover the costs incurred by taking emergency action, by filing a civil action in the Circuit or Superior Court of Elkhart County against persons who held a fee interest, life estate interest, or equitable interest of a contract purchaser in the unsafe premises at the time the Building Commissioner found it necessary to take the emergency action.

(n) Any person required to vacate an unsafe premises under the emergency action of this Code section may challenge the emergency action to vacate in the Circuit or Superior Courts of Elkhart County by challenging the Building Commissioner's determination that there is an immediate danger to life or safety of any person. The Building Commissioner shall have the burden of proving that an emergency action is necessary to prevent immediate danger to the life and safety of any person occupying or using nearby property.

(o) If a cited violation is not corrected within the designated time period and the Building Commissioner finds that the building is unsafe within the meaning of Indiana Code 36-7-9-4, the City of Goshen may file a complaint with the Elkhart Superior Courts, or Elkhart Circuit Court to assess any fine provided by this Code article, to seek an injunction as provided by Indiana Code 36-7-9-18, or any sanction allowed by Indiana Code 36-7-9-1 through Indiana Code 36-7-9-28 inclusive.

(p) If a cited violation is not corrected within the designated time period and the Building Commissioner does not find that the building is unsafe within the meaning of Indiana Code 36-7-9-4, the City of Goshen may file a complaint with Elkhart Superior Courts or the Elkhart Circuit Court to assess any fine provided by this Code article.

(q) Any rental unit for which the Building Department has issued an order finding the building or premises to be unsafe shall be so designated and placarded by the Inspection Officer.

(r) No rental unit which is placarded as unsafe shall again be used for human habitation until the written approval is secured from the Building Department, Board of Public Works and Safety, or a court of law. The Inspection Officer shall remove the placard whenever the defect or defects upon which the finding that the building is unsafe have been eliminated.

(s) No person shall deface or remove any notification of the Inspection Officer that any rental unit has been declared unsafe for human habitation.

(t) The order of the Board of Public Works and Safety expires two (2) years after the notice of the order is given unless one or more of the following events occur within that two (2) year period:

- 1) A complaint requesting judicial review is filed by any party having a substantial property interest.

- 2) A contract for action required by the order is let at public bid.
- 3) A civil action concerning the property is filed either by the City or any person having a substantial property interest.

(u) This Code article specifically adopts the provisions of the Indiana Unsafe Building Law which are included in Indiana Code 36-7-9-1 through 36-7-9-28 inclusive.

(Ord. 4068, § 14, 5-14-2002)

6.3.1.13 Penalties.

Sec. 13 (a) Any person who commits any of the following acts is subject to a fine not to exceed Five hundred Dollars (\$500.00). Each day that a violation of this order continues shall constitute a separate offense.

- 1) A person who fails to obtain a registration receipt as required by this Code article;
- 2) A person who fails to correct a violation cited in accordance with this Code article, whether or not such violation makes the premises an unsafe premises, or whether the violation is a violation of this Code article, any ordinance of the City of Goshen or a statute of the State of Indiana;
- 3) A person who removes or defaces the notification of the Inspection Officer that a rental unit has been determined to be unsafe.

(b) Any building or premises which is unsafe within the meaning of Indiana Code 36-7-9-4 shall be subject to any other sanction provided in Indiana Code 36-7-9-1 through Indiana Code 36-7-9-28 inclusive.

(c) A person failing to comply with an order of the Board of Public Works and Safety issued pursuant to this Code article in connection with an unsafe building or premises will be subjected to any other sanction provided in Indiana Code 36-7-9-1 through Indiana Code 36-7-9-28 inclusive.

(Ord. 4200, § 15, 2-3-2004)

6.3.1.14 Miscellaneous provisions.

Sec. 14 (a) Notice of orders, notice of statements of public bid are to be let, and notices of claims for payment must be given by:

- 1) Sending a copy of the order or statement by registered or certified mail to the residence, place of business or employment of the person to be notified, with return receipt requested;

- 2) Delivering a copy of the order or statement personally to the person to be notified; or
- 3) Leaving a copy of the order or statement at the dwelling or usual place of abode by the person to be notified.

(b) In the event that service is not obtained by foregoing methods, the alternate means of service described in Indiana Code 36-7-9-25 may be used.

(Ord. 4068, § 16, 5-14-2002)

6.3.1.15 Definitions.

Sec. 15 The following definitions shall apply in the interpretation and enforcement of this Code article. Words in the singular shall include the plural, and words in the plural shall include the singular:

- 1) DWELLING. A building which is wholly or partly used or intended to be used as a residence, but not including a tent, trailer or other structure which is designed to be transportable and is used for less than thirty (30) days.
- 2) DWELLING UNIT. A room or group of rooms located within a dwelling and forming a single habitable unit with facilities which are used or intended to be used for living, sleeping, and cooking.
- 3) HABITABLE ROOM. A room or enclosed floor space used or intended to be used for living, sleeping, or cooking purposes, excluding bathrooms, laundries, pantries, foyers, hallways, closets, and storage spaces.
- 4) HOTEL. A building or structure kept, used, maintained, advertised or held out to the public to be an inn, motel, lodge, lodging house, dormitory, or place where sleep or rooming accommodations are furnished for hire or are used or maintained for the accommodation of guests or lodgers.
- 5) INSPECTION CERTIFICATE. A certificate issued by the Building Department which documents that a rental unit has passed inspection and the owner is permitted to rent or lease the unit.
- 6) INSPECTION OFFICERS. Shall mean the following persons, working separately or together, who shall enforce the provisions of this Code article:
 - (A) building Commissioner, Code Compliance Officer or other designated officer.
 - (B) Fire Inspector, Fire Chief or other designated officer.

- (C) County Health Officer.
- 7) OCCUPANT. Any person, living, sleeping, cooking, or having actual possession of a dwelling unit or rooming unit; or any person having actual possession of any building or structure other than a dwelling unit or rooming unit.
- 8) OWNER. Any person who, alone or jointly or severally with others:
- (A) shall have legal title to any dwelling, dwelling unit, or any other building or structure, whether or not they occupy the same; or
- (B) shall have charge, care or control of any dwelling, dwelling unit, or any other building or structure, as owner or agent of the owner, or as executor, executrix, administrator, administratrix, trustee or guardian of the estate of the owner. Any such person representing the actual owner shall be bound to comply with the provisions of this Code article, to the same extent as if he or she were the owner; or
- (C) shall be the purchaser under a recorded land contract of any dwelling, dwelling unit, or any other building or structure, whether or not they occupy the same.
- 9) PERSON. Any entity, including any individual, firm, corporation, association or partnership.
- 10) PLUMBING. Shall include any of the following supplied facilities and equipment: gas pipes, gas-burning equipment, water pipes, garbage disposal units, waste pipes, toilets, sinks, installed dishwashers, bathtubs, showers, installed clothes-washing machines, catch basins, building drains, sewer drains, vents, and any other similar supplied fixtures, together with all connections to water, sewer, or gas lines.
- 11) REGISTRATION FEE. The amount paid to the Building Department when registering a rental unit with the City.
- 12) REGISTRATION RECEIPT. The receipt issued by the Building Department which documents that a dwelling unit has been registered and the owner has paid the appropriate registration fee.
- 13) RENTAL UNIT. A single unit of a hotel, rooming house, dwelling, apartment, or other similar building which is held for lease or rent.
- 14) ROOMING HOUSE. A dwelling, or that part of a dwelling containing one (1) or more rooming units, in which space is let by the owner or the owner's representative to persons who are not husband, wife, son, daughter, mother, father, sister, or brother of the owner or the owner's representative.

- 15) ROOMING UNIT. A room or group of rooms forming a single habitable unit used or intended to be used for living and sleeping, but not for cooking purposes.
- 16) SOLID WASTE. All solid and semisolid wastes, including garbage, litter, trash, refuse and rubbish.
- 17) SUBSTANTIAL PROPERTY INTEREST. Any right in real estate susceptible of being affected in a substantial way by actions authorized by this Code article, including a fee interest, life estate interest, future interest, present possessory interest, or equitable interest of a contract purchaser.
- 18) SUPPLIED. Shall mean paid for, furnished, or provided by or under the control of the owner or the owner's representative.
- 19) UNSAFE BUILDING. A building or structure, or any part of a building or structure, that is:
- (A) in an impaired structural condition that makes it unsafe to a person or property;
 - (B) a fire hazard;
 - (C) a hazard to the public health;
 - (D) a public nuisance;
 - (E) dangerous to a person or property because of a violation of a statute, ordinance, or any part of this Code article concerning building condition or maintenance; or
 - (F) vacant and not maintained in a manner that would allow human habitation, occupancy, or use under the requirements of a statute, an ordinance or any part of this Code.
- 20) UNSAFE PREMISES. The tract of real estate on which an unsafe building is located.

(Ord. 4068, § 1, 5-14-2002)

Article 4 Beautification and Restoration

Chapter 1 Beautification and Restoration Program

6.4.1.1 Establishment and purpose.

Sec. 1 (a) The Beautification and Restoration Public Purpose Trust (the Trust) is hereby established to facilitate the City of Goshen, Indiana's government and citizens in fulfilling the City's mission statement which charges us to "create for future generations a legacy of an even greater, better, and more beautiful City than was given to us."

(b) The purpose of the Trust is to provide a perpetual income stream from the investment of tax-

deductible contributions, pursuant to IRC Section 170(c)(1), made specifically to the Trust which will be available to the government and citizens of Goshen to assist in their efforts to preserve, maintain, and enhance the appearance of the City. The resources will be spent primarily, but not exclusively, in three areas:

- 1) Need-based assistance for homeowners in making appearance enhancements and other necessary structural improvements to their properties.
- 2) Assistance in acquiring blighted properties for the purpose of restoring such properties, or redeveloping such properties in a fashion that promotes the well-being of the City and its citizens.
- 3) To make grants to organizations, operating within the City of Goshen, which promote programs that focus on improving the appearance of the City, and the well-being of its citizens from a property maintenance perspective.

(Ord. 4076, § 1, 6-4-2002)

6.4.1.2 Administration.

Sec. 2 (a) The Trust will be under the control of the City of Goshen and accounted for as a permanent fund within the City's governmental fund structure. Communications to donors will specify that any and all contributions received without specific donor stipulations, may be spent by after appropriation by the Goshen Common Council and will be divided among the primary purposes established in 6.4.1.1 of this Code as directed by the Common Council in the appropriation.

(b) Donors may designate that their gifts be use for a particular project or that their gift be used for a one of the particular categories of projects described in 6.4.1.1 of this Code. A donor may also indicate that the principal of the gift be spent as soon as practical, that the principal or a gift be invested in perpetuity, or that the principal be used in some combination of spending and investing.

(c) All Income generated from the Trust and other Trust balances shall not revert to the City's general fund, whether or not such funds were appropriate by the Common Council.

(d) The Goshen Clerk-Treasurer shall account for the fund in accordance with all applicable laws of the State of Indiana. All disbursements and expenditures from the fund shall be approved by the Board of Public Works.

(e) The Goshen Common Council shall appropriate so much of the income and available principal of the fund as the Council deems appropriate, taking into account the recommendation of the Beatification and Restoration Trust Fund Committee, and the Council shall designate the amount of

the appropriated funds to be available for each of the following: assistance to homeowners in making appearance enhancements or structural improvements; acquisition of blighted real estate for the purpose of restoration or redevelopment; and grants to organizations operating within the City of Goshen that operate programs which focus on improving the appearance of the City of Goshen.

(Ord. 4076, § 2, 6-4-2002)

6.4.1.3 City of Goshen Beautification and Restoration Committee.

Sec 3 (a) A five (5) person committee will award the funds appropriated by the Common Council within each of the three categories.

(b) Four (4) members of the committee will be appointed by the Goshen Common Council. Two (2) of the members will serve an initial two-year term and the other two (2) members will serve four-year terms. All subsequent terms will be four (4) years. One of the appointees shall be a member of the Goshen Common Council. The other three (3) members of the committee will not be members of the Common Council or employees of the City of Goshen. The Common Council appointments must be Elkhart County residents.

