



# **GOSHEN CITY CODE**

**DECEMBER 6, 2016**



# GOSHEN CITY CODE

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# TITLE 1. ADMINISTRATIVE PROVISIONS

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## Article 1. In General

### Chapter 1. General Provisions

#### 1.1.1.1 Purposes and disclaimer.

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

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

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

(d) The Code does not include fee ordinances for the most part. References to fees within this Code may not be the most recent fees established. Any reference to fees in this codification is not intended to repeal or replace any fee established by ordinance.

(e) This Code also does not include any of the following codes or ordinances:

- (1) Zoning Ordinance
- (2) Subdivision Control Ordinance
- (3) Sign Ordinance
- (4) Development Regulation Ordinance
- (5) Design and Construction Standard for Streets and Utilities
- (6) Ordinances establishing fees and charges
- (7) Ordinances that dedicate or vacate rights of way or easements, or transfers title to real estate

The above referenced ordinances and codes remain in full force and effect as originally passed and amended from time to time.

1.1.1.2 Effective date.

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

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

1.1.1.3 Code designation.

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

1.1.1.4 Severability.

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

1.1.1.5 Effect of repeal of ordinance.

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

1.1.1.6 Effect of ordinance information.

Sec. 6 The presence of an ordinance number and date of passage is intended to denote the derivation of the Code section. The Goshen Common Counsel declares that this Code is a restatement of previously enacted ordinances and applicable amendments to the original ordinances.

## **Chapter 2. Document Organization**

1.1.2.1 Codification of ordinances.

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



### 1.1.2.2 Numbering system.

Sec. 2 (a) This Code incorporates certain material by reference. Any material incorporated by reference is on file in the office of the Goshen Clerk Treasurer.

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

## **Chapter 3. Enforcement of Code**

### 1.1.3.1 Application.

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

(Ord. 3507, 5-12-1992)

### 1.1.3.2 Initiation of enforcement.

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

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

(Ord. 3507, 5-12-1992)

### 1.1.3.3 Commencement of complaint.

Sec. 3 If the violator has not fully complied with the applicable section of this Code or other ordinance within the specified deadline, the City may enforce the section of this Code or other ordinance by filing a complaint in a court of competent jurisdiction within the City of Goshen specifying the nature of the violation, the section of this Code or other ordinance of the City of Goshen violated and whether an injunction against the violation is sought and/or a fine requested. A

person named in any such complaint shall be entitled to a hearing before the court at which the Indiana Rules of Civil Procedure shall govern the hearing process.

(Ord. 3507, 5-12-1992)

#### 1.1.3.4 Penalties.

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

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

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

(Ord. 3507, 5-12-1992)

#### 1.1.3.5 Appeal of court decision.

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

(Ord. 3507, 5-12-1992)

#### 1.1.3.6 Alternative procedure.

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

(b) The City may request a hearing be held before the City of Goshen Board of Public Works and Safety instead of initiating an action in a court of competent jurisdiction. The City of Goshen Board of Public Works and Safety may order any action to be taken necessary to eliminate any violation of the

section of this Code or other ordinance and may prohibit any action which would constitute a violation of the section of this Code or other ordinance. The Board, may not, however, impose a fine or order payment of the cost of enforcement.

(Ord. 3507, 5-12-1992)

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

Sec. 7 Any action taken by the Board of Public Works and Safety is subject to the review by any court of competent jurisdiction within Elkhart County. A person requesting a judicial review must file the verified complaint, including the findings of fact and action taken by the City of Goshen Board of Public Works and Safety. The complaint must be filed within sixty (60) days after the date the action was taken. Any appeal will be heard by the court de novo. The court may affirm, modify or reverse the action taken by the City of Goshen Board of Public Works and Safety.

(Ord. 3507, 5-12-1992)

**Article 2. Ordinance Violations Bureau**

**Chapter 1. Ordinance Violations Bureau**

1.2.1.1 Establishment.

Sec. 1 An ordinance violations bureau is established.

(Ord. 3846, 8-4-1998)

1.2.1.2 Violations clerk; duties.

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

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

(Ord. 4411, 2-6-2007)

1.2.1.3 Schedule of civil penalties.

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

- (1) Parking Violations,..... \$150.00  
First offense

(2) Parking Violations, .....	\$200.00
Second offense within one (1) year	
(3) Parking Violations, .....	\$250.00
Third offense and subsequent offenses within one (1) year	
(4) All other Code Violations, .....	\$175.00
First offense	
(5) All other Code Violations, .....	\$225.00
Second offense within one (1) year	
(6) All other Code Violations, .....	\$250.00
Third offense and subsequent offenses within one (1) year	

(Ord. 4411, 2-6-2007; Ord. 4519, 1-4-2009)

1.2.1.4 Right to trial; denial of violation, failure to satisfy civil penalty assessed.

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

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

(Ord. 4411, 2-6-2007)

**Article 3. Public Records**

**Chapter 1. Access to Public Records**

1.3.1.1 Unauthorized alteration of a public record; penalty.

Sec. 1 (a) It shall be unlawful for any person having or obtaining access to a public record to alter the content of the public record from its original state without the prior written authorization from the City.

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

(Ord. 3930, 12-7-1999)

## **Article 4. Dishonored Check, Draft, Order, or Like Instrument**

### **Chapter 1. Dishonored Check, Draft, Order or Like Instrument**

#### **1.4.1.1 Application.**

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

(Ord. 4000, 2-13-2001)

#### **1.4.1.2 Surcharge.**

Sec. 2 If a check, draft, order or like instrument tendered to the City of Goshen is dishonored or returned unpaid for any reason, the City may charge and collect from the maker or drawer, or the person for whose benefit the instrument was given, an amount not to exceed Twenty Dollars (\$20.00) plus an amount equal to the actual charge by the depository institution for each returned or dishonored instrument. The charge shall not be considered an interest charge, a finance charge, a time-price differential, or any charge of a similar nature.

(Ord. 4000, 2-13-2001)

#### **1.4.1.3 Notice; collection by City; referral of dishonored checks to prosecuting attorney.**

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

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

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

(Ord. 4000, 2-13-2001)

**– End of Title 1 –**



## TITLE 2. CIVIL RIGHTS

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### Article 1. Community Relations

#### Chapter 1. Public Policy

##### 2.1.1.1 Equal opportunity.

Sec. 1 (a) It is the public policy of the City of Goshen to provide all of its citizens equal opportunity for education, employment, access to public conveniences and accommodations, and acquisition through purchase or rental of real property, including but not limited to housing, and to eliminate segregation or separation based solely on race, religion, color, sex, disability, national origin or ancestry, since such segregation is an impediment to equal opportunity. Equal education and employment opportunities and equal access to and use of public accommodations and equal opportunity for acquisition of real property are declared to be civil rights to be protected by the City of Goshen by the means of this Code article and 2.2 of this Code.

(b) The practice of denying these rights to properly qualified persons by reason of the race, religion, color, sex, disability, national origin, or ancestry of such person is contrary to the principles of freedom and equality of opportunity and is a burden to the objectives of the public policy of the City and shall be considered as discriminatory practices. The promotion of equal opportunity without regard to race, religion, color, sex, disability, national origin, or ancestry through reasonable methods is the purpose of this Code article.

(c) It is also the public policy of the City to protect employers, labor organizations, employment agencies, property owners, real estate brokers, builders, and lending institutions from unfounded charges of discrimination.

(d) It is declared to be contrary to the public policy of the City and an unlawful practice for any person, for profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, religion, color, sex, disability, national origin, or ancestry.

(Ord. 4201, 4-13-2004; Ord. 4339, 2-7-2006)

2.1.1.2 Commission created.

Sec. 2 There is created a local civil rights commission to be known as the Goshen Community Relations Commission to effectuate within the City limits of Goshen the public policy of the City as declared in 2.1.1.1 of this Code.

(Ord. 4201, 4-13-2004; Ord. 4339, 2-7-2006)

2.1.1.3 Membership of commission; appointment; term; vacancies; removal.

Sec. 3 (a) The Goshen Community Relations Commission shall consist of nine (9) members, all who must be residents of the City of Goshen.

(b) The Mayor shall appoint five (5) members of the Commission, and the Goshen Common Council shall appoint four (4) members of the Commission. In making the appointments to the Commission, the appointing authority shall take into consideration all interests in the community's diversity.

(c) Members of the Commission shall be appointed within sixty (60) days after the adoption of Ordinance 4201. Members shall initially be appointed to serve the following terms:

- (1) Two (2) members appointed by the Mayor and one (1) member appointed by the Common Council shall serve an initial term of one (1) year.
- (2) One (1) member appointed by the Mayor and two (2) members appointed by the Common Council shall serve an initial term of two (2) years.
- (3) Two (2) members appointed by the Mayor and one (1) member appointed by the Common Council shall serve an initial term of three (3) years.

(d) After the initial term expires, successors to all members shall be appointed for a term of three (3) years. All terms expire on the first Monday in January, but a member continues in office until his or her successor is appointed.

(e) If a vacancy occurs on the Commission, then the appointing authority shall appoint a successor to serve the remainder of the unexpired term.

(f) The appointing authority may remove a member from the Commission for cause which shall include repeated failure to attend meetings of the Commission; failure or refusal to discharge duties as a Commissioner; commission of a felony; willful or repeated failure or refusal to follow lawful procedures in the conduct of office; or gross misconduct bringing the member, the City or the Commission into discredit. Commission members will automatically be removed for missing in excess of four (4) scheduled meetings during a calendar year unless an exception is made for an excuse ruled acceptable by the appointing authority. In the event of such removal, the appointing



authority shall certify in writing to the member and the Community Relations Director the cause for such removal.

(Ord. 4201, 4-13-2004; Ord. 4339, 2-7-2006)

#### 2.1.1.4 Meetings; officers; quorum.

Sec. 4 (a) At the first meeting of every calendar year, the Commission shall elect from among its membership a Chairperson who shall serve until the first meeting of the following calendar year.

(b) The Commission shall hold one (1) regular meeting each month, and such called meetings as its Chairperson may deem to be necessary.

(c) A minimum of five (5) members of the Commission must be present to constitute a quorum. It shall take the concurrence of a majority of the Commission membership present at a proper quorum to take official action.

(Ord. 4201, 4-13-2004; Ord. 4339, 2-7-2006; Ord. 4526, 2-27-2009)

#### 2.1.1.5 Powers and duties.

Sec 5 (a) The Commission may study and recommend to the Common Council programs and policies that enhance communications and understanding among all residents of the community.

(b) The Commission may develop and maintain programs that build positive relations among the community and enhance problem-solving skills among residents throughout the community.

(c) The Commission shall establish and maintain an office in the City.

(d) The Mayor may appoint a Community Relations Director, subject to the approval of the Community Relations Commission. The Director shall serve at the pleasure of the Mayor and may be dismissed without cause. Attorneys, other employees and agents may be hired by the City as authorized by the Community Relations Commission. The Goshen Common Council must appropriate funds for the payment of the Director, attorneys, other employees or agents before such individuals may commence work for the Commission. All such attorneys, employees and agents may be dismissed with or without cause.

(e) Except as it concerns judicial review, the Commission may, adopt, promulgate, amend and rescind such procedural rules and regulations, as are consistent with the provisions of this Code article and state laws, or its intent and purpose as the Commission may deem necessary. A majority of the entire membership of the Commission is required to adopt, amend or rescind any rules and regulations of the Commission.

(f) The Commission shall formulate policies to effectuate the purposes of this Code article and make recommendations to the Common Council to effectuate such policies.

(g) The Commission shall receive and investigate complaints alleging practices that are contrary to the public policy stated in this Code article or that are in violation of 2.2 of this Code. All investigations of complaints shall be conducted by the Community Relations Director or his or her designee. If the investigation demonstrates that the complaint warrants further action, the Community Relations Director shall encourage the parties to reach an amicable resolution of the issues which may include mediation if both parties agree. If the parties are unable to resolve the issues and the Director has found that the complaint has merit, the Commission shall conduct a hearing in accordance with the provisions of Indiana Code § 22-9-1 and Indiana Code § 22-9.5-6, et al. The Commission shall not hold hearings in the absence of a complaint.

(h) The Commission may issue such publications and such results of investigations and research as in its judgment will tend to promote good will and minimize or eliminate discrimination because of race, religion, color, sex, disability, national origin, or ancestry.

(i) The Commission shall prevent any person from discharging, expelling, or otherwise discriminating against any other person because he or she filed a complaint, testified in any hearing before this Commission, or in any way assisted the Commission in any matter under its investigation.

(j) The Commission may hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath, and require the production for examination of any books and papers relating to any matter under investigation or in question before the Commission. The Commission may make rules as to the issuance of subpoenas by individual commissioners. Contumacy or refusal to obey a subpoena issued under this Code section shall constitute a contempt. All hearings shall be held within the City of Goshen at a location determined by the Commission. A citation of contempt may be issued upon application by the Commission to the circuit or superior court in the county in which the hearing is held or in which the witness resides or transacts business.

(k) The Commission shall state its findings of fact after a hearing and, if the Commission finds a person has engaged in an unlawful discriminatory practice, shall cause to be served on this person an order requiring the person to cease and desist from the unlawful discriminatory practice. If the Commission finds that a person has engaged in an unlawful discriminatory practice, the cease and desist order shall require the person to take further affirmative action as will effectuate the purposes of this Code article, including but not limited to the power:

- (1) To restore complainant's losses incurred as a result of discriminatory treatment, as the Commission may deem necessary to assure justice, however, this specific provision when applied to orders pertaining to employment shall include only wages, salary, or commissions.

Credit shall be given, in appropriate instances, from earnings received elsewhere than from the respondent and complainant must make a good faith effort to mitigate damages;

- (2) To require the posting of notice setting forth the public policy of the state of Indiana and the City of Goshen concerning civil rights and respondent's compliance with the policy in places of public accommodations;
- (3) To require proof of compliance to be filed by respondent at periodic intervals; and
- (4) To require a person who has been found to be in violation of this Code article and who is licensed by a state agency authorized to grant a license to show cause to the licensing agency why this person's license should not be revoked or suspended.

(l) If, upon all the evidence, the Commission shall find that a person has not engaged in any unlawful practice or violation of this Code article, the Commission shall state its findings of facts and shall issue and cause to be served on the complainant an order dismissing the complaint as to the person.

(m) The Commission may furnish technical assistance requested by persons subject to this Code article to further compliance with this Code article or with an order issued thereunder.

(n) The Commission may conduct conciliation proceedings between the parties. Under certain circumstances and with the consent of the Community Relations Director and written permission from the complainant and agreement by the employer, the Commission may attempt to resolve an allegation of discrimination prior to the filing of the complaint. Following a failed resolution proceeding, and after the filing of the complaint, the Commission shall have the power to conduct hearings to find facts, reach conclusions, and issue orders in proper cases that the respondent cease and desist any discriminatory practice found to exist within the scope of the complaint and the evidence.

(o) The Commission may reduce the terms of conciliation agreed to by the parties to writing (to be called a consent agreement) that the parties and a majority of the commissioners shall sign. When signed, the consent agreement shall have the same effect as a cease and desist order issued under 2.1.1.5(k) above. If the Commission determines that a party to the consent agreement is not complying with it, the Commission may obtain enforcement of the consent agreement in a circuit or superior court upon showing that the party is not complying with the consent agreement and the party is subject to the Commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.

(p) In lieu of investigating a complaint and holding a hearing under this Code section, the Commission may issue an order based on findings and determinations by the federal Department of Housing and Urban Development or the federal Equal Employment Opportunity Commission concerning a

complaint that has been filed with one of these federal agencies and with the Commission. The Commission shall adopt by rule standards under which the Commission may issue such an order.

(q) Upon notice that a complaint is the subject of an action in a state or federal court, the Commission shall immediately cease investigation of the complaint and may not conduct hearings or issue findings of fact or orders concerning that complaint.

(r) The Commission may sue to recover civil damages ordered by the Commission to be paid or enforce the terms of any valid order of the Commission.

(s) All procedures carried on by the Commission shall be in accordance and compliance with Indiana Code § 22-9-1, and when applicable, Indiana Code § 22-9-5 and Indiana Code § 22-9.5-6.

(t) The Commission shall submit to the Mayor and Common Council an annual report of the Commission's activities, including the number of complaints filed with respect to each type of alleged discrimination, the number of cases in each category disposed of, the number still pending, and such other information as may be requested by the Mayor or Common Council or as the Commission may see fit to include.