(c) One member of the committee will be appointed by the Mayor of the City of Goshen and will serve a four-year term.

(d) The committee will recommend to the Common Council the amount of the trust fund to appropriate each year and will recommend how the appropriation should be allocated among the three categories identified in 6.4.1.1 of this Code

(e) In awarding the appropriated funds in each category, the committee shall consider the following:

- 1) The financial resources available for similar projects or programs from governmental sources or charities.
- 2) The extent the private sector will fill the need or provide the necessary funds.
- 3) The contribution of the proposed project or program to the appearance of the City.

(f) The committee shall give preference in awarding assistance to homeowners in making appearance enhancements and other necessary structural improvements to those applications that demonstrate the following:

- 1) The current condition of the home significantly violates existing building codes.
- 2) The home is owner occupied.
- 3) Low family income and other family resources.

(g) No person is eligible for assistance for making appearance enhancements and other necessary structural improvements from the fund if their family incomes exceed 150% of the family income to qualify for a 100% forgivable loan as established by the City of Goshen Housing Rehabilitation Program as amended from time to time.

(h) No award for assistance for making appearance enhancements and other necessary structural improvements from the fund shall exceed Five thousand Dollars (\$5,000.00) unless all other eligible applicants have been awarded funds.

(i) Any applicant for homeowner assistance funds shall include an estimate from a qualified contractor. If the cost of the project exceeds Five thousand Dollars (\$5,000.00), the applicant must detail the source of the additional funds required to complete the project.

(Ord. 4076, § 3, 6-4-2002)

Article 5 House Moving

Chapter 1 Moving Buildings on City Streets

6.5.1.1 Permit required.

Sec. 1 It shall be unlawful for any person to move any building upon and along any street, without a written permit.

(Ord. No. 251, § 1, 8-1-1910)

6.5.1.2 Permit application.

Sec. 2 Any person desiring the permit required by the provisions of this Code article shall apply in writing to the Building Department giving on the application such information as may be reasonably necessary to determine whether the permit should be issued.

(Ord. No. 251, § 2, 8-1-1910; Ord. No. 928, § 1, 6-2-1941; Ord. 3714, § 10, 4-9-1996;

Ord. 4211, § 2, 4-13-2004)

6.5.1.3 Route approval; other permit conditions.

Sec. 3 The Board of Public Works and Safety shall set a bond to be payable to the City for any damage resulting from the house moving. The amount of the bond shall depend upon the value of the property involved, the length and complexity of the route, and the time required to move the house.

(Ord. No. 251, § 2, 8-1-1910; Ord. No. 928, § 1, 6-2-1941; Ord. No. 2845, § 2, 11-2-1981)

Article 6 Stormwater Management

Chapter 1 Requirements for Stormwater Management Associated with Illicit Discharges

6.6.1.1 Purpose and Policy.

Sec. 1 (a) This Code chapter provides for the regulation of stormwater maintenance through the approval of stormwater management plans and establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process.

(b) The objectives of this Code chapter are as follows:

- 1) Prevent or reduce harm due to periodic flooding, including loss of life and property and threats and inconveniences to public health, safety and welfare; and
- 2) Protect, conserve, and promote orderly development of water and land resources by implementing beneficial design features and conservation techniques; and
- 3) Prevent additional disruption of the economy and governmental services due to stormwater and flood drainage; and
- 4) Conserve the natural hydrologic, hydraulic, water quality and other beneficial functions of watercourses, floodplains and wetlands; and
- 5) Promote orderly economic development and resource use; and
- 6) Regulate the contribution of pollutants to the MS4 by stormwater discharges by any user; and
- 7) Prohibit illicit connections and discharges to the MS4 and waters of the state; and
- 8) Establish legal authority to carry out all plan review, inspection, surveillance and monitoring procedures necessary to ensure compliance with this Code chapter.

(c) It is the policy of the Board of Public Works and Safety of the City of Goshen, Indiana, that an engineered drainage plan shall be submitted to the office of the City of Goshen Department of Stormwater Management for any new development, redevelopment, new construction, addition to existing construction, or other land disturbing activity located within the City's jurisdiction which results in the addition of impervious surfaces or the redirection of the surface water runoff in pervious areas

(d) Except as otherwise provided, the Superintendent of the Department of Stormwater

Management shall administer, implement, and enforce the provisions of this Code chapter. Any powers granted to or duties imposed upon the Superintendent of the Department of Stormwater Management may be delegated by the Superintendent to other City personnel.

(Ord. No. 4327, §§ 1.01 to 1.04, 12-20-2005)

6.6.1.2 Conduct Prohibited.

Sec. 2 (a) No person shall discharge, cause to be discharged, or permit to be discharged into the municipal storm drainage system or any water course, any discharge or materials including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards other than stormwater.

(b) Notwithstanding the prohibitions contained in 6.6.1.2 (a) above, the following activities or conditions are permitted even if such activities or conditions result in discharge or materials entering the municipal storm drainage system or any water course:

- 1) Water line flushing or other portable water sources;
- 2) Landscape irrigation or lawn watering;
- 3) Diverted stream flows;
- 4) Rising ground water;
- 5) Ground water infiltration to storm drains;
- 6) Uncontaminated pumped ground water;
- 7) Foundation or footing drains (not including active ground water dewatering systems);
- 8) Crawl space pumps;
- 9) Air conditioning condensation;
- 10) Springs;
- 11) Noncommercial washing of vehicles;
- 12) Natural repairing habitat or wetland flows;
- 13) Swimming pools (if dechlorinated);
- 14) Fire fighting activities;
- 15) Discharge specified by an authorized enforcement agency as being necessary to protect public health or safety;

16) Dye testing (verbal notification to the Department of Stormwater Management is required before test); and

17) Any discharge permitted under a NPDES permit, waiver or waste discharge order issued to the discharge and administered under the authority of the Federal Environmental Protection Agency or the Indiana Department of Environmental Management.

(c) No person shall connect to any drain or conveyance or allow the continued connection of any drain or conveyance to the storm drainage system which allows any non-stormwater discharge including but not necessarily limited to any sewage, process waste water and wash water.

(d) No person may reinstate a MS4 access if that access has been suspended pursuant to this Code chapter until such time as the suspension is lifted by the Department of Stormwater Management, the Board of Public Works and Safety, or a court of competent jurisdiction.

(e) No person subject to a NPDES stormwater discharge permit shall allow or permit any discharge enter the MS4 without complete compliance with the terms and conditions of the NPDES permit.

(f) No person subject to a NPDES stormwater discharge permit shall unreasonably delay the Department of Stormwater Management's access to a permitted facility.

(g) No person owning real estate or in possession of such real estate shall fail to properly maintain the portion of any water course that passes through that real estate. Proper maintenance shall include keeping the water course free of trash, debris, excessive vegetation and other obstacles that might pollute, contaminate or significantly retard the flow of water through the water course. Proper maintenance shall also include maintaining the structure within or adjacent to the water course so that such structures will not become a hazard to the use, function or physical integrity of the water course.

(h) No person owning a parcel of real estate, in possession of a parcel of real estate, in charge of any facility or operation, or responsible for the emergency response at any facility or operation, shall fail to notify the Department of Stormwater Management as soon as practicable of any improper or unpermitted release of materials, discharges, or pollutants into stormwater, the stormwater drainage system, or any water course if such person has information that such discharge or release may have occurred.

(i) No person owning a parcel of real estate, in possession of a parcel of real estate, in charge of any facility or operation or responsible for the emergency response at any facility or operation shall fail to take all reasonable steps to ensure the discovery, containment and cleanup of any improper or unpermitted release or discharge.

(Ord. No. 4327, §§ 2.01 to 2.09, 12-20-2005)

6.6.1.3 Monitoring of Discharges.

Sec. 3 (a) The City of Goshen shall be permitted to enter and inspect any facility that discharges waters or materials into the MS4 within the corporate limits of the City of Goshen or into any water course within the corporate limits of the City of Goshen even if only occasionally, as often as may be necessary to determine compliance with this Code chapter. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the Department of Stormwater Management.

(b) Facility operators shall allow the City of Goshen ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of the records that must be kept under the conditions of a NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.

(c) The City of Goshen shall have the right to set up in any facility that has a permit to discharge into the MS4 such devices as are reasonably necessary to conduct monitoring and/or sampling of the facility's stormwater discharge.

(d) The City of Goshen has the right to require the discharger to install monitoring equipment at any commercial or industrial facility or any facility containing more than three (3) residential units. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

(e) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Superintendent of the Department of Stormwater Management and shall not be replaced if so requested. The costs of clearing such access shall be borne by the operator.

(f) If the City of Goshen has been refused access to any part of the premises from which stormwater is discharged, and the Department of Stormwater Management is able to demonstrate probable cause to believe that there may be a violation of this Code chapter, or that there is a need to inspect and/or sample as part of a routine inspection or sampling program designed to verify compliance with this Code chapter or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, the Department of Stormwater Management may seek issuance of a search warrant from any court of competent jurisdiction within Elkhart County.

(Ord. No. 4327, §§ 3.01 to 3.06, 12-20-2005)

6.6.1.4 Notification of Spills.

Sec. 4 (a) As soon as any person responsible for a facility or operation or responsible for the emergency response for a facility or operation has information of a known or suspected release of materials which may result in an illegal discharge into the stormwater, or storm drain system, such person shall take all necessary steps to contain and clean up the release.

(b) Any person responsible for a facility or operation or responsible for the emergency response for a facility or operation shall immediately inform the City of Goshen that a release of materials within the City of Goshen may result in an illegal discharge into the stormwater, or storm drain system, by contacting the Department of Stormwater Management if such a release occurs within normal business hours and if not occurring within normal business hours by informing emergency dispatch services.

(c) If the discharge causes an illegal discharge into the stormwater or storm drain system and emanates from a commercial or industrial establishment, the owner or operator of the establishment shall retain written record of the discharge, action taken to contain and clean up the discharge and actions taken to ensure that such discharge does not occur again.

(Ord. No. 4327, §§ 4.01 to 4.03, 12-20-2005)

6.6.1.5 Enforcement.

Sec. 5 (a) Notice of Violation.

1) Whenever the City of Goshen finds that a person has committed a prohibited act or failed to meet the requirements of this Code chapter, the Superintendent of the Department of Stormwater Management or the Superintendent's designee may take one (1) or more of the following actions:

(A) notify the person who committed the act or failed to meet the requirements of this Code chapter by telephone and request compliance or cessation of the prohibited act.

(B) notify the person who committed the act or failed to meet the requirements of this Code chapter in writing and order compliance or cessation of the prohibited act.

(C) enter into an agreed order with the approval of the Board of Public Works and Safety which order may include payment of a fine by the violator.

(D) file a notice of violation before the Board of Public Works and Safety describing the violation of this Code chapter found by the Superintendent of the Department of Stormwater Management.

(E) file a complaint in a court of competent jurisdiction within Elkhart County seeking a judicial determination that this Code chapter has been violated and requesting the imposition of fines and ordering compliance with the violated provisions of this Code chapter.

- 2) If the Superintendent of the Department of Stormwater Management takes any authorized action and taking such action does not result in compliance with this Code chapter, the Superintendent may take any other authorized action to obtain compliance.
- 3) The Superintendent of the Department of Stormwater Management may file a complaint with a court of competent jurisdiction to enforce the terms of an agreed order or an order of the Board of Public Works and Safety.

(b) Right to Enter Premises.