(u) If the Commission concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this Code article or 2.2 of this Code, the Commission may file a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint in a civil or superior court located in Elkhart County in accordance with Indiana Code § 22-9.5-6-6.

(Ord. 4201, 4-13-2004; Ord. 4339, 2-7-2006)

#### 2.1.1.6 Judicial review.

Sec. 6 (a) Either the complainant or the respondent may seek judicial review of a final order of the Commission, if aggrieved by such order.

(b) All proceedings for judicial review of final orders shall be governed by the Administrative Adjudication Act, Section 4-21.5 et seq. of the Indiana Code, as may be amended. If no proceeding to obtain judicial review is instituted within thirty (30) days from the date of receipt of notice by a person that an order has been made by the Commission, the Commission, if it determines that the person upon whom a cease and desist order has been served is not complying or is making no effort to comply, may obtain a decree of a court for the enforcement of the order in circuit or superior court upon showing that the person is subject to the Commission's jurisdiction and resides or transacts business within the county in which the petition for enforcement is brought.

(c) For purpose of judicial review, the record of the public hearing shall consist of a transcript of the oral testimony, exhibits admitted into evidence, all notices, pleadings, exceptions, motions, requests and other papers filed with the Commission with the exception of briefs or arguments of law. The cost of producing such record for judicial review shall be borne by the party making the appeal. The Commission may require the deposit of reasonable security for the payment of such costs before producing such record.

(Ord. 4201, 4-13-2004; Ord. 4339, 2-7-2006)

#### 2.1.1.7 Funding.

Sec. 7 No funding, whether budgeted or by special appropriation, will occur in 2008 or after without the Common Council conducting an assessment of the activities of the Community Relations Commission and taking action to approve the continuation of the Commission.

(Ord. 4201, 4-13-2004; Ord. 4339, 2-7-2006)

#### 2.1.1.8 Definitions.

Sec. 8 With the exception of the definitions set forth below, the definitions set forth in Indiana Code § 22-9-1-3, Indiana Code § 22-9-1-12.1, Indiana Code § 22-9.5-2-1, Indiana Code § 22-9.5-1-2 and Indiana Code § 22-9-5, et al. are adopted by reference and shall apply to the interpretation of this article.

- (1) COMMISSION. The Goshen Community Relations Commission.
- (2) EMPLOYER. The City of Goshen, or any other political subdivision or civil subdivision located in the City of Goshen, and any person employing six (6) or more persons within the City of Goshen, except that the term "employer" does not include:
  - (A) any nonprofit corporation or association organized exclusively for fraternal or religious purposes;
  - (B) any school, educational, or charitable religious institution owned or conducted by or affiliated with a church or religious institution; or
  - (C) any exclusively social club, corporation, or association that is not organized for profit.

(Ord. 4201, 4-13-2004; Ord. 4339, 2-7-2006)

## Article 2. Fair Housing

### Chapter 1. Discrimination

#### 2.2.1.1 Discrimination in the sale or rental of housing.

Sec. 1 The following prohibitions against discrimination in sale or rental of housing apply to all dwellings. Except as exempted by this Code article, it shall be unlawful:

- (1) To refuse to sell or to rent after making a bona fide offer, refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, handicap or national origin.
- (2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, handicap, or national origin.
- (3) To make, print, or publish, or cause to be made, printed, or published any notice, statement or advertisement with respect to the sale or rental of a dwelling that indicates any intention, preference, limitation, or discrimination based on race, color, religion, sex, familial status, handicap, or national origin or an intention to make such a preference, limitation or discrimination.
- (4) To represent to any person because of race, color, religion, sex, familial status, handicap, or national origin that the dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
- (5) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into a neighborhood of a person of a particular race, color, religion, sex, familial status, handicap, or national origin.
- (6) For any person or other entity whose business includes engaging in residential real estate related transactions to discriminate against any person in making available such a transaction or in the terms or conditions of such a transaction because of race, color, religion, sex, familial status, handicap, or national origin. The definition of residential real estate related transactions shall be as the definition is set forth at Indiana Code § 22-9.5-5-6.

(Ord. 3528, 8-4-1992; Ord. 4340, 2-7-2006)

## 2.2.1.2 Exemptions.

Sec. 2 Sections 2.2.1.1(1) and (2) above do not apply to following:

(1) The sale or rental of a single-family house sold or rented by an owner if:

(A) the owner does not:

- i. own more than three (3) single family houses at any one (1) time; or
- ii. own any interest in, nor is there owned or reserved on the owner's behalf, under any express or voluntary agreement, title to, or any right to any part of the proceeds from the sale or rental of more than three (3) single-family houses at any one (1) time; and

(B) the house was sold or rented without:

- i. the use in any manner of the sales or rental facilities or services of any real estate broker, agent or salesman, or any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent or person; and
- ii. the publication, posting, or mailing of a notice, a statement, or an advertisement that indicates any intention, preference, limitation, or discrimination based on race, color, religion, sex, familial status, handicap, or national origin.

(2) The sale or rental of rooms or units in a dwelling containing living quarters accepted or intended to be occupied by no more than four (4) families living independently of each other if the owner maintains and occupies one (1) of the living quarters as the owner's residence.

(3) For the purposes of 2.2.1.2(1)(A) above, a person shall be deemed to be in the business of selling or renting dwellings if he or she has, within the preceding twelve (12) months, participated as:

(A) principal in three (3) or more transactions involving the sale or rental of any dwelling or any interest therein, or

(B) agent, other than in the sale of his own personal residence, in providing sales or rental facilities or services in two (2) or more transactions involving the sale or rental of any dwelling or any interest therein, or

(C) the owner of any dwelling unit designed or intended for occupancy by, or occupied by, five (5) or more families.

- (4) The exemption in 2.2.1.2(1) above applies to only one (1) sale or rental in a twenty-four (24) month period if the owner was not the most recent resident of the house at the time of the sale or rental.
- (5) 2.2.1.1(1) and (2) of this Code do not prohibit discrimination against a person because the person has been convicted under federal law or the law of any state for the illegal manufacture or distribution of a controlled substance.
- (6) Nothing in this Code article shall prohibit a religious organization, association, or society, or any nonprofit institution or organization, supervised or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color, sex, familial status, handicap, or national origin.
- (7) Nor shall anything in this Code article prohibit a private club not open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

(Ord. 3528, 8-4-1992; Ord. 4340, 2-7-2006)

#### 2.2.1.3 Other prohibited discrimination.

Sec. 3 (a) It shall be unlawful for any bank, building and loan association, or other corporation, association, firm or enterprise whose business consists in whole or in part in making commercial real estate loans to deny a loan or other financial assistance to a person for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling because of race, color, religion, sex, familial status, handicap, or national origin. Such discrimination shall include the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance.

(b) It shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate broker organizations, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, sex, familial status, handicap, or national origin.

(Ord. 3528, 8-4-1992; Ord. 4340, 2-7-2006)



#### 2.2.1.4 Discrimination based on handicap.

Sec. 4 (a) A person may not discriminate in the sale or rental or otherwise make unavailable or deny a dwelling to any buyer or renter because of a handicap of:

- (1) The buyer or renter;
- (2) A person residing in or intending to reside in the dwelling after the dwelling is sold, rented, or made available; or
- (3) Any person associated with the buyer or renter.

(b) A person may not discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a handicap of:

- (1) The person;
- (2) A person residing in or intending to reside in the dwelling after the dwelling is sold, rented, or made available; or
- (3) Any person associated with the person.

(c) For the purpose of this Code article only, discrimination includes the following:

- (1) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications may be necessary to afford the person full enjoyment of the premises.
- (2) A refusal to make reasonable accommodations in rules, policies, practices, or services, when accommodations may be necessary to afford the person equal opportunity to use and enjoy a dwelling.
- (3) In connection with the design and construction of covered multifamily dwellings for first occupancy after January, 1993, a failure to design and construct those dwellings and construct those dwellings in a manner that:
  - (A) the public use and common use parts of the dwellings are readily accessible to and usable by handicapped persons;
  - (B) all the doors are designed to allow passage into and within the dwellings and are sufficiently wide to allow passage by handicapped persons in wheelchairs; and
  - (C) all premises within the dwellings contain the following features of adaptive design;
    - i. an accessible route into and through the dwelling;

- ii. light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
- iii. reinforcements in bathroom walls to allow later installations of grab bars; and
- iv. usable kitchen and bathrooms so that an individual in a wheelchair can maneuver about the space.