- 1) The City of Goshen shall have the right to enter any premises for any of the following reasons:
 - (A) investigate a suspected spill or discharge into the stormwater or City's storm drain system;
 - (B) to carry out routine inspections;
 - (C) to carry out routine sampling; or
 - (D) to verify compliance with any agreed order, order of the Board of Public Works and Safety or order of any court of competent jurisdiction.
- 2) If the City of Goshen has been refused access to any part of the premises from which stormwater is discharged and City is able to reasonably demonstrate to a court of competent jurisdiction within Elkhart County that there may be a violation of this Code chapter or that there is a need to inspect or sample as part of the City's routine inspections and sampling program, the court shall grant an order allowing City access to all relevant parts of a premises.
- 3) Any written notice of violation shall be issued upon the responsible party by regular US mail or delivered personally to the responsible party unless the applicable ordinance or statute requires different written notice.

(c) Board of Public Works and Safety Hearing.

- 1) Before any Board of Public Works and Safety hearing is held, a party alleged to have violated this Code chapter shall receive written notice of the violation including the nature of the

- violation and a summary of the facts that constitute that violation. In the event of an emergency hearing before the Board of Public Works and Safety, this information may be orally presented to the affected party and the affected party may elect to proceed or the affected party may insist on written notice and delay the hearing. The emergency action taken by the Department of Stormwater Management shall continue until a hearing can be held.
- 2) A party alleged to have violated this Code chapter has the right to have an attorney present to cross examine witnesses, and has the right to present evidence and have witnesses testify.
 - 3) A party found to have violated this Code chapter has a right to appeal the determination of the Board of Public Works and Safety to a court of competent jurisdiction within twenty (20) days of the action of the Board of Public Works and Safety by filing a verified complaint. The court may affirm, modify or reverse the action taken by the Board of Public Works and Safety. Any such appeal shall be heard de novo.
 - 4) Filing a notice of violation is not a prerequisite to filing a complaint alleging a violation before a court of competent jurisdiction within Elkhart County.

(d) Sanctions.

- 1) Any violation of this Code chapter is subject to a fine of up to Two Thousand Five Hundred Dollars (\$2,500.00).
- 2) The City may enter upon private property and take any and all measures necessary to abate a violation, if a court of competent jurisdiction has found a violation of this Code chapter has occurred and has approved the action to be taken by the City. The costs of such abatement shall be assessed to the owner of the private property.
- 3) The City of Goshen may suspend MS4 discharge access to stop an actual or threatened discharge which presents imminent and substantial danger to the environment, to the health or welfare of any person, to the MS4 or to water of the United States. This suspension may be without notice if an emergency exists but a hearing will be held at the next Board of Public Works and Safety meeting after the owner of the real estate can be notified to determine the existence of an emergency and that there is a substantial and imminent danger.
- 4) The Board of Public Works and Safety or any court may order the owner of the real estate or the responsible party for the operations on the real estate to take any and all actions necessary to comply with this Code chapter.

- 5) The City may recover reasonable attorney fees, court costs and other expenses associated with the enforcement of this Code chapter including sampling and monitoring expenses and the cost of actual damages incurred by the City.
- 6) Each day a violation continues constitutes a new and separate violation.
- 7) If a party has violated this Code chapter and continues to do so, the City may petition any court of competent jurisdiction within Elkhart County for the issuance of a temporary restraining order or permanent injunction which restrains or requires specific compliance with this Code chapter.

(Ord. No. 4327, §§ 5.01 to 5.04, 12-20-2005)

6.6.1.6 Miscellaneous

Sec. 6 (a) Remedies Not Exclusive. The remedies listed in this Code chapter are not exclusive of any other remedies available under any applicable federal, state or local law. It is within the discretion of the City to choose which remedies to include.

(b) Conflict. All ordinances and parts of other ordinances inconsistent with any part of this Code chapter are repealed to the extent of such inconsistency or conflict.

(Ord. No. 4327, §§ 7.01 to 7.04, 12-20-2005)

Chapter 2 Construction Site Stormwater Run-off Control

6.6.2.1 Stormwater clearance required.

Sec. 1 (a) No person shall be granted a building permit, construction permit, driveway permit, right-of-way permit, or other license or authorization for construction activities that result in a land disturbing activity to take place in the Greater Elkhart County MS4 without first having obtained a stormwater clearance from the Elkhart County Soil and Water Conservation District (SWCD) and/or the City of Goshen Department of Stormwater Management.

(b) No person shall engage in a land disturbing activity affecting one (1) acre or more in the Greater Elkhart County MS4 without having and maintaining in effect a stormwater clearance from the SWCD and/or the Department of Stormwater Management. An application for a stormwater clearance shall be filed with the Department of Stormwater Management on a form provided by the Department of Stormwater Management.

(c) For any construction activities covered by Rule 5 (Indiana Administrative Code (IAC) Article 15 Rule 5, as may be amended), the applicant must also submit a copy of the application directly to the

Indiana Department of Environmental Management.

(d) For those construction projects requiring a construction plan under Rule 5 (Indiana Administrative Code (IAC) Article 15 Rule 5, as may be amended), the applicant shall also submit the construction plan to the SWCD and the Department of Stormwater Management with the application. If the applicant does not receive notification within twenty-eight (28) days after the construction plan is received stating that the construction plan is deficient, the applicant may submit the Notice of Intent letter information to the Indiana Department of Environmental Management.

(e) The application for a stormwater clearance shall include a calculation of the acreage to be disturbed by the proposed construction activities.

(f) A stormwater clearance shall expire on December 31st of the year which is one (1) year after the date the stormwater clearance was issued. Renewal is required unless the following has occurred:

- 1) All land disturbing activities, including construction on all building lots, have been completed and the entire site has been stabilized;
- 2) All temporary erosion and sediment control measures have been removed; and
- 3) A notice of termination letter has been submitted to the SWCD by the expiration of the stormwater clearance.

(g) Subsequent annual renewals shall be required until all land disturbing activities including construction on all building lots have been completed and the entire site has been stabilized, all temporary erosion and sediment control measures have been removed, and a notice of termination has been submitted to the SWCD.

(Ord. No. 4328, §§ 1.01 to 1.06, 02-07-2006)

6.6.2.2 Filing and renewal fees for stormwater clearance.

Sec. 2 (a) Application fees for stormwater clearances under this Code chapter shall as set forth in the ordinance.

(b) In addition to the charges set forth in the ordinance, the Indiana Department of Environmental Management may have their own separate and distinct fees.

(Ord. No. 4328, §§ 2.01 to 2.04, 02-07-2006)

6.6.2.3 Adoption of state erosion and sediment control manual.

Sec. 3 The latest version of the state erosion and sediment control manual (currently known as

the Indiana Handbook for Erosion Control in Developing Areas), as amended or replaced from time to time, is hereby adopted as the technical manual of reference for the minimum control requirements for erosion and sediment control for the Greater Elkhart County MS4

(Ord. No. 4328, § 3.01, 02-07-2006)

6.6.2.4 Compliance with Rule 5 ((Indiana Administrative Code (IAC) Article 15 Rule 5, as may be amended)

Sec. 4 Rule 5, as amended from time to time, is hereby adopted and shall provide the minimum stormwater run-off requirements associated with construction activity within the Greater Elkhart County MS4. In the event that Rule 5 is amended from time to time in the future, however, the then current Rule 5 requirements shall govern and be applicable within the Greater Elkhart County MS4 without this Code chapter having to be amended.

(Ord. No. 4328, § 4.01, 02-07-2006)

6.6.2.5 Appeal of conditions or denial of stormwater clearance.

Sec. 5 An interested person who objects to or is dissatisfied with the actions of the SWCD and/or the Department of Stormwater Management in approving or denying any application for a stormwater clearance may file an appeal with the Goshen Board of Public Works and Safety; provided such filing is made within fifteen (15) calendar days of the action of the SWCD and/or the Department of Stormwater Management in question. The action of the SWCD and/or the Department of Stormwater Management shall be final and conclusive after the appeal deadline has expired. Any appeal shall be filed on the forms required by the Board with a copy of the stormwater clearance. The Board shall conduct a public hearing on the appeal within forty-five (45) calendar days after receipt of the filing. After an appeal has been filed, no land disturbing activities may begin or continue unless in compliance with the stormwater clearance if one was issued. Following the conclusion of the public hearing which may adjourn from time to time, the Board shall render a decision on the appeal which decision may affirm, modify, or overturn the action of the SWCD and/or the Department of Stormwater Management or refer the matter back to the SWCD and/or the Department of Stormwater Management for further consideration.

(Ord. No. 4328, § 5.01, 02-07-2006)

6.6.2.6 Inspections.

Sec. 6 The MS4 operator, the SWCD or the Department of Stormwater Management may inspect any project site involved in construction activities regulated by Rule 5 (Indiana Administrative

Code (IAC) Article 15 Rule 5, as may be amended) at all reasonable times. All self-monitoring program evaluation reports for a project site must be made available to the MS4 operator, the SWCD or the Department of Stormwater Management for inspection within forty-eight (48) hours of a request.

(Ord. No. 4328, § 6.01, 02-07-2006)

6.6.2.7 Enforcement.

Sec. 7 (a) Violations. Any failure to meet the requirement of this Code chapter, Rule 5 (Indiana Administrative Code (IAC) Article 15 Rule 5, as may be amended), or the State Erosion and Sediment Control Manual and Stormwater Pollution Prevention Plan or any commission of any act prohibited by this Code chapter, Rule 5 or the State Erosion and Sediment Control Manual within the corporate boundaries of the City of Goshen constitutes a violation of this Code chapter may be enforced in accordance with the terms and conditions of this Code chapter.

(b) Notice of Violation.

- 1) Whenever the Department of Stormwater Management determines that a violation of this Code chapter has occurred, the Superintendent of the Department of Stormwater Management or the Superintendent's designee may take one (1) or more of the following actions:
 - (A) notify the person who committed the act or failed to meet the requirements of this Code chapter by telephone and request compliance or cessation of the prohibited act.
 - (B) notify the person who committed the act or failed to meet the requirements of this Code chapter in writing and order compliance or cessation of the prohibited act.
 - (C) enter into an agreed order with the approval of the Board of Public Works and Safety which order may include payment of a fine by the violator.
 - (D) issue a stop work order until all corrective measures have been completed.
 - (E) file a notice of violation before the Board of Public Works and Safety describing the violation of this Code chapter found by the Superintendent of the Department of Stormwater Management.
 - (F) file a complaint in a court of competent jurisdiction within Elkhart County seeking a judicial determination that this Code chapter has been violated and requesting the imposition of fines.

- 2) If the Superintendent of the Department of Stormwater Management takes any authorized action and taking such action does not result in compliance with this Code chapter, the Superintendent may take any other authorized action to obtain compliance.
- 3) The Superintendent of the Department of Stormwater Management may file a complaint with a court of competent jurisdiction to enforce the terms of an agreed order or an order of the Board of Public Works and Safety.
- 4) Filing a notice of violation is not a prerequisite to filing a complaint alleging a violation before a court of competent jurisdiction within Elkhart County.
- 5) Any written notice of violation shall be issued upon the responsible party by regular US mail or delivered personally to the responsible party unless the applicable ordinance or statute requires different written notice.

(c) Right to Enter Premises.

- 1) The City of Goshen shall have the right to enter any premises for any of the following reasons:
 - (A) investigate any construction site to determine the need for a clearance or compliance with the terms of the clearance, Rule 5 (Indiana Administrative Code (IAC) Article 15 Rule 5, as may be amended), State Erosion and Sediment Control Manual or the Stormwater Pollution Prevention Plan.
 - (B) to verify compliance with any agreed order, order of the Board of Public Works and Safety or order of any court of competent jurisdiction.
- 2) If the City of Goshen has been refused access to any part of the premises for any permitted purpose and City is able to reasonably demonstrate to a court of competent jurisdiction within Elkhart County that there may be a violation of this Code chapter, the court shall grant an order allowing City access to all relevant parts of a premises.

(d) A party subject to a stop work order within the corporate limits of the City of Goshen may appeal the stop work order by requesting a hearing before the Board of Public Works and Safety. The request for a hearing must be made within ten (10) days of the order's issuance.

(e) Board of Public Works and Safety Hearing.

- 1) Before any Board of Public Works and Safety hearing is held, a party alleged to have violation this Code chapter shall receive written notice of the violation including the nature of the violation and a summary of the facts that constitute that violation.

- 2) A party alleged to have violated this Code chapter has the right to have an attorney present to cross examine witnesses, and has the right to present evidence and have witnesses testify.
- 3) A party found to have violated this Code chapter has a right to appeal the determination of the Board of Public Works and Safety to a court of competent jurisdiction within twenty (20) days of the action of the Board by filing a verified complaint. The court may affirm, modify or reverse the action taken by the Board. Any such appeal shall be heard de novo.

(f) Sanctions.

- 1) Any violation of this Code chapter is subject to a fine of up to Two Thousand Five Hundred Dollars (\$2,500.00).
- 2) The City of Goshen may enter upon private property and take any and all measures necessary to abate a violation, if a court of competent jurisdiction has found a that violation of this Code chapter has occurred and has approved the action to be taken by the City. The costs of such abatement shall be assessed to the owner of the private property.
- 3) The City of Goshen, MS4 operator or SWCD may issue a stop work order if no clearance is obtained or if the provision of Rule 5 (Indiana Administrative Code (IAC) Article 15 Rule 5, as may be amended), State Erosion and Sediment Control Manual or any applicable Stormwater Pollution Prevention Plan is violated.
- 4) The Board of Public Works and Safety or any court may order the owner of the real estate or the responsible party for the operations on the real estate to take any and all actions necessary to comply with this Code chapter.
- 5) The City may recover reasonable attorney fees, court costs and other expenses associated with the enforcement of this Code chapter.
- 6) Each day a violation continues constitutes a new and separate violation.
- 7) If a party has violated this Code chapter and continues to do so, the City may petition any court of competent jurisdiction within Elkhart County for the issuance of a temporary restraining order or permanent injunction which restrains or requires specific compliance with this Code chapter.

(Ord. No. 4328, §§ 7.01 to 7.06, 02-07-2006)

Chapter 3 Uniform Requirements for Post Construction Stormwater Management

6.6.3.1 General provisions.

Sec. 1 (a) Applicability. This Code chapter shall be applicable to all parcels of real estate within the jurisdiction of the City of Goshen unless exempt under this Code chapter.

(b) Exempt Real Estate. The following activities are exempt from the stormwater performance criteria established by this Code chapter:

- 1) Forest harvesting activities.
- 2) Agricultural land distributing activities.
- 3) Additions or modifications to existing single family structures.
- 4) Repairs to any stormwater treatment practice deemed necessary by Goshen's Department of Stormwater Management.
- 5) Demolition that conforms the real estate to the adjacent terrain at completion.
- 6) Fill. Provided the fill is less than one foot (1') in depth placed on natural terrain with a slope flatter than four percent (4%), does not exceed one thousand (1,000) cubic yards per acre and does not obstruct the existing drainage pattern.
- 7) Any real estate less than one (1) acre which is not part of development or sale which development or sale is one (1) acre or more in the aggregate.

(Ord. No. 4329, §§ 1.01 to 1.02, 01-03-2006)

6.6.3.2 Conduct Prohibited.

Sec. 2 Any entity owning or operating non-exempt real estate shall not do any of the following:

- 1) Discharge stormwater directly into a wetland or local water body without adequate treatment.
- 2) Discharge stormwater in a manner that is inconsistent with applicable state or federal law.

(Ord. No. 4329, §§ 2.01 to 2.02, 01-03-2006)

6.6.3.3 Conduct Required.

Sec. 3 Any entity owning or operating non-exempt real estate shall comply with each of the following requirements:

- 1) Maintain any and all stormwater measures and practices identified in the construction plan

- that were intended to remain in place after construction activities have been completed.
- 2) Install and maintain each post construction stormwater quality measure approved as part of the construction plan.
 - 3) Provide the Department of Stormwater Management with a narrative description of the maintenance guidelines for all post construction stormwater quality measures to facilitate their proper long-term function and identify the entity or entities responsible for long-term maintenance. It is an obligation of the project owners and their successors in interest to provide these narrative descriptions to future parties who acquire interest in any portion of the real estate or who assume responsibility for the operation and maintenance of the post construction stormwater quality measures.
 - 4) Maintain all drainage systems and stormwater storage facilities in good working order.
 - 5) Maintain natural drainage for any portion of the real estate not served by a constructed drainage system.
 - 6) Maintain all erosion sediment control systems installed on the real estate or identified as part of the construction plan unless such systems were temporary measures only intended to be in place during construction.
 - 7) Maintain all drainage channels and swales installed or identified as part of the construction plan so they do not cause erosion in the receiving channel or at the outlet.
 - 8) Keep all natural features such as wetlands and sinkholes protected from stormwater run off pollutants.
 - 9) Annually inspect all stormwater management facilities to insure compliance with this Code chapter and provide for the removal of silt, litter, grass cutting, vegetation and other debris from all catch basins, inlets and stormwater retention/detention areas.
 - 10) Annually inspect all landscaping to insure compliance with provisions of the management plan.

(Ord. No. 4329, §§ 3.01 to 3.10, 01-03-2006)

6.6.3.4 Developments.

Sec. 4 Any development, redevelopment or sale consisting of two (2) or more lots (and totaling in the aggregate one (1) or more acres) shall comply with the following requirements:

- 1) Execute an enforceable maintenance agreement that designates the parties responsible for

the operation, maintenance and repair of all stormwater management facilities, and any other system, structure or measure required by this Code chapter. The agreement shall include provisions for funding all required maintenance.

- 2) Parties who are responsible for operation and maintenance of stormwater management facilities shall make and maintain records for all installation and maintenance and repairs of all systems, structures and measures. These records must be maintained for at least five (5) years and made available to the Department of Stormwater Management at all reasonable times.
- 3) All maintenance agreements shall be approved by the Department of Stormwater Management and recorded with the Elkhart County Recorder.

(Ord. No. 4329, §§ 4.01 to 4.03, 01-03-2006)

6.6.3.5 Maintenance and repair of stormwater facilities.

Sec. 5 (a) Maintenance Covenants.

- 1) Maintenance of all stormwater management facilities in a development, redevelopment or sale where parcels of real estate, units or buildings are owned by different entities shall be insured through the creation of a formal maintenance covenant that must be approved by the City of Goshen and recorded with the Elkhart County Recorder prior to final plan approval. As part of the covenant, a schedule shall be developed for when and how often maintenance will occur to insure proper function of the stormwater management facility. The covenant shall also include plans for periodic inspections to ensure proper performance of the facility between scheduled cleanouts.
- 2) All stormwater management facilities must undergo, at the minimum, an annual inspection to document maintenance and repair needs and insure compliance with the requirements of this Code chapter and accomplishment of its purposes. These needs include removal of silt, litter and other debris from all catch basins, inlets and drainage pipes, grass cutting and vegetation removal, and necessary replacement of landscape vegetation. Any maintenance needs found must be addressed in a timely manner.
- 3) All developers must execute an easement and an inspection and maintenance agreement binding on all subsequent owners of the real estate served by on-site stormwater management measures.
- 4) The design and planning of all stormwater management facilities shall include detailed

maintenance and repair procedures to insure their continued function. These plans will identify the parts or components of a stormwater management facility that need to be maintained and the equipment and skills or training necessary. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures shall be included in the plan.

- 5) Parties responsible for the operation and maintenance of a stormwater management facility shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least five (5) years. These records shall be made available to the City of Goshen during inspection of the facility and at other reasonable times upon request.

(b) Landscaping Plan. The developer of the real estate must establish a landscaping plan which provides for the maintenance of vegetation at the site after construction is finished, including who will be responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved.

(c) Erosion and Sediment Control Plans for Construction of Stormwater Management Measures. All developers must prepare and carry out an erosion and sediment control plan for all construction activities related to implementing any on-site stormwater management practices.

(Ord. No. 4329, §§ 5.01 to 5.03, 01-03-2006)

6.6.3.6 Enforcement and penalties.

Sec. 6 (a) Notice of Violation

- 1) Whenever the Department of Stormwater Management finds that a person has committed a prohibited act or failed to meet the requirements of this Code chapter, the Superintendent of Department of Stormwater Management or the Superintendent's designee may take one (1) or more of the following actions:
 - (A) notify the person who committed the act or failed to meet the requirements of this Code chapter by telephone and request compliance or cessation of the prohibited act.
 - (B) notify the person who committed the act or failed to meet the requirements of this Code chapter in writing and order compliance or cessation of the prohibited act.
 - (C) enter into an agreed order with the approval of the Board of Public Works and Safety which order may include payment of a fine by the violator.
 - (D) file a notice of violation before the Board of Public Works and Safety describing the violation of this Code chapter found by the Superintendent of the Department of

Stormwater Management.

(E) file a complaint in a court of competent jurisdiction within Elkhart County seeking a judicial determination that this Code chapter has been violated and requesting the imposition of fines.

- 2) If the Superintendent of the Department of Stormwater Management takes any authorized action and taking such action does not result in compliance with this Code chapter, the Superintendent may take any other authorized action to obtain compliance.
- 3) The Superintendent of the Department of Stormwater Management may file a complaint with a court of competent jurisdiction to enforce the terms of an agreed order or an order of the Board of Public Works and Safety.

(b) Right to Enter Premises.

- 1) City of Goshen shall have the right to enter any premises for any of the following reasons:
 - (A) investigate a suspected spill or discharge into the stormwater or City's storm drain system;
 - (B) to carry out routine inspections;
 - (C) to carry out routine sampling;
 - (D) to verify compliance with any agreed order, order of the Board of Public Works and Safety or order of any court of competent jurisdiction.
- 2) If the City of Goshen has been refused access to any part of the premises from which stormwater is discharged and City is able to reasonably demonstrate to a court of competent jurisdiction within Elkhart County that there may be a violation of this Code chapter, or that there is a need to inspect or sample as part of the City's routine inspections and sampling program, the court shall grant an order allowing City access to all relevant parts of a premises.
- 3) Any written notice of violation shall be issued upon the responsible party by regular US mail or delivered personally to the responsible party unless the applicable ordinance or statute requires different written notice.

(c) Board of Public Works and Safety Hearing.

- 1) Before any Board of Public Works and Safety hearing is held, a party alleged to have violated this Code chapter shall receive written notice of the violation including the nature of the

violation and a summary of the facts that constitute that violation. In the event of an emergency hearing before the Board of Public Works and Safety, this information may be orally presented to the affected party and the affected party may elect to proceed or the affected party may insist on written notice and delay the hearing. The emergency action taken by the City shall continue until a hearing can be held.

- 2) A party alleged to have violated this Code chapter has the right to have an attorney present to cross examine witnesses, and has the right to present evidence and have witnesses testify.
- 3) A party found to have violated this Code chapter has a right to appeal the determination of the Board of Public Works and Safety to a court of competent jurisdiction within twenty (20) days of the action of the Board of Public Works and Safety by filing a verified complaint. The court may affirm, modify or reverse the action taken by the Board of Public Works and Safety. Any such appeal shall be heard de novo.

(d) Sanctions.

- 1) Any violation of this Code chapter is subject to a fine of up to Two Thousand Five Hundred Dollars (\$2,500.00).
- 2) The City may enter upon private property and take any and all measures necessary to abate a violation, if a court of competent jurisdiction has found a that violation of this Code chapter has occurred and has approved the action to be taken by the City. The costs of such abatement shall be assessed to the owner of the private property.
- 3) The City of Goshen may suspend MS4 discharge access to stop an actual or threatened discharge which presents imminent and substantial danger to the environment, to the health or welfare of any person, to the MS4 or to water of the United States. This suspension may be without notice if an emergency exists but a hearing will be held at the next Board of Public Works and Safety meeting after the owner of the real estate can be notified to determine the existence of an emergency and that there is a substantial and imminent danger.
- 4) The Board of Public Works and Safety or any court may order the owner of the real estate or the responsible party for the operations on the real estate to take any and all actions necessary to comply with this Code chapter.
- 5) The City may recover reasonable attorney fees, court costs and other expenses associated with the enforcement of this Code chapter including sampling and monitoring expenses and the cost of actual damages incurred by the City.