(d) As used in 2.2.1.4(c) above, “covered multifamily dwellings” means:

- (1) Buildings consisting of four (4) or more units if the buildings have one (1) or more elevators;  
and
- (2) Ground floor units in other buildings consisting of four (4) or more units.

(Ord. 3528, 8-4-1992; Ord. 4340, 2-7-2006)

#### 2.2.1.5 Administration.

Sec. 5 (a) The authority and responsibility for administering this article shall be the responsibility of the Goshen Community Relations Commission (Commission).

(b) The Commission may delegate any of these functions, duties, and powers to employees of the City or to boards of the City, including such functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter under this article.

(c) All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this Code article and shall cooperate with the Commission to further such purposes.

(Ord. 3528, 8-4-1992; Ord. 4340, 2-7-2006)

#### 2.2.1.6 Enforcement.

Sec. 6 (a) Complaints

- (1) The Commission or any person who claims to have been injured by a discriminatory housing practice or who believes that he/she will be irrevocably injured by a discriminatory housing practice that is about to occur (person aggrieved) may file a complaint.
- (2) All complaints shall be in writing and shall contain such information and be in such format as the Commission requires.
- (3) All complaints shall be under oath.

- (4) Any complaint must be filed no later than one (1) year after an alleged discriminatory housing practice has occurred or terminated, whichever is later.
- (5) A complaint may be amended at any time.
- (6) The Commission will confirm the receipt of the complaint and give the aggrieved person notice of time limits and choice of forums.

(b) Service of Complaint

- (1) The Commission shall within twenty (20) days after the filing of the complaint or the identification of an additional respondent serve on each respondent:
  - (A) a notice identifying the alleged discriminatory housing practice and advising the respondent of the procedural rights and obligations of a respondent under this Code article.
  - (B) provide the respondent with a copy of the complaint.

(c) Answer

- (1) A respondent shall file an answer to the complaint no later than ten (10) days after the receipt of the notice and a copy of the complaint.
- (2) The answer must be in writing, under oath and on a form prescribed by the Commission.
- (3) The answer may be amended at any time.

(d) The proceedings shall be consistent with the procedures and requirements established by Indiana Code §§ 22-9.5-6-1 through 22-9.5-6-18 inclusive.

(e) The process shall meet all time requirements established in Indiana Code §§ 22-9.5-6-1 through 22-9.5-6-18 inclusive.

(Ord. 3528, 8-4-1992; Ord. 4340, 2-7-2006)

**2.2.1.7 Interference, coercion, or intimidation.**

Sec. 7 It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of his/her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this Code article. This Code section may be enforced by appropriate civil action.

(Ord. 3528, 8-4-1992; Ord. 4340, 2-7-2006)

## 2.2.1.8 Definitions.

Sec. 8 The following terms and phrases shall apply in the interpretation and enforcement of this Code article:

- (1) DWELLING. Any building, structure, or portion thereof which is occupied as or designed or intended for occupancy as, a residence by one (1) or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.
- (2) FAMILY. Includes a single individual.
- (3) HANDICAP. With respect to a person, includes:
  - (A) a physical or mental impairment that substantially limits one (1) or more of the person's major life activities;
  - (B) a record of having an impairment described in subdivision (A) above; or
  - (C) being regarded as having an impairment described in subdivision (A) above.
  - (D) The term does not include current illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act 921 U.S.C. 802).
- (4) PERSON. Includes one or more individuals, corporations, partnerships, association, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.
- (5) TO RENT. Includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy the premises owned by the occupant.
- (6) Any definitions contained in Indiana Code § 22-6.5 are incorporated into this Code article and shall be used in construing the Code article terms and provisions.

(Ord. 3528, 8-4-1992; Ord. 4340, 2-7-2006)

– End of Title 2 –

## TITLE 3. HEALTH AND PUBLIC SAFETY

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### Article 1. Animal Control

#### Chapter 1. In General

##### 3.1.1.1 Running at large.

Sec. 1 (a) No person shall suffer, permit or allow any animal or any dog, cat, or other domestic animal or pet to run at large within the City limits. For purposes of definition, any such animal or dog, cat or other domestic animal or pet which is untethered shall be determined to be "running at large".

(b) All animals found running at large shall be impounded.

(c) The owner of any animal shall be responsible for any damages to the person or property of others caused by said animal while running at large.

(Ord. 1477, 3-7-1960, Ord. 2373, 10-5-1976)

##### 3.1.1.2 Exposed to disease.

Sec. 2 All animals which are afflicted with a contagious or infectious disease and have been found at large, or have come into contact with, or exposed to any public place shall be placed in an animal shelter provided for that purpose by contract or otherwise by the City.

(Ord. 1477, 3-7-1960)

##### 3.1.1.3 Keeping livestock, fowl or wild animals.

Sec. 3 It shall be unlawful for any person to have, keep, or otherwise maintain within the corporate limits of the City of Goshen, any livestock, fowl or wild animal excepting domestic animals, unless such livestock, fowl or wild animal is confined not less than one hundred fifty (150) feet from the residence of any other person; provided, however, that no such livestock, fowl or wild animal shall be so kept or maintained if noxious and/or offensive odors are caused to enter upon and cross the real estate owned and/or occupied by another; provided further that any animal of any type may be kept in a zoological garden which must be set up in a prescribed area zoned for such purposes; provided further that chickens may be kept, possessed or maintained only in accordance with Chapter 4 of this Code article.

(Ord. 432, 12-19-1921; Ord. 905, 11-4-1940; Ord. 2805, 1-6-1958; Ord. 4773, 4-17-2014)

#### 3.1.1.4 Harboring vicious animal.

Sec. 4 (a) It shall be unlawful for any person to keep or harbor any cross, vicious or unruly animal.

(b) The members of the police department are authorized to kill any dangerous or vicious animal when it is necessary for the protection of any person or property.

(Ord. 149, 9-14-1903; Ord. 1477, 3-7-1960)

#### 3.1.1.5 Animals disturbing the peace.

Sec. 5 No person, firm, or corporation owning or harboring any dog, cat or other domestic animal or pet shall suffer or permit such animal to disturb the peace or quiet of the neighborhood by barking or making other loud or unusual noise.

(Ord. 1477, 3-7-1960; Ord. 2373, 10-5-1976)

#### 3.1.1.6 Noxious odors.

Sec. 6 (a) No person shall have, keep or otherwise harbor any dog, cat or other domestic animal or pet in the City of Goshen if noxious and/or offensive odors are thereby caused to enter upon or across the real estate owned or occupied by another or upon or across any public right-of-way.

(b) It shall be the duty of the owner of the property where any violation exists to eliminate the violation by removing the substances, materials or animal excrements giving rise to any odor and to maintain the premises free from such unwholesome substances. Should the owner, upon proper notice in writing, fail or refuse to remove the violation, the City may enter upon the premises where the violation exists and abate the violation by removal of the substances, materials or animal excrement giving rise to the offensive odors and by impounding the animal found on the premises. The animal so impounded shall be placed in an animal shelter provided for that purpose.

(Ord. 2373, 10-5-1976)

#### 3.1.1.7 Securing animals.

Sec. 7 (a) It shall be unlawful for any person to leave unattended, any horse or other animal which is hitched to any vehicle in any of the streets or alleys without securely fastening them to some object to prevent them from running away.

(b) It shall be unlawful for any person to tie any horse or other animal within said City without securing the same so that it cannot go upon or over any sidewalk.

(c) It shall be unlawful to hitch any horse or other animal or animals to any shade tree upon or along any street or alley.

(Ord. 149, 9-14-1903)

## **Chapter 2. Impoundment**

### **3.1.2.1 Redemption.**

Sec. 1 The owner of any animals impounded pursuant to this Code article may, within five (5) days after the impoundment redeem the animal by paying all the expenses incident to impounding such animal, caring for the animal and paying any lawfully imposed and unpaid license fees for such animals that have accrued up to the time of redemption. It shall be the duty of such impounding authority to release such animal to the owner.