6) Each day a violation continues constitutes a new and separate violation.

(e) If a party has violated this Code chapter and continues to do so, the City may petition any court of competent jurisdiction within Elkhart County for the issuance of a temporary restraining order or permanent injunction which restrains or requires specific compliance with this Code chapter.

(f) Restoration of Lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the City of Goshen may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

(g) Access to Inspections of Stormwater Facilities.

- 1) The City of Goshen shall be granted at all reasonable terms access to the real estate to inspect any stormwater facility.
- 2) When any new drainage control facility is installed on private property, or when any new connection is made between private property and a public drainage control system, sanitary sewer or combined sewer, the property owner shall grant to the City of Goshen the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. This includes the right to enter a property when it has a reasonable basis to believe that a violation of this Code chapter is occurring or has occurred, and to enter to correct a violation of this Code chapter.

(Ord. No. 4329, §§ 6.01 to 6.07, 01-03-2006)

Chapter 4 Definitions

6.6.4.1 Definitions.

Sec. 1 Unless the context specifically indicates otherwise, the following terms and phrases as used in this Code article shall have these meanings:

- 1) If any term or provision contained in 327 IAC 15-5-4 is used in this Code article, chapters 2 and 3, then the term or provision shall have the same meaning as set forth in 327 IAC 15-5-4.
- 2) If any term or provision contained in 327 IAC 15-13-5 is used in this Code article, chapters 2 and 3, then the term or provision shall have the same meaning as set forth in 327 IAC 15-13-5.
- 3) BEST MANAGEMENT PRACTICES. Schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices,

- maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.
- 4) DEVELOPMENT. The construction, reconstruction, conversion, structural alteration, location, relocation or enlargement of any structure; or, a land disturbing activity that is, or that may be, associated with the preparation of a site for a new or intensified use.
 - 5) GREATER ELKHART COUNTY MS4. The area designated by the Indiana Department of Environmental Management as Municipal Separate Storm Sewer System (MS4) entities under 327 IAC 15-13 which is comprised of the City of Elkhart, City of Goshen, Town of Bristol, and certain unincorporated areas within the County of Elkhart, Indiana.
 - 6) HAZARDOUS MATERIALS. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
 - 7) ILLEGAL DISCHARGE. Any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in 6.6.1.3 (f) of this Code article.
 - 8) ILLICIT CONNECTIONS. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including, but not limited to any conveyances which allow any non-stormwater discharge including sewage, process waste water, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or, any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.
 - 9) INTERESTED PERSON. The applicant for a stormwater clearance, the MS4 operator, the MS4 entities in Elkhart County, Indiana including the City of Elkhart, City of Goshen, Town of Bristol, and County of Elkhart, or any person adversely affected by a stormwater clearance.
 - 10) NON-STORM WATER DISCHARGE. Any discharge to the storm drain system that is not

composed entirely of stormwater.

- 11) PERSON. As used in chapter 1 of this Code article: Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owners' agents. As used in chapters 2 and 3 of this Code article: An individual, partnership, limited partnership, limited liability partnership, corporation, limited liability company, association, company, organization, or governmental entity, whether for-profit or not-for-profit.
- 12) POLLUTANT. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinance and accumulations, so that same may cause or contribute to pollution; floatable; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.
- 13) PREMISE. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.
- 14) SITE. The entire area included in the legal description of the parcel of land on which development has been proposed or is being conducted; or the controlled area where runoff originates.
- 15) STORMWATER DRAINAGE SYSTEM. All methods, natural or man-made, used for conveying stormwater to, through or from a drainage area to any of the following: conduits and appurtenant features; canals; channels; ditches; streams; culverts; streets; or pumping stations.
- 16) STORMWATER RUNOFF. The water derived from rains falling within a tributary basin, flowing over the surface of the ground or collected in channels or conduits.
- 17) NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM STORMWATER DISCHARGE PERMIT. A permit issued by the EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

6.6.4.2 Abbreviations

Sec. 2 The following abbreviations shall apply in the interpretation and enforcement in the previous Code article:

- 1) BMPs Best Management Practices
- 2) MS4 Municipal separate storm sewer system.
- 3) NPDES National Pollutant Discharge Elimination System.
- 4) RULE 5. 327 IAC 15-5 et seq.

(Ord. No. 4327, §§ 6.01 to 6.14, 12-20-2005, 4328, §§ 8.01 to 8.06, 02-07-2006, 4329, §§ .78.01 to 7.04, 01-03-2006)

Article 7 Numbering Houses and Business Buildings

Chapter 1 Numbering Houses and Business Buildings

6.7.1.1 The plan and system of numbering houses and buildings.

Sec. 1 (a) That the plan and system of numbering the houses and buildings of the City of Goshen, shall be that known as the "New Philadelphia Plan, modified only in so far as may be necessary to suit any irregularities that may exist in the platting of said City.

(b) All blocks and lots are to be numbered north and south from Lincoln Avenue, (Market Street) and east and west from Main Street, beginning with the number one hundred(100) for blocks, and designating successive blocks by successive hundreds (100) and the units shall indicate the lots. The first lot in block one hundred (100) shall be numbered one hundred and one (101), north, south, or east and west respectively.

(c) Numbers shall be assigned to each lot or part of lot on all streets, avenues, and public places as follows:

- 1) Twenty-two (22) feet front in business blocks shall constitute one number, and thirty three (33) feet constituting one number in residence blocks, or as near such number of feet as practicable;
- 2) Odd numbers to be assigned to the west side of north and south street and avenues odd-numbers are to be assigned to the north side and -even numbers to the south side.

(d) In case a street does not run through a block the numbers of lots and that of the block itself shall continue to the farther line of the street as the line would. be if the street ran through, and a new block

shall begin at such line.

(Ord. No. 54, § 1, 9-1-1884)

6.7.1.2 Displaying number on house or building.

Sec. 2 (a) That the owner or occupant of every house or business building within said City be, and he is hereby required, within thirty (30) days from the taking effect of this Code article, to place the number assigned to his house or building, as provided in 6.7.1.1 of this Code, in a conspicuous place on the front of his said house or building, which number shall consist of figures not less than two and one-half (2 1/2) inches in length and so made or marked as to be distinct and easily read.

(b) That every owner or occupant of any building hereafter erected within said City shall within thirty (30) days after the erection of the same, place a number thereon according to the provisions of this Code article.

(Ord. No. 54, §§ 2 and 3, 9-1-1884)

6.7.1.3 Penalties for violations

Sec. 3 (a) After the time limited in this Code article for placing numbers on houses and buildings, said City may place a number upon such house or building not numbered as aforesaid, and recover the costs thereof from such owner or occupant in a civil action.

(b) Any person who shall violate any of the provisions of this Code article, or who shall neglect or fail to comply with any of the requirements thereof, shall upon conviction thereof, be fined in any sum not exceeding Twenty-five (\$25.00) dollars.

(Ord. No. 54, §§ 4 and 5, 9-1-1884)

Article 8 Trees

Chapter 1 Planting, Maintenance and Removal of Trees

6.8.1.1 Purpose

Sec. 1 It is the purpose of this Code article to promote and protect the public health, safety and general welfare of the persons and properties of the citizens of Goshen by promoting the planting, maintenance and removal of street trees on public or private lands within the City of Goshen, and to establish procedures for planting trees on City-owned property. It is also the purpose of this Code article to promote the enhancement and protection of the aesthetics and the environment of the City of Goshen.

(Ord. No. 4008, 4-9-2001)

6.8.1.2 Trees prohibited.

Sec. 2 (a) The following trees shall not be planted within the City of Goshen:

- 1) Box Elder
- 2) Female Ginkgo
- 3) Elm
- 4) Cottonwood
- 5) Basswood

(b) The following trees shall not be planted as street trees within the City of Goshen:

- 1) Catalpa
- 2) Tree of Heaven
- 3) Weeping Willow
- 4) Black Walnut
- 5) Podded Honey Locust
- 6) Mulberry
- 7) Bradford Callery Pear

(c) Any tree prohibited by this Code section which is already growing in the City of Goshen on August 1, 1995 shall not be required to be removed. However, such trees shall not be permitted to proliferate.

(d) This Code section shall not apply to any land used for agricultural or commercial nurseries or tree farms.

(Ord. No. 4008, § 2, 4-9-2001)

6.8.1.3 Recommended trees.

Sec. 3 The City of Goshen recommends that the following trees be selected when planting trees within the corporate boundaries of the City of Goshen. The trees included on this list are the most capable of adapting to the conditions of an urban environment.

- 1) Hard Maple

- 2) Crimson Maple
- 3) European Hornbeam
- 4) Hardy Rubber
- 5) Green Ash
- 6) European Ash
- 7) Male Ginkgo
- 8) Sweet Gum
- 9) Callery Pear
- 10) Linden
- 11) White Oak
- 12) Burr Oak
- 13) Tulip

(Ord. No. 4008, § 3, 4-9-2001)

6.8.1.4 Damaging and injuring trees.

Sec. 4 It shall be unlawful for any person to:

- 1) Damage, cut, carve or injure any street tree.
- 2) Attach any sign, wire or injurious material to any street tree. However, wires or other supports used to straighten trees shall not be deemed to be unlawful.
- 3) Allow any gaseous, liquid or solid substance harmful to trees to come in contact with the roots, leaves, or bark of any street tree.

(Ord. No. 4008, § 4, 4-9-2001)

6.8.1.5 Tree removal, stump removal & replacement of street trees.

Sec. 5 (a) All dead, decayed or diseased street trees shall be removed unless the diseased or decayed tree can be restored to good health and the necessary action to restore the tree to good health is taken.

(b) City shall notify property owner that the street tree on its property is dead, decayed or diseased. The notice shall give the owner a period of sixty (60) days to remove the tree or take action

reasonably calculated to cure the existing disease.

(c) If the City of Goshen removes a street tree for road widening purposes or utility construction, the City shall either compensate the property owner for the tree if required for a state or federally funded project, or the City shall offer to plant a replacement tree at the request of the property owner and at the City's expense.

(d) The City of Goshen is to develop a program to facilitate the removal of street trees in the City. Under this program, property owners may then make application with the City to have their street tree removed by a contractor approved by the Board of Public Works and Safety. The City will pay the contractor for the work performed and allow the property owner up to five (5) years to reimburse the City for fifty percent (50%) of the cost of the tree removal. The City may elect to charge interest for money as advanced at a rate to be established on an annual basis by the Board of Public Works and Safety. This program shall be offered to property owners until the funding appropriated by the Common Council for this purpose has been expended.

(e) The City of Goshen is to develop a program to facilitate the planting of street trees in the City. Under this program, property owners, excluding developers, may then make application with the City to receive a street tree at a fifty percent (50%) cost share. In determining who is qualified to receive a street tree, the City shall consider the following factors:

- 1) Whether the funding appropriated by the Common Council for this purpose has been expended.
- 2) Whether the property owner had a street tree removed.
- 3) Whether the property owner has previously received a street tree from the City.
- 4) Whether the tree can be planted in a location within the parameters set by the Shade Tree Board, and without negatively affecting nearby streets, alleys, sidewalks, utilities, buildings, and other trees.
- 5) Whether the tree will be planted along a street or alley.
- 6) Whether the property owner lives in an area that may be designated by the Shade Tree Board as an area the City will focus street tree planting efforts.

(f) Further, as a condition of receiving a street tree, the property owner must agree to plant (if the City does not plant the tree) and maintain the street tree in accordance with the standards set by the Shade Tree Board.

(Ord. No. 4008, § 5, 4-9-2001)

6.8.1.6 Trimming and maintenance of street trees.

Sec. 6 (a) All property owners with any kind of street tree, shrub or hedge shall keep the street tree, shrub or hedge trimmed and maintained so that all dead wood and decayed branches are removed to prevent dangerous conditions to persons or property and so that the tree, shrub or hedge does not obstruct the visibility and free use of public ways.