(Ord. 1477, 3-7-1960)

### **3.1.2.2 Disposition when not redeemed.**

Sec. 2 Any animal impounded pursuant to the provisions of this Code article which is not redeemed by its owner within five (5) days after it has been impounded may, at the election of the impounding supervisor, be sold or destroyed in a humane manner.

(Ord. 1477, 3-7-1960)

### **3.1.2.3 Vaccination of dogs required.**

Sec. 3 No dog impounded for running at large shall be released to any person unless said dog shall, prior to such release, have received vaccination for rabies, and the person receiving said animal upon release has paid the cost of such vaccination.

(Ord. 1477, 3-7-1960)

### **3.1.2.4 Definitions.**

Sec. 4 The following terms and phrases shall apply in the interpretation and enforcement of this Code article:

- (A) **LIVESTOCK and FOWL.** Livestock and fowl shall be construed to mean all animals and fowl that provide food and/or are beasts of burden such as cattle of all species, cows, bulls, horses, mules, ponies, burros, goats, sheep, hogs, chickens, ducks, and any other animals of a similar kind, nature, type or use.

(B) DOMESTIC ANIMALS. Domestic animals shall be construed to be dogs, cats, parakeets, canaries and other small animals or birds which are normally kept within the living quarters of an abode.

(C) WILD ANIMALS. Wild animals shall be construed to mean all poisonous reptiles or any other dangerous or carnivorous wild animal or reptile, any vicious or dangerous domesticated animals or any other animal or reptile of wild, vicious or dangerous propensities. This term shall include but not be restricted to apes, bears, constrictor snakes over six (6) feet in length, coyotes, deer, foxes, gamecocks and other fighting birds, monkeys and wolves.

(Ord. 432, 12-19-1921; Ord. 905, 11-4-1940; Ord. 1419, 1-6-1958; Ord. 2805, 8-6-1981)

### **Chapter 3. Penalties**

#### **3.1.3.1 Penalties and disposition of funds.**

Sec. 1 (a) Any person who violates the provisions set forth in this Code article shall be fined in a sum of not less than Five Dollars (\$5.00) nor more than Two Hundred Dollars (\$200.00), and each day's continuance shall constitute a separate offense.

(b) All monies received pursuant to this Code article shall be paid to the clerk-treasurer who shall place such monies in the general fund of the City.

(Ord. 1477, 3-7-1960; Ord. 2373, 10-5-1976)

### **Chapter 4. Keeping Chickens**

#### **3.1.4.1 Application of chapter.**

Sec. 1 This Code chapter does not apply to any real estate that is zoned agricultural or to any real estate that has been granted a zoning variance that specifically permits the raising of chickens on the real estate.

(Ord. 4773, 4-17-2014; Ord. 4849, 11-20-2015)

#### **3.1.4.2 Keeping chickens.**

Sec. 2 It shall be unlawful for a person to keep, possess, or maintain chickens in violation of this Code chapter.

(Ord. 4773, 4-17-2014; Ord. 4849, 11-20-2015)



### 3.1.4.3 Chickens permitted.

Sec. 3 (a) Chickens shall be permitted only upon the real estate containing an occupied single family dwelling or upon the real estate containing a duplex provided the owner of the real estate resides in one (1) of the two (2) units. Chickens are otherwise prohibited on the premises of a multi-family dwelling.

(b) Each residence wishing to keep chickens must pay a registration fee of Twenty-Five Dollars (\$25.00) every two (2) years.

(c) The total number of permits to be issued is limited to fifty (50). The permits will be available on a first-come, first-serve basis.

(d) In order to be eligible to receive a permit, the permit applicant must have the written approval of each adjoining real estate owner. Adjoining real estate owners are limited to the owners of real estate that are immediately adjacent to the real estate that is keeping chickens provided the real estate parcels are not separated by a street or alley.

(Ord. 4773, 4-17-2014; Ord. 4849, 11-20-2015)

### 3.1.4.4 Limitations.

Sec. 4 (a) No more than six (6) female chickens may be located on any real estate. Roosters and other types of fowl are prohibited.

(b) Chickens shall be kept for pets or personal, non-commercial use only. Selling of eggs and fertilizer is prohibited.

(c) Breeding of chickens is prohibited on the premises.

(d) Slaughtering of chickens is prohibited on the premises.

(e) A chicken may not be turned loose or taken to the humane shelter.

(Ord. 4773, 4-17-2014; Ord. 4849, 11-20-2015)

### 3.1.4.5 Chicken enclosure.

Sec. 5 (a) All chickens shall be kept outside of the dwelling in a chicken enclosure which shall include a chicken coop and a covered chicken pen/run.

(1) The chicken enclosure shall be secure to prevent the entry of rodents and predators, and shall effectively contain and protect the chickens.

(2) The chicken enclosure shall be located at least fifteen (15) feet from the property lines, and at least twenty (20) feet from any adjacent residential dwelling, church, school or place of

business. The chicken enclosure may not be located in the front yard of the residential dwelling as defined by 3.1.4.8 of this Code chapter. The chicken enclosure may be located in a yard adjacent to a street that is not considered a front yard if the location meets the front yard setbacks established by the Goshen City Zoning Ordinance.

- (3) The chicken coop shall be constructed of solid materials on all sides, including roof and door(s). Vents, covered with wire, shall be placed as necessary for adequate ventilation. The chicken coop shall provide at least two (2) square feet of area per chicken.
- (4) The chicken pen/run shall be connected to and/or surround the chicken coop and be constructed of traditional building materials or fencing. The pen/run shall provide at least two (2) square feet of area per chicken, not exceed six (6) feet in height, and shall be covered with wire, aviary netting or solid roofing.
- (5) The chicken coop, pen and run shall be constructed and maintained in a workmanlike manner and comply with all applicable Goshen Building Code requirements for accessory structures as may be amended from time to time.

(b) The chicken enclosure and surrounding area shall be maintained in a clean, dry, odor free, and sanitary condition at all times. All manure, uneaten feed, and other trash shall be regularly removed and disposed of in a sanitary manner so that the chicken enclosure and surrounding area does not constitute a nuisance, safety hazard or health problem to surrounding property.

(Ord. 4773, 4-17-2014; Ord. 4849, 11-20-2015)

#### 3.1.4.6 Disposal.

Sec. 6 Those who wish to dispose of their hen(s) must transport them to a licensed processor for butchering, take them to a veterinarian's office for euthanizing, or place the hen(s) in a new home. The new home must include the new owner's permission and the new placement must meet all criteria of this Code chapter.

(Ord. 4773, 4-17-2014; Ord. 4849, 11-20-2015)

#### 3.1.4.7 Enforcement.

Sec. 7 This Code chapter shall be enforced in accordance with the applicable provisions of Title 1, Article 1, Chapter 3 of this Code, as may be amended from time to time.

(Ord. 4773, 4-17-2014; Ord. 4849, 11-20-2015)

### 3.1.4.8 Front yard of residential dwelling.

Sec. 8 The front yard of residential dwelling is defined for purposes of this Code chapter as the area between property line and the foundation of the residence extending across the full width of the lot on the side of the residence adjacent to the street. If the residential lot is adjacent to more than one street, the front yard shall be the yard adjacent to the street which is the street address of the residence.

(Ord. 4773, 4-17-2014; Ord. 4849, 11-20-2015)

## **Article 2. Fire Prevention and Protection**

### **Chapter 1. In General**

#### 3.2.1.1 Open burning.

Sec. 1 (a) Except as otherwise permitted by subsection (b) below, it shall be unlawful for any person to kindle, set on fire, burn, or cause to be burned any material between the hour of 6:00 p.m. of any day and the hour of 6:00 a.m. of the following day unless such material is contained in a stove, oven, or other device equipped and connected to a smokestack or chimney of sufficient height and capacity to effectually carry off the smoke and noxious odor arising in such a manner as to not be offensive or injurious to the health and comfort of the public.

(b) Recreational or ceremonial fires are permitted in the City provided that the person conducting this open burning complies with the following conditions:

- (1) Only clean wood products, paper, charcoal or clean petroleum products may be burned.
- (2) The fire shall not be ignited more than two (2) hours before the recreational or ceremonial activity is to take place, and must be extinguished upon conclusion of the activity.
- (3) The pile to be burned shall be less than or equal to one thousand (1,000) cubic feet, and only one (1) pile may be burned at a time.
- (4) The Goshen Fire Department and county health department must be notified at least twenty-four (24) hours before any burning where the size of the pile being burned is more than one hundred twenty-five (125) cubic feet.
- (5) The fire shall not be used for the purpose of disposing of solid waste.
- (6) The fire shall not take place within five hundred (500) feet of any fuel storage or pipeline.
- (7) The fire must be attended at all times during the burning until the fire is completely extinguished.