(b) All street trees, shrubs or hedges that overhang sidewalks or traveled portions of streets shall be trimmed to a height so that the tree, shrub or hedge does not interfere with pedestrian and vehicular traffic. Any street tree trimmed to a height of not less than eight feet (8') over sidewalks and fourteen feet (14') over streets will be construed to meet this Code section. If the City believes that any street tree, shrub or hedge needs to be trimmed to bring it into conformity with this Code section, a notice of the need of the trimming shall be given to the property owner. The City shall give the property owner twenty (20) days to trim the street tree, shrub or hedge so that it complies with this Code section.

(c) The City of Goshen is to develop a program to facilitate trimming and maintaining of street trees in the City. Under this program, property owners may then make application with the City to have their street tree trimmed or otherwise maintained by a contractor approved by the Board of Public Works and Safety. The City will pay the contractor for the work performed and allow the property owner up to five (5) years to reimburse the City for fifty percent (50%) of the cost of the tree trimming or other tree maintenance activity. The City may elect to charge interest for money as advanced at a rate to be established on an annual basis by the Board of Public Works and Safety. This program shall be offered to property owners until the funding appropriated by the Common Council for this purpose has been expended.

(Ord. No. 4008, § 6, 4-9-2001)

6.8.1.7 Emergency action.

Sec. 7 (a) If the City finds it necessary to take emergency action concerning a street tree in order to protect life, safety or property, it may take action without issuing notice. However, this action must be limited to removing any immediate danger.

(b) The City may recover the costs incurred in taking such emergency actions against the property owner upon which the street tree was located. The City shall first bill the property owner for fifty percent (50%) of the costs incurred by the City in removing the immediate danger. If such costs remain unpaid after sixty (60) days, the City may proceed to collect such amounts by filing a civil action in any court of competent jurisdiction within Elkhart County, Indiana.

(Ord. No. 4008, § 7, 4-9-2001)

6.8.1.8 Notice.

Sec. 8 (a) This Code article may be enforced by the Goshen Board of Public Works and Safety through the Goshen Ordinance Administrator, any Goshen Police Officer, City Legal Department or any other designee of the Goshen Board of Public Works and Safety.

(b) Any notice issued in the enforcement of this Code article must contain the name of the person to whom the order is issued, the address of the property that is the subject of the order, the action the order requires, the period of time in which the action is required to be accomplished measured from when the notice of the order is given, a statement indicating that the property owner may appeal the City's determination that the tree or stump is in violation of this Code article. The notice shall also include a brief statement indicating why the action is required.

(c) Any appeal to the Goshen Board of Public Works and Safety must be made within thirty (30) days of the receipt of the notice.

(d) The property owner requesting the appeal shall be given an opportunity to appear at the hearing and present such evidence that reasonably relates to whether the required action is consistent with the terms of this Code article.

(e) The affected property owner will be afforded the opportunity to cross-examine any person providing information or testimony to the Board of Public Works and Safety.

(f) Any service of process required by this Code article is sufficient if it is served upon owners of the property listed in the Elkhart County Auditor's Office by first-class U.S. mail. In addition, notice must be posted on the property where the tree is located.

(g) Any action of the Board of Public Works and Safety is subject to review by the Elkhart Circuit or Superior Court, but it must be filed within twenty (20) days of the action taken by the Board of Public Works and Safety.

(Ord. No. 4008, § 8, 4-9-2001)

6.8.1.9 Violation.

Sec. 9 A person violating any section of this Code article is subject to a fine of up to Five hundred Dollars (\$500.00).

(Ord. No. 4008, § 11, 4-9-2001)

6.8.1.10 Definitions.

Sec. 10 For the purpose of this Code article, the following terms, phrases and words shall have the following meanings:

- 1) PUBLIC WAY. The entire width, including easements and right-of-ways of any street, highway, avenue, boulevard, road or lane provided for public travel or use in the municipality.
- 2) PUBLIC PLACES. All public parks and other grounds owned by the municipality.
- 3) MUNICIPALITY. The corporate City limits of Goshen, Indiana.
- 4) STREET TREES. Any tree on public or private property that is located within the public way.
- 5) DEVELOPER. Any individual, partnership, corporation or other entity that constructs buildings or structures on land for other than their own personal use which shall include preparing land by subdividing or making infrastructure improvements.
- 6) PERSON. Any individual, partnership, corporation or other entity.
- 7) PROPERTY OWNER. Any person that has an ownership interest in real estate within the City of Goshen.

(Ord. No. 4008, § 1, 4-9-2001)

Article 9 Rank Vegetation and Noxious Weeds

Chapter 1 Rank Vegetation and Noxious Weeds

6.9.1.1 Required maintenance.

Sec. 1 (a) The owners of real estate located within the City of Goshen shall cut or remove rank vegetation from an area within the public right-of-way and within one hundred fifty feet (150') of an adjacent real estate owner or within one hundred fifty feet (150') of a public right-of-way.

(b) If an owner of real estate has a variance, the owner of the real estate shall maintain the real estate in accordance with the conditions of the variance.

(c) The owners of real estate located within the City of Goshen shall remove and eliminate all noxious weeds.

(Ord. No. 4066, § 1, 2-5-2002)

6.9.1.2 Exclusions.

Sec. 2 This Code article shall not apply to:

- 1) Wooded areas;
- 2) Wetlands; or
- 3) Wildlife projects conducted and funded by educational institutions or local, state or federal government entities.

(Ord. No. 4066, § 3, 2-5-2002)

6.9.1.3 Application for variance.

Sec. 3 (a) Any owner of real estate in the City of Goshen may apply for a variance either before or after the City serves a notice of violation upon the owner. A variance may permit the growing of rank vegetation. The variance request shall be filed with the Goshen Department of Parks and Recreation upon forms supplied by the Parks Department.

(b) The variance request must be in writing and describe the real estate affected in sufficient detail to enable the Parks Department to accurately identify the real estate. The variance request shall describe the types of plants to be grown and the specific management and maintenance techniques to be employed.

(Ord. No. 4066, § 4, 2-5-2002)

6.9.1.4 Preliminary meeting.

Sec. 4 (a) If the Parks Department determines the variance request meets the Code article's requirements, the Parks Department will send notice of a preliminary meeting to all real estate owners within three hundred feet (300') of the variance. Each notified real estate owner shall be supplied with a copy of the variance request. Notification is sufficient if sent by first-class mail to each owner at the address listed with the Elkhart County Auditor's office.

(b) At the preliminary meeting, the petitioner and Parks Department will describe to those attending the meeting the variance requested and respond to questions.

(c) At the conclusion of the preliminary meeting, the Parks Department will advise those in attendance that they may file a written objection to the variance request with the Parks Department on a form supplied for that purpose.

(d) The Parks Department will notify the media of the preliminary meeting in the same manner as if the notice to the media was required under the Indiana Open Door Statute.

(Ord. No. 4066, § 5, 2-5-2002)

6.9.1.5 Review board.

Sec. 5 (a) If anyone attending the preliminary meeting files an objection to the variance requested within five (5) days of the preliminary meeting, the Parks Department shall set the variance request for a hearing before the Review Board. The Parks Department shall notify the petitioner and each person attending the preliminary meeting of the date, time, and location that the variance will be heard by the Review Board.

(b) The Review Board will consist of three (3) persons. One (1) person will be appointed by the Purdue University Co-Operative Extension Service. One (1) person will be appointed by the Elkhart County Board of Realtors. The Board of Realtors appointment must have familiarity with real estate values. One (1) person will be appointed by the Goshen Common Council. The Common Council's appointment must have formal training in landscaping and serve a one (1) year term. A Board member must be a resident of the State of Indiana and be at least twenty-one (21) years of age.

(c) The Board will only meet when an objection to a variance request is filed with the Parks Department by a person who attended the preliminary meeting. The appointments to the Board will be made by the designated entities for each objection filed, except the Common Council's appointment will serve a one (1) year term. The other appointments will serve until the Board has rendered a decision on the variance request. The Board will hold the hearing within thirty (30) days of their appointment.

(d) Any resident of the City of Goshen or any owner of real estate within the City of Goshen that attends the hearing on a variance request shall be provided with an opportunity to be heard on the merits of the variance.

(e) At the hearing, the Review Board will consider the variance's impact on the neighborhood's overall appearance, taking into consideration the type of neighborhood into which the variance will be introduced, the location and size of the area affected, the visibility to neighboring real estate or to public sidewalks or roadways, and the objections of neighboring real estate owners. The Board will consider any trend toward natural landscaping and allow for the introduction of new ideas and new approaches, provided the variance request is not an extreme deviation from the aesthetic appearance of the existing neighborhood.

1) The variance request must be approved unless a majority of the Board determines on the basis of the information submitted at the hearing that the variance will do one of the following:

(A) pose a substantial hazard to adjoining parcels of real estate. The hazard must be different in kind or degree than the hazards posed to adjacent real estate owners in areas

where natural landscaping is permitted by exemption or by variance.

(B) materially lower real estate values of adjacent parcels of real estate.

(C) constitute an extreme deviation from the aesthetic appearance of the existing neighborhood.

- 2) The Board may add reasonable conditions to the granting of any variance.
- 3) The Board may approve a variance that constitutes an extreme deviation from the aesthetic appearance of the existing neighborhood if the Board finds the benefits of the variance, including the impact on the environment, outweigh the negative impact on the aesthetic appearance of the existing neighborhood.

(Ord. No. 4066, § 6, 2-5-2002)

6.9.1.6 Notice of violation.

Sec. 6 Upon discovering a parcel of real estate containing rank vegetation, unmanaged or neglected vegetation growth, noxious weeds, or upon discovering a parcel of real estate that is not maintained in accordance with the conditions of a variance, the Ordinance Administrator shall give the owner of the real estate a written notice to cut and remove the rank vegetation, remove and eliminate the noxious weeds, or comply with the variance. The owner shall have five (5) business days to abate the violation from the real estate. Service of this notice is adequate if given to the owner of the real estate in person or sent by first-class mail, postage prepaid, to the owner at the address listed with the Elkhart County Auditor's Office.

(Ord. No. 4066, § 8, 2-5-2002)

6.9.1.7 Failure to comply.

Sec. 7 Should any person who has been provided written notice fail, neglect or refuse to cut or remove the rank vegetation and/or fail, neglect or refuse to remove and eliminate the noxious weeds from the real estate within five (5) business days as required by the notice, a representative of the City of Goshen may enter upon the premises and cause the rank vegetation to be cut or removed and/or cause the noxious weeds to be removed and eliminated.

(Ord. No. 4066, § 9, 2-5-2002)

6.9.1.8 Bill issued to owner.

Sec. 8 In the event the City of Goshen is forced to cut or remove rank vegetation and/or remove

and eliminate the noxious weeds, the Clerk-Treasurer shall issue a bill to the owner of the real estate for Seventy-five Dollars (\$75.00) or the actual cost of the abatement, if greater. The Clerk-Treasurer shall keep record of the billing and collect the same as the Clerk-Treasurer does other charges of the City. Payment shall be due to the Clerk-Treasurer's Office fifteen (15) days after the bill is mailed to the owner.

(Ord. No. 4066, § 10, 2-5-2002)

6.9.1.9 Failure to pay.

Sec. 9 If the owner fails to pay the bill within thirty (30) days, the City may collect the bill in any manner available at law. The Clerk-Treasurer may also certify to the Elkhart County Auditor the amount of the bill plus any additional administrative costs incurred in the certification. The Auditor shall place the total amount certified on the tax duplicate for the property affected, and the total amount, including any accrued interest, shall be collected as delinquent taxes and shall be disbursed to the general fund of the City of Goshen as provided by Indiana Code 36-7-10.1-4.

(Ord. No. 4066, § 11, 2-5-2002)

6.9.1.10 Board of Public Works and Safety Hearing.

Sec. 10 (a) A person receiving a notice of violation issued pursuant to this Code article or a bill issued pursuant to this Code article may request, in writing, a hearing before the Goshen Board of Public Works and Safety to dispute the existence of a violation on his or her real estate or dispute the accuracy of a bill issued. The request must be received by the Mayor's Office within the amount of time set out in the notice of violation which may not be less than five (5) business days, or within fifteen (15) days of the date of that the bill was issued. A hearing will be held within ten (10) days of the City's receipt of a written request for such hearing unless the person receiving a notice has also requested a variance. In that case, the hearing will be held within ten (10) days after the final action on the variance.

(b) At the hearing before the Board of Public Works and Safety, the person receiving a notice of violation will be given the opportunity to appear, with or without counsel, to present such evidence to the Board of Public Works and Safety. Each person appearing shall have the opportunity to cross-examine those persons establishing the violation for the City, and testify on their own behalf. The City of Goshen shall assist the person receiving a notice of violation in obtaining witnesses, exhibits, and documentation to present at the time of the hearing if such information is not available to the person requesting assistance and can be obtained by the City.

(c) At the hearing the Board of Public Works and Safety shall enter a finding determining whether the party notified is the owner of the real estate; and whether the condition of the real estate is in violation of this Code article or whether the bill issued is accurate. The Board may affirm or modify the notice of violation consistent with the Board's findings.

(Ord. No. 4066, § 12, 2-5-2002)

6.9.1.11 Appeal.

Sec. 11 Any appeal from the findings and order of the Board of Public Works and Safety shall be taken in accordance with the provisions of Indiana Code 36-1-6-9.

(Ord. No. 4066, § 13, 2-5-2002)

6.9.1.12 Definitions.

Sec. 12 (a) Rank vegetation shall mean any plant exceeding six inches (6") in height. Trees, shrubberies, flowers, ornamental grasses, and agricultural crops exceeding six inches (6") are not to be considered rank vegetation unless they constitute an extreme deviation from the aesthetic appearance of the existing neighborhood.

(b) Noxious weeds shall include the following weeds:

- 1) Canada thistle (*Cirsium arvense*).
- 2) Johnson grass and *Sorghum album* (*Sorghum halepense*).
- 3) Bur cucumber (*Sicyos angulatus*).
- 4) Shattercane (*Sorghum bicolor* (L.) Moench spp. *Drummondii* (Steud.) deWet).
- 5) Poison ivy.
- 6) Poison sumac.
- 7) Poison oak.
- 8) Quackgrass (*Elytrigia repens*).
- 9) Carolina horsenettle (*Solanum carolinense*).
- 10) Cocklebur (*Xanthium strumarium*).
- 11) Wild mustard (*Brassica kaber* var. *pinnatifida*).

(c) Wooded areas shall mean an area densely covered with trees and shrubs.

(d) Wetlands shall mean a swampy or marshy area and include the areas immediately surrounding ponds, river beds, and streams.

(Ord. No. 4066, § 2, 2-5-2002)

Article 10 Solid Waste

Chapter 1 Solid Waste

6.10.1.1 Administration and enforcement.

Sec. 1 Enforcement of the provisions of this Code article shall be under the jurisdiction of the Board of Public Works and Safety. A representative of the Legal Department, including the Ordinance Administrator, or Building Department, shall have the authority to make inspections, determine violations, and take action to enforce the provisions of this Code article.

(Ord. 3880, § 2, 7-6-1999)

6.10.1.2 Unlawful disposal of solid waste.

Sec. 2 (a) It shall be unlawful for any person to leave, place, throw or deposit, or cause or permit any other person to leave, place, throw or deposit, in or upon any street, alley, sidewalk, public place, public property, or private property within the City limits, solid waste of any kind.

(b) It shall be unlawful for any person to leave, place, throw or deposit within the City limits, or cause or permit any other person to leave, place, throw or deposit within the City limits, solid waste of any kind for the purpose of collection and disposal by the City when the solid waste is generated at a location outside the City limits or from a location where the City does not collect solid waste.

(c) It shall be unlawful for any person to leave, place, throw or deposit any yard waste at the Goshen Environmental Center unless such yard waste is generated at a location within the City limits. However, no tree service contractor, landscaping contractor, nursery or similar business enterprise shall leave, place, throw or deposit any yard waste at the Goshen Environmental Center. It shall be unlawful for any person to leave, place, throw or deposit grass clippings at the Goshen Environmental Center.

(d) It shall be unlawful for any person to bury solid waste within the City limits.

(e) It shall be unlawful for any person to allow an accumulation of solid waste which creates a fire, health or safety hazard, or harborage for rodents or insects.

(f) No person shall deposit in a solid waste container, or otherwise set out for solid waste collection and disposal by the City, or its authorized representative, any yard waste consisting of leaves, tires,

or hazardous waste.

(Ord. 3880, § 3, 7-6-1999)

6.10.1.3 Duty of occupant.

Sec. 3 (a) The occupant of any premises within the City, whether business, commercial, industrial, institutional or residential premises, shall maintain the premises in a clean, orderly, safe and sanitary condition, free from any accumulation of solid waste which creates a fire, health or safety hazard, or harborage for rodents or insects.

(b) The occupant of any premises within the City shall ensure that all solid waste are stored on the premises in containers complying with the requirements of this Code article. All waste stored outside a building shall be stored in such containers, except that waste may be stored in a plastic bag complying with the requirements of 6.10.1.6 of this Code, provided that such plastic bag is placed outside no earlier than the day prior to collection.

(c) The occupant of any premises within the City shall cover and/or secure all solid waste containers, keeping the storage area and area surrounding any containers in a clean, orderly and sanitary manner and preventing the waste from being scattered by animals, wind or other means. In the event that any solid waste stored in a plastic bag or other container becomes torn, spilled or otherwise scattered, the occupant shall be responsible for clean-up of the area.

(d) The occupant of any premises within the City shall not store any solid waste, including bulky waste, outside for more than seven (7) days.

(Ord. 3880, § 4, 7-6-1999)

6.10.1.4 Duty of owner.

Sec. 4 (a) The owner of any multi-family dwelling unit shall provide the premises with a sufficient number of covered solid waste containers complying with the requirements of 6.10.1.6 of this Code to allow the occupants to adequately store the solid waste generated by the occupants of the premises between collection days. The owner shall provide a minimum of one (1) 45-gallon container for every two (2) persons residing on the premises. For a single occupant, a minimum of one (1) 32-gallon container must be provided.

(b) The owner of any premises shall not allow the accumulation of solid waste on the premises to such an extent that the solid waste creates a fire, health or safety hazard, or harborage for rodents or insects.

(Ord. 3880, § 5, 7-6-1999)

6.10.1.5 Collection and disposal of solid waste.

Sec. 5 (a) Commercial Solid Waste Collection and Disposal. The occupant of any commercial building shall be responsible for the lawful collection and disposal of all commercial solid waste generated from the location, except that the owner of a building containing five (5) or more rental dwelling units shall also be responsible for the lawful collection and disposal of all solid waste generated from the location.

(b) Residential Solid Waste Collection and Disposal. The City, or its authorized representative, shall provide residential solid waste collection and disposal services from eligible residential buildings. The City, or its authorized representative, is not required to collect any residential solid waste that does not comply with the requirements of this Code article.

- 1) The occupant shall place all residential solid waste at the designated collection site for collection and disposal by the City, or its authorized representative, no later than 7:00 a.m. on the day of collection, nor earlier than the day prior to collection if the collection site is adjacent to a City street. The occupant shall retrieve all solid waste containers from any street side collection site and return the containers to the storage area by 10:00 p.m. on the day of collection.
- 2) The occupant shall place all residential solid waste for collection by the City, or its authorized representative, within five feet (5') of the edge of the traveled portion of the alley if an alley is available, or if there is no alley, within five feet (5') of the edge of the street, or at such other place as approved or designated by the City.

(Ord. 3880, § 6, 7-6-1999)

6.10.1.6 Containers required.

Sec. 6 (a) Commercial Buildings/Commercial Solid Waste.

- 1) The occupant responsible for the condition of property used as any business enterprise and generating commercial solid waste shall have and use solid waste containers of a number and size sufficient to contain all solid waste generated from the location. The owner of a building containing five (5) or more rental dwelling units shall supply the building with containers of sufficient number and size to contain all waste generated from the location.
- 2) All containers in which solid waste is placed shall be made of metal or plastic, insect-proof, rodent-proof and have a tight-fitting, watertight cover.

- 3) All containers shall be maintained in a clean and sanitary condition, and in good repair.
- 4) Any container that does not conform to the provisions of this Code section must be promptly removed and replaced by a proper container upon receipt of notice to that effect from the City.

(b) Residential Buildings/Residential Solid Waste.

- 1) The occupant of a property shall have and use either or a combination of:

(A) bags of sufficient strength and tightly secured to contain all solid waste generated from the location without tearing or breaking when lifted. Bags, however, may not be stored outside a building unless placed in solid waste containers meeting the limitations set forth in 6.10.1.6 (b), 2) of this Code. Bags, however, may be placed at the designated collection site without a container no earlier than the day before collection.

(B) solid waste containers of a number and size sufficient to contain all solid waste generated from the location, and meeting the limitations set forth in 6.10.1.6 (b), 2) of this Code.

- 2) All containers in which solid waste is placed shall be made of metal or plastic, insect-proof, rodent-proof and have a tight-fitting, watertight cover. A container shall be of such size and shape as to be easily handled by one person, and shall have a maximum capacity of 45 gallons and not exceed 50 pounds when full. A container with a greater capacity and weight limit may be utilized only if authorized by or provided by the City, or its authorized representative.
- 3) All containers shall be maintained in a clean and sanitary condition, and in good repair.
- 4) Any container that does not conform to the provisions of this Code section, or that may have ragged or sharp edges or any other defect that will hamper or injure the person collecting the contents thereof, or is likely to cause bags to tear, must be promptly removed and replaced by a proper container upon receipt of notice to that effect from the City.

(c) Use of unapproved containers, such as wooden containers, screen/wire containers or 55 gallon drums for the storage and collection of solid waste are prohibited. Replacement containers shall meet the limitations set forth in 6.10.1.6 (a) of this Code if considered to contain commercial solid waste or 6.10.1.6 (b) of this Code if considered to contain residential solid waste.

(Ord. 3880, § 7, 7-6-1999)

6.10.1.7 Notice.

Sec. 7 (a) Upon discovery of a violation of this Code article, the person or persons in violation shall be given written notice describing the violation, and if the City is seeking abatement of the violation, the City shall give the violator three (3) days from the service of the notice to abate the violation.

(b) The notice shall contain the following information:

- 1) Date;
- 2) Name of the person(s) to whom the notice is given, however, if the name of the occupant cannot reasonably be determined, it will be deemed sufficient for the notice to be given to "Occupant";
- 3) Address and/or parcel number of the real property that is subject to the notice;
- 4) Nature of violation and the action required, including the period of time in which the action is required to be accomplished measured from the time the notice is given;
- 5) Statement indicating the opportunity for a hearing or the date of any court appearance required;
- 6) If the City is seeking abatement of the violation, a statement indicating that the notice becomes final three (3) days after notice is given if a hearing is not requested in writing and delivered to the City before the end of the three (3) day period;
- 7) Statement briefly indicating what action can be taken by the City if the notice is not complied with; and
- 8) Name, address and telephone number of the enforcement authority.

(c) Service of this notice is deemed sufficient if given by:

- 1) Sending a copy by registered or certified mail, return receipt requested, to the person(s) to be notified; or
- 2) Delivering a copy personally to the person(s) to be notified; or
- 3) Leaving a copy at the residence of the person(s) to be notified.

(d) It shall be the responsibility of the occupant to abate the existing violation after receipt of a notice. If the notice is not complied with, the City may take appropriate action to abate the violation, and the cost thereof shall be assessed pursuant to 6.10.1.9 of this Code, or the City may elect to notify the owner of the premises of the violation and order the owner to abate the violation. The

owner shall be entitled to the same notice and period of time to abate the violation that was originally given to the occupant. If the owner does not then abate the violation, the City may take appropriate action to abate the violation and assess the costs of the abatement to either the occupant or the owner.