(8) Burning shall not be conducted during unfavorable meteorological conditions such as high winds, temperature inversions, air stagnation, or when a pollution alert or ozone action day has been declared.

(9) The fire shall be extinguished if at any time the fire creates a pollution problem, threat to public health, nuisance, or fire hazard.

(10) Adequate firefighting equipment shall be on-site for extinguishing purposes during burning times.

(11) All burning shall comply with other federal, state, and local laws, rules and ordinances.

(Ord. 262, 0-3-1910; Ord. 4588, 5-24-2010)

**3.2.1.2 Burning on the streets.**

Sec. 2 It shall be unlawful for any person to kindle, set fire, burn, or cause to be burned, any combustible substance on any paved street or alley.

(Ord. 262, 10-3-1910)

**3.2.1.3 Duty to extinguish certain fires.**

Sec. 3 It shall be unlawful for any person in possession of any real estate within the corporate limits of the City, to knowingly suffer or permit any fire to be kindled or to continue to burn on the real estate or on any street or alley abutting their real estate, in violation of this Code chapter, without making a reasonable effort to extinguish such fire.

(Ord. 262, 10-3-1910)

**3.2.1.4 Leaf burning and enforcement.**

Sec. 4 (a) No person shall burn leaves within the City of Goshen.

(b) This shall be enforced in accordance with the provisions of the general enforcement article of this Code. See 1.1.3.1 of this Code.

(Ord. 3569, 6-1-1993)

## Chapter 2. Fire Prevention and Enforcement

### 3.2.2.1 Adoption of the codes.

Sec. 1 The City of Goshen adopts the National Fire Prevention Association National Codes and Standards, Life Safety Code and the Uniform Building Code.

(Ord. 3318, 10-4-1988)

### 3.2.2.2 Bureau of fire prevention.

Sec. 2 (a) The Bureau of Fire Prevention of the Fire Department of the City of Goshen is established.

(b) The Bureau shall have the power to adopt and promulgate rules and regulations for the safeguarding of life and property within the City of Goshen from the hazards of fire and explosion, subject to prior approval of the Common Council.

(c) The Bureau shall have the power to issue orders for the correction of each class of defects found which shall include without limitation to order any combustible or explosive matter or inflammable condition, or dangerous condition of any kind which may lead to loss or damage by fire or explosion, to be remedied, repaired or removed, and such order shall forthwith be complied with by the owner, occupant or lessee of any premises, place, property, building or thing.

(Ord. 3318, 10-4-1988)

### 3.2.2.3 Establishment and duties of the fire investigation team.

Sec. 3 There is established a Fire Investigation Team within the Goshen Fire Department which may enforce all national, state and City fire codes applicable within the City of Goshen, and may investigate and gather information and evidence for the prosecution of persons who violate the fire codes and investigate fires of suspicious origin. The Team shall consist of at least one (1) fire officer and at least one (1) police officer of the City of Goshen.

(Ord. 3318, 10-4-1988)

### 3.2.2.4 Variances and special exceptions.

Sec. 4 The Indiana State Fire Prevention Commission shall have the power to grant variances or special exceptions from any of the provisions of the fire code upon application in writing by an owner or lessee, or his duly authorized agent, and upon a showing of circumstances which prevent or make

strict compliance therewith impossible or unduly burdensome, provided that the spirit of the code shall be observed, public safety secured, and substantial justice done.

(Ord. 3318, 10-4-1988)

**Article 3. Noise Control**

**Chapter 1. Excessive Noise and Sound**

3.3.1.1 Community noise level standards (excluding motor vehicles and sound amplification systems on public property).

Sec. 1 (a) Sound Levels by Receiving Land Use.

(1) No person shall create, cause to be created, permit to be created, or otherwise generate any source of sound in a manner that creates a sound level which exceeds the following limits for the receiving land use category when measured at or within the property line of the receiving land use.

Receiving Land Use Category	Time	Sound Level Limit
Residential Area	7:00 a.m. to 10:00 p.m.	65 dB(A)
	10:00 p.m. to 7:00 a.m.	55 dB(A)
Commercial Area	7:00 a.m. to 10:00 p.m.	75 dB(A)
	10:00 p.m. to 7:00 a.m.	65 dB(A)
Industrial Area	All Times	80 dB(A)

(2) When a noise source can be identified and its sound measured in more than one land use category, the sound level limit of the most restrictive land use category shall apply.

(b) Measurement Procedure. The sound level meter shall be operated according to the instrument manufacturer’s instructions and as follows:

- (1) Microphone Orientation. The microphone shall be pointed toward the allegedly offensive noise source, unless the instrument manufacturer’s instructions specifically indicate otherwise.
- (2) Meter Setting. The meter shall be set for the A-weighted network and “slow” response mode.
- (3) Calibration. An external calibration check and battery check shall be made before and after each use.

- (4) Meter Readings. The recorded reading shall be the highest sound level obtained with the allegedly offensive noise source in operation, disregarding unrelated peaks due to extraneous ambient noises.
- (5) Ambient Conditions. Measurements shall be made only when the A-weighted ambient sound level, including wind effects and all sources other than the noise source being measured, is at least ten (10) dB(A) lower than the sound level of the noise source being measured, provided however that no source shall emit noise in excess of eighty-six (86) dB(A) when measured twenty-five (25) feet or more from the source.
- (6) Sound levels shall be measured at the approximate location of the property line or the boundary of the public property, at a height of at least four (4) feet above the immediate surrounding surface.
- (7) In no case shall the operator or observer be closer than two (2) feet from the system's microphone, nor shall he locate himself between the microphone and the noise source being measured.

(c) Specifically Excluded. This Code section does not apply to motor vehicles or sound amplification systems operated on public property.

(Ord. 3899, 7-22-1999)

### 3.3.1.2 Noise level standards for motor vehicles and sound amplification systems on public property.

Sec. 2 (a) Sound Levels by Sound Amplification System. No person shall play, use, operate or permit to be played, used or operated any sound amplification system if it is located in or on any of the following:

- (1) Any public property, including, but not limited to, any street, alley, highway, sidewalk, park or other public property; or
- (2) Any motor vehicle on a public street, alley, highway, park or other public property;

if the sound generated is plainly audible to any other person measured at a distance at least one hundred (100) feet from the sound amplification system.

(b) Sound Levels by Motor Vehicles.

- (1) No person shall operate any motor vehicle on a public street, alley, highway, park or other public property in which the engine, muffler, exhaust and/or other noise control equipment have been altered, removed or maintained in such disrepair as to generate a sound plainly

audible to any other person measured at a distance at least one hundred (100) feet from the motor vehicle.

- (2) No person operating a motor vehicle containing a jake brake shall apply the jake brake within the City limits.

(c) Measurement Procedures. Measurement of the audible sound shall be by the auditory senses and based upon direct line of sight.

(Ord. 3899, 7-22-1999)

### 3.3.1.3 Exemptions.

Sec. 3 The sound levels in 3.3.1.1 and 3.3.1.2 of this Code, shall not apply to sounds emitted from:

- (1) Authorized emergency vehicles, public safety vehicles or from public safety officials acting in the scope of their authority.
- (2) Vehicle horns, sirens or other devices used as a warning of danger or an emergency.
- (3) Passing trains.
- (4) Properly operating building alarms or vehicle alarms.
- (5) Stationary emergency signaling devices, such as severe weather sirens.
- (6) Any emergency work.
- (7) Communication of any message in any public forum between the hours of 8:00 a.m. and 8:00 p.m.
- (8) Any activity authorized by the Board of Public Works and Safety, Board of Parks and Recreation, or any other governmental body having jurisdiction and control over the property, including parades, festivals, sporting events, concerts or firework displays.
- (9) Any recreational and educational activity including, but not limited to, school bands and neighborhood ball games. Any recreational and educational activity taking place between the hours of 10:00 p.m. and 7:00 a.m. shall not exceed the maximum sound levels specified in 3.3.1.1 or 3.3.1.2 of this Code.
- (10) Any construction equipment operated during the time period between 7:00 a.m. and 10:00 p.m., provided that such equipment shall be equipped with a properly installed muffler in good working order. Construction equipment operated between the hours of 10:00 p.m. and 7:00 a.m. shall not exceed the maximum sound levels specified in 3.3.1.1 or 3.3.1.2 of this Code.



- (11) Any detonation of explosives used to fragment rock for mining, quarrying, excavation and construction.
- (12) Any domestic power equipment operated during the time period between 7:00 a.m. and 10:00 p.m., provided that such equipment does not exceed a sound level of eighty (80) dB(A) when measured at a minimum of twenty-five (25) feet from the noise source. Domestic power equipment operated between the hours of 10:00 p.m. and 7:00 a.m. shall not exceed the maximum sound levels specified in 3.3.1.1 or 3.3.1.2 of this Code.
- (13) Licensed refuse collection vehicles operated during the time period between 7:00 a.m. and 10:00 p.m. Sounds emitted from licensed refuse collection vehicles operated between the hours of 10:00 p.m. and 7:00 a.m. shall not exceed the maximum sound levels specified in 3.3.1.1 or 3.3.1.2 of this Code.
- (14) Aircraft.
- (15) Noise sources within multi-family dwellings, offices, apartment complexes, condominiums, and similar structures occupied by more than one tenant which impact only those persons within the same dwelling, office, complex or building.

(Ord. 3899, 7-22-1999)

#### 3.3.1.4 Undue hardship.

Sec. 4 Applications for a permit for relief from the sound level limits designated in this Code article may, on the basis of undue hardship, be made to the Board of Public Works and Safety. Any permit granted by the Board of Public Works and Safety hereunder shall contain all conditions upon which said permit has been granted and shall specify a reasonable time that the permit shall be effective. The Board of Public Works and Safety may grant the relief as applied for only if it is found that:

- (1) Additional time is reasonably necessary for the applicant to alter or modify his activity or operation to comply with this Code article; or
- (2) The activity, operation or noise source will be of a temporary duration, and cannot be done in a manner that would comply with this Code article; and
- (3) No other reasonable alternative is available to the applicant, and
- (4) The applicant represents and the Board of Public Works and Safety finds that the noise source as permitted will not violate recognized safety standards. The Board of Public Works

and Safety may prescribe any reasonable conditions or requirements it deems necessary to minimize adverse effects upon the community or the surrounding neighborhood.

(Ord. 3899, 7-22-1999)

### 3.3.1.5 Enforcement and penalties.

Sec. 5 (a) A citation may be issued for a violation under this Code article, subjecting the violator to a fine up to Five Hundred Dollars (\$500.00). Each day that a violation occurs is a separate offense.

(b) The citation shall be filed with the City of Goshen Ordinance Violations Bureau or with any court of competent jurisdiction in Elkhart County, Indiana.

(c) For the purposes of this Code article, the violator shall be the person or persons who created, caused to be created, permitted to be created or otherwise generated any source of sound in a manner that creates a sound level exceeding the limits for the receiving land use category as established by this Code article; the person or persons in possession of a sound amplification system played, used or operated in violation of this Code article; or the person in control of a motor vehicle operating in violation of this Code article.

(Ord. 3899, 7-22-1999)

### 3.3.1.6 Definitions.

Sec. 6 For the purposes of this Code article, the following words, terms and phrases shall have the meanings set forth:

- (1) COMMERCIAL AREA. Commercial area shall mean any parcel of land zoned as B-1, B-2, B-3 or B-4 under the Zoning Ordinance.
- (2) dB(A). dB(A) shall mean the intensity of a sound expressed in decibels read from a calibrated sound level meter using the A-level weighting scale and the slow meter response, as specified by the American National Standards Institute.
- (3) DECIBEL. Decibel shall mean a unit measure of sound level. The symbol is dB.
- (4) DOMESTIC POWER EQUIPMENT. Domestic power equipment shall mean any equipment or device rated at 20 horsepower or less and used for home or building repairs and grounds maintenance.
- (5) EMERGENCY WORK. Emergency work shall mean any activities performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by existing or imminent peril.

- (6) INDUSTRIAL AREA. Industrial area shall mean any parcel of land zoned as M-1 or M-2 under the Zoning Ordinance.
- (7) PERSON. Person shall mean any individual, association, partnership or corporation.
- (8) PROPERTY LINE. Property line shall mean the real or imaginary line and its vertical extension which separates the real property owned, leased or occupied by any person from contiguous real property owned, leased or occupied by any other person.
- (9) PUBLIC PROPERTY. Public property shall mean all real property which is owned or controlled by a governmental entity, and shall include any public rights-of-way, public buildings, parks and waterways.
- (10) PUBLIC RIGHT-OF-WAY. Public right-of-way shall mean any street, avenue, boulevard, highway, road, thoroughfare, sidewalk, alley or any other property which is owned or controlled by a governmental entity.
- (11) RESIDENTIAL AREA. Residential area shall mean any parcel of land zoned as R-1, R-1S, R-2, R-3, R-4 or A-1 under the Zoning Ordinance.
- (12) SOUND AMPLIFICATION SYSTEM. Sound amplification system shall mean any apparatus used for the amplification of sounds from any radio, tape player, cassette player, compact disc player, loudspeaker, sound amplifier, alarm or other sound-generating device, including any apparatus for the amplification of the human voice.

(Ord. 3899, 7-22-1999)

## **Article 4. Public Gatherings**

### **Chapter 1. Parades and Meetings**

#### **3.4.1.1 Permit required.**

Sec. 1 No person shall conduct a parade or procession upon any street or public way or hold any open air public meeting upon any ground abutting upon any street or public way without a written permit issued by the Board of Public Works and Safety.

(Ord. 740, 5-2-1932; Ord. 2690, 5-13-1980)

#### **3.4.1.2 Permit application.**

Sec. 2 An application for the permit required by this Code article shall be made in writing to the Board of Public Works and Safety by the person in charge of, control of, or responsible for the activity

for which the permit is sought. In such application the applicant shall set forth the route along which the parade or procession is to proceed, its starting time and the names of those in control of it, or responsible for it, the time at which the public meeting is to be held and its probable duration, as appropriate.

(Ord. 740, 5-2-1932; Ord. 2690, 5-13-1980)

#### 3.4.1.3 Permit issuance.

Sec. 3 Upon application being made for the permit required by this Code article, the Board of Public Works and Safety shall investigate or cause to be investigated the person making such application and the truth of the statements made in such application regarding the purpose or object of the parade, procession or open air public meeting, and if it is found that such parade, procession or open air public meeting is not to be held for any unlawful purpose and will not in a manner tend to a breach of peace, or unnecessarily interfere with the public use of the streets and ways of the City or the peace and quiet of the inhabitants thereof, the Board of Public Works and Safety shall issue such permit to the person making application therefore, without fee or charge.

(Ord. 740, 5-2-1932; Ord. 2690, 5-13-1980)

#### 3.4.1.4 Illegal participation.

Sec. 4 Any person who marches, rides or in any other manner participates in any parade or procession upon such street or public way, attends any open air public meeting held upon any ground abutting upon any street or public way for which a permit in writing has not been first obtained from the Board of Public Works and Safety shall be in violation of this Code article and penalized according to 1.1.3.1 of this Code.

(Ord. 740, 5-2-1932; Ord. 2683, 5-13-1980; Ord. 2690, 5-13-1980)

## **Article 5. Firearms Within City Limits**

### **Chapter 1. Firearms Within City Limits**

#### 3.5.1.1 Discharge of firearms and detonation of explosives prohibited.

Sec. 1 (a) It shall be unlawful for any person to discharge any firearm or to detonate any explosives at any place within the corporate limits of the City of Goshen, or to assist any other person or persons to engage in any such discharging or detonation unless such person has been granted special permission by the Board of Public Works and Safety; provided, however this Code section shall not apply to the following:

- (1) Any law enforcement officer who shall so discharge a firearm in the lawful performance of his duty;
- (2) Any person who shall so discharge a firearm in a shooting gallery;
- (3) Any person who shall so discharge a firearm in the protection of life or property when the surrounding facts and circumstances justify such action; or
- (4) Any person who shall so discharge a firearm during a ceremonial occasions approved by the Board of Public Works and Safety.