(e) Enforcement of this Code article against any owner of record shall not in any manner diminish the ability of the City to enforce this Code article against an occupant of the real property, and the enforcement of this Code article against any occupant shall not in any manner diminish the ability of the City to enforce the Code article against an owner of record of the real property.

(f) This Code article shall not prohibit a landlord from including a provision in a lease agreement to collect any enforcement costs imposed by the City against the landlord due to the actions or inactions of a tenant.

(Ord. 3880, § 8, 7-6-1999)

6.10.1.8 Hearing.

Sec. 8 (a) In the event that a person receiving a notice seeking abatement of a violation does not believe that he or she is in violation of this Code article, the person may request a hearing before the Board of Public Works and Safety.

(b) The request for a hearing before the Board of Public Works and Safety must be in writing and delivered to the Clerk-Treasurer's Office within three (3) days after the date the notice is given.

(c) A hearing will be scheduled to be held within ten (10) days of receipt of the written request.

(d) At the hearing, the person will be given the opportunity to appear, with or without counsel, to present such evidence to the Board of Public Works and Safety that reasonably relates to whether the presence of the solid waste on the real property is in violation of this Code article. Each person appearing will also be given the opportunity to cross-examine any opposing witnesses and present evidence and arguments.

(Ord. 3880, § 9, 7-6-1999)

6.10.1.9 Abatement of violation by the City; collection of costs.

Sec. 9 (a) The City may take action to abate the violation from the real property if any person who has been provided written notice fails, neglects or refuses to comply with the notice; and has not requested a hearing, or, if a hearing was requested, the Board of Public Works and Safety affirmed the notice; and the notice is not being reviewed by the county circuit or superior court. The City may

abate the violation by contract with a contractor or with City personnel and equipment.

(b) The owner and occupant of the real property shall be jointly and severally responsible for the City's cost for the abatement of the violation under this Code article. The costs for abatement shall be Fifty Dollars (\$50.00) or the actual cost of the work performed by a City department or contractor, whichever is greater.

(c) The Clerk-Treasurer shall send a bill to the person violating this Code article for the City's cost for the abatement of the violation. Payment shall be due fifteen (15) days after the billing date.

(d) If the bill is not paid within forty-five (45) days of the due date, the City may file a civil action in a court of competent jurisdiction in Elkhart County against the violator to collect the costs for the abatement of the violation, including reasonable attorneys' fees.

(Ord. 3880, § 10, 7-6-1999)

6.10.1.10 Penalty.

Sec. 10 Any person who violates a provision of this Code article may be subject to a fine in an amount not more than Five hundred Dollars (\$500.00) for each offense. If the violation is of a continuing nature, each day of failure to comply with the provisions of this Code article shall constitute a separate offense. A complaint for violation seeking the imposition of a fine may be filed with any court of competent jurisdiction in Elkhart County.

(Ord. 3880, § 11, 7-6-1999)

6.10.1.11 Definitions.

Sec. 11 For the purposes of this Code article, the following words, terms and phrases shall have the meanings set forth:

- 1) **BULKY WASTE.** All large, heavy or otherwise difficult to handle wastes with weights and/or volumes greater than that allowed for an acceptable container, including, but not limited to, appliances, white goods and furniture.
- 2) **COMMERCIAL BUILDING.** Any building, or part of a building, used for any business enterprise, commercial enterprise, industrial enterprise or institutional establishment, including a building containing five (5) or more rental dwelling units.
- 3) **COMMERCIAL SOLID WASTE.** All solid waste which results from the operation of any business enterprise, including commercial waste, industrial waste, institutional waste, or waste from the cleanup or maintenance of property rental operations. For the purposes of

- this Code article, commercial solid waste shall also include solid waste generated from a building containing five (5) or more rental dwelling units.
- 4) CONTAINER. A receptacle designed and intended for the storage of solid waste, and where permitted, may include bags.
 - 5) DWELLING UNIT. Any room or group of rooms located within a building and forming a single habitable residence with facilities which are used or intended to be used for living, sleeping, cooking and eating.
 - 6) HAZARDOUS WASTE. Any material, solid waste, chemical or substance determined to be hazardous by state or federal regulations or may be potentially hazardous to any person, to property, or to the environment.
 - 7) OCCUPANT. The person in actual possession of the property, premises, building or dwelling unit, whether or not the owner.
 - 8) OWNER. The legal or equitable owner of record who has a right to participate in controlling the property, premises, building or dwelling unit, whether or not the occupant.
 - 9) PERSON. Any individual, firm, association, partnership or corporation.
 - 10) RESIDENTIAL BUILDING. Any building, or part of a building, that contains one (1) or more dwelling units, but excluding a building containing five (5) or more rental dwelling units.
 - 11) RESIDENTIAL SOLID WASTE. All household solid waste originating from a dwelling unit within the City and generated by the occupant. For the purposes of this Code article, residential solid waste shall exclude solid waste generated from a building containing five (5) or more rental dwelling units.
 - 12) SOLID WASTE. All solid and semisolid wastes, including garbage, litter, trash, refuse and rubbish.
 - 13) YARD WASTE. Vegetative matter resulting from landscaping and garden maintenance, including, but not limited to, leaves, grass clippings, branches, brush, shrubbery, trees and flowers.

(Ord. 3880, § 1, 7-6-1999)

Article 11 Graffiti

Chapter 1 Graffiti

6.11.1.1 Declaration of nuisance.

Sec. 1 The existence of graffiti anywhere within the boundaries of the City of Goshen is a public nuisance and may be removed according to the provisions and procedures contained in this Code article.

(Ord. 3779, § 2, 7-29-1997)

6.11.1.2 Removal by person applying graffiti.

Sec. 2 Any person applying within the City of Goshen shall have the duty to remove the same immediately, but not longer than 72 hours after notice by the City or the owner of the property involved. Each instance of failure by a person to remove graffiti following notice shall constitute a separate violation. Everyday that the graffiti is not removed after notice shall constitute a separate violation of this Code article.

(Ord. 3779, § 3, 7-29-1997)

6.11.1.3 Removal at City's expense.

Sec. 3 (a) Graffiti located on privately owned property within the City of Goshen so as to be capable of being viewed by a person utilizing any public right-of-way may be removed by the City at the City's expense after service of a notice to remove the graffiti.

(b) The notice to remove graffiti shall set forth the following:

- 1) The street address, or other description sufficient to identify the premises affected.

(c) After notifying the person who applied the graffiti in accordance with this Code section or if such person is known immediately upon discovery of the graffiti, the City may notify the owner of the real property on which the graffiti was placed of the City's intent to remove the graffiti at the City's expense. City shall have the right to enter upon the property for the purpose of removing the graffiti from 8:00 a.m. to 5:00 p.m. any Monday through Saturday unless the property owner shall within 72 hours of the City's notice of its intent to remove the graffiti at the City's expense file an objection with the Goshen Board of Public Works and Safety.

(d) If a landowner who files an objection agrees to have the graffiti removed at the landowner's expense within 30 days, no action on the objection will be taken until after the 30 day period has expired.

(e) If an objection is filed and the landowner does not agree to remove the graffiti at the landowner's expense or if filed the time period for such removal has expired, City shall schedule a hearing before the Board of Public Works and Safety for the purpose of hearing the landowner's objection to the removal of the graffiti. The landowner will have the right to appear at the time of the hearing in person or by counsel and will be afforded an opportunity to present evidence to the Board of Public Works and Safety as to why the graffiti should be removed or shall not be removed by the City. Landowner will also be given the opportunity to cross examine any witnesses presented by the City in support of the removal of the graffiti.

(Ord. 3779, § 4, 7-29-1997)

6.11.1.4 Violations

Sec. 4 (a) Any and all violations of 6.11.1.2 of this Code shall be subject to fines not in excess of Five hundred Dollars (\$500.00). This sanction shall be cumulative and in addition to any other applicable relief provided by State law.

(b) Any person who violates 6.11.1.2 of this Code shall be liable to the City of Goshen for the cost of the removal of the graffiti. In the event that any person under the age of 18 violates 6.11.1.2 of this Code the violator's parents, provided the child is living with that parent, shall pay for the actual cost of removing the graffiti up to the maximum amount provided by Indiana Code 34-6-2-21; Indiana Code 34-31-4-1; Indiana Code 34-31-4-2.

(Ord. 3779, § 5, 7-29-1997)

6.11.1.5 Alternative means of Enforcement.

Sec. 5 Nothing in this Code article should preclude the City from taking any other action either civil or criminal to have graffiti removed or take any action against persons responsible for applying the graffiti.

(Ord. 3779, § 6, 7-29-1997)

6.11.1.6 Definitions.

Sec. 6 The following definitions should apply in the interpretation and enforcement of this Code article:

- 1) GRAFFITI. Graffiti means markings unauthorized by the property owner, visible from the premises open to the public, that have been placed upon the property through the use of paint, ink, chalk, dye, etching, or any other substance capable of marking property.

- 2) OWNER. Owner means any entity or entities having legal or equitable interest in the real estate or personal property including, but not limited to the interest of a tenant.
- 3) PREMISES OPEN TO THE PUBLIC. Premises open to the public means all public spaces, including but not limited to streets, alleys, sidewalks, parks, and public open spaces as well as private property on to which the public is regularly invited or permitted to enter for any purpose.
- 4) UNAUTHORIZED. Unauthorized means without consent of the owner.

(Ord. 3779, § 1, 7-29-1997)

Article 12 Miscellaneous

Chapter 1 Garage and Yard Sales

6.12.1.1 Garage, porch, patio, yard sales.

Sec. 1 (a) No person, firm or corporation and no group or groups of persons shall organize, operate and maintain a garage, porch, patio, or yard sale in any residential area or on any premises primarily used for residential purposes for any period or term exceeding four (4) days after which the premises are to be cleaned up and no person, firm, corporation, group or groups of persons may thus organize, operate or maintain such yard or garage sale more than four (4) times during a calendar year.

(b) The penalty for violation of the provisions of subsection (a) above shall be Ten Dollars (\$10.00). Each day of violation shall constitute a separate offense.

(Ord. No. 2924, §§ 1, 2, 11-3-82)

Chapter 2 Advertisements and Handbills

6.12.2.1 Advertising and handbills.

Sec. 1 (a) It shall be unlawful for any person to post, or cause to be posted, on any public or private wall, fence, telephone, telegraph or electric light poles or other structure, any printed advertisement, bills or notices, whatever, without having first obtained permission from the owner or person having lawful control of such wall, walls, poles or other structures.

(b) It shall be unlawful for any person to throw, scatter, or distribute, or cause to be thrown, scattered or distributed, any advertising poster, sign, card, pamphlet, bill, dodger, ticket, book, booklet, sheet of paper, or any other written or printed advertising matter of whatever nature, kind or description, and in whatever from the same may be, upon any sidewalk, street, alley, lane, walk,

sidewalk, public ground, public building, or other public place, or upon any private lot private building, porch or steps, or any part thereof, or to throw into or upon, or deposit therein, or attach to either the inside or outside of any automobile, truck, bus, buggy, wagon, or any vehicle, any of such advertising matter; provided, that it shall not be unlawful to distribute such advertising matter to residences, offices, or mercantile establishments, if the same is handed in at the door or securely fastened, so as to prevent the same from being blown or scattered about by the wind or other cause.

(Ord. No. 149, § 6, 9-14-1903; Ord. No. 789, § 1, 7-1-1935)

6.12.2.2 Placement of goods on sidewalk.

Sec. 2 It shall be unlawful to suspend over, or to deposit on any sidewalk, any goods, wares or merchandise, unless the same shall be within three (3) feet of the building in front of which they are placed.

(Ord. No. 149, § 14, 9-14-1903)

– End of Title 6 –