(b) Any person engaging in any of the unlawful activity described in 3.5.1.1 (a) shall be guilty of an ordinance violation and shall be fined not more than One Thousand Dollars (\$1,000.00).

(Ord. 149, 9-14-1903; Ord. 2516, 7-17-1978; Ord. 4644, 7-8-2011)

## **Article 6. Fireworks**

### **Chapter 1. Regulating the Use, Discharge or Ignition of Consumer Fireworks**

3.6.1.1 Use, discharge or ignition prohibited.

Sec. 1 (a) The use, discharge or ignition of consumer fireworks by any person or other entity is prohibited in the corporate limits of the City of Goshen except during the following periods:

- (1) Between the hours of 5:00 p.m. and two (2) hours after sunset on June 29, June 30, July 1, July 2, July 3, July 5, July 6, July 7, July 8, and July 9;
- (2) Between the hours of 10:00 a.m. and 12:00 midnight on July 4; and
- (3) Between the hours of 10:00 a.m. on December 31 and 1:00 a.m. on January 1.

(b) Consumer firework means a small firework that is designed primarily to produce visible effects by combustion, and that is required to comply with the construction, chemical composition, and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 CFR 1507. The term also includes some small devices designed to produce an audible effect, such as whistling devices, ground devices containing fifty (50) milligrams or less of explosive composition, and aerial devices containing one hundred thirty (130) milligrams or less of explosive composition. Propelling or expelling charges consisting of a mixture of charcoal, sulfur, and potassium nitrate are not considered as designed to produce an audible effect.

(1) Consumer fireworks include:

- (A) aerial devices, which include sky rockets, missile type rockets, helicopter or aerial spinners, roman candles, mines, and shells;
- (B) ground audible devices, which include firecrackers, salutes, and chasers; and
- (C) firework devices containing combinations of the effects described in clauses (1) and (2).

(2) Consumer fireworks do not include:

- (A) dipped sticks or wire sparklers. However, total pyrotechnic composition may not exceed one hundred (100) grams per item. Devices containing chlorate or perchlorate salts may not exceed five (5) grams in total composition per item.
- (B) cylindrical fountains;
- (C) cone fountains;
- (D) illuminating torches;
- (E) wheels;
- (F) ground spinners;
- (G) flitter sparklers;
- (H) snakes or glow worms;
- (I) smoke devices; and
- (J) trick noisemakers, which include party poppers, booby traps, snappers, trick matches, cigarette loads, and auto burglar alarms.

(c) The use, discharge or ignition of all other fireworks is governed by Indiana state statutes.

(Ord. 4428, 6-19-2007)

### 3.6.1.2 Permits.

Sec. 2 Notwithstanding section 3.6.1.1, the use, discharge or ignition of consumer fireworks may be permitted with the approval of the Board of Public Works and Safety on real estate owned by a government entity. The approval shall specify the real estate upon which the use, discharge or ignition will be permitted and the date(s) on which the use, discharge or ignition will be permitted which may not exceed seventy-two (72) hours.

(Ord. 4428, 6-19-2007)

### 3.6.1.3 Enforcement.

Sec. 3 This ordinance shall be enforced in accordance with Title 1, Chapter 1, Article 3 of this Code, as may be amended from time to time.

(Ord. 4428, 6-19-2007)

### 3.6.1.4 Penalty.

Sec. 4 Any person or other entity who violates this article may be fined up to Five Hundred Dollars (\$500.00) for each violation.

(Ord. 4428, 6-19-2007)

## **Article 7. Business Within Right-of-Way**

### **Chapter 1. Requiring a Permit to Conduct Business Within Right-of-Way**

#### 3.7.1.1 Permits.

Sec. 1 (a) A vendor shall not operate its business within the right-of-way without obtaining a permit issued by the Goshen Planning and Zoning Department.

(b) The Goshen Planning and Zoning Department shall issue a permit to any food vendor meeting the following standards:

- (1) The vendor operates at an outside location within the right-of-way of the Central Business District (B-2 commercial district), but is not on Main Street.
- (2) The vendor operates at a location and in a manner that does not unreasonably interfere with vehicular and pedestrian traffic.
- (3) The vendor has obtained the consent of the property owners on the same side of the street and within one hundred feet (100') of the proposed operation.
- (4) The vendor has obtained a variance from the Goshen Board of Zoning Appeals to operate at the location requested.
- (5) The vendor's sales are limited to food and drink.
- (6) The vendor meets and continues to meet all requirements of the Indiana State Department of Health and the Elkhart County Health Department.

(7) The vendor has paid an annual permit fee in the amount of One Hundred Fifty Dollars (\$150.00). No permit fee will be prorated. All permits shall be renewed between January 1 and February 28 each year.

(c) A vendor shall not operate its business in violation with the standards set forth in this Code chapter including the conditions of any granted variance.

(d) Any business seeking a food vendor permit in the right-of-way in front of their business will not need permission of the property owners within one hundred feet (100') of the proposed operation or any permit under this Code chapter.

(Ord. 4580, 3-23-2010)

### 3.7.1.2 Exemptions.

Sec. 2 Food vendors who only participate in First Fridays and other events sponsored by Downtown Goshen, Inc. or events approved by the Goshen Board of Public Works and Safety will not need to have a permit issued.

(Ord. 4580, 3-23-2010)

## **Article 8. Gasoline Generators**

### **Chapter 1. Gasoline Generators Prohibited**

#### 3.8.1.1 Prohibited use.

Sec. 1 (a) It shall be unlawful for any entity to operate a gasoline-powered generator at a residence or within a residential zoning district, including R1, R1S, R2, R3 or R4, between the hours of 10:00 p.m. and 7:00 a.m. unless:

- (1) The generator cannot be heard more than fifty feet (50') from the source;
- (2) The generator is operated for less than four (4) hours in a twenty-four (24) hour period;
- (3) The generator is operated during a power outage unless the outage is due to the failure to properly pay a utility bill; or
- (4) The generator is operated at a construction site.

(Ord. 4621, 12-23-2010)



### 3.8.1.2 Enforcement.

Sec. 2 This Code chapter shall be enforced in accordance with the applicable provisions of Title 1, Article 1, Chapter 3 of the Code as may be amended from time to time.

(Ord. 4621, 12-23-2010)

## **Article 9. Pedestrian Traffic**

### **Chapter 1. Blocking Pedestrian Traffic**

#### 3.9.1.1 Prohibition.

Sec. 1 It shall be unlawful for any person or group of persons to completely block a public sidewalk in such a manner that the sidewalk cannot be used for pedestrian traffic without first obtaining authorization from the Board of Public Works and Safety.

(Ord. 4679, 5-16-2012; Ord. 4703, 10-18-2012; Ord. 4753, 10-2-2013)

#### 3.9.1.2 Enforcement; penalty.

Sec. 2 (a) Any person found violating this Code chapter shall be subject to enforcement in accordance with Indiana Code § 34-28-5 et seq., as amended from time to time.

(b) The court may enter a judgment for violation of this Code chapter, including costs, in an amount not exceeding Two Hundred Dollars (\$200.00).

(Ord. 4679, 5-16-2012; Ord. 4703, 10-18-2012; Ord. 4753, 10-2-2013)

## **Article 10. Alarm Systems**

### **Chapter 1. False Alarm Service Charge**

#### 3.10.1.1 Service charge.

Sec. 1 (a) The owner of real estate serviced by an alarm system shall be subject to a false alarm service charge for each false alarm at an alarm site that the Goshen Police Department and/or Goshen Fire Department respond to in excess of two (2) false alarms occurring within a rolling three hundred sixty-five (365) day period.

- (1) The false alarm service charge shall be One Hundred Dollars (\$100.00) for the third and fourth false alarms occurring at an alarm site within a rolling three hundred sixty-five (365) day period;

(2) The false alarm service charge shall be One Hundred Fifty Dollars (\$150.00) for the fifth and all subsequent false alarms occurring at an alarm site within a rolling three hundred sixty-five (365) day period.

(b) In the event that both the Goshen Police Department and Goshen Fire Department respond to the same false alarm, the event shall be considered a single false alarm.

(Ord. 4754, 10-2-2013)

### 3.10.1.2 Notice.

Sec. 2 (a) The City shall provide the owner of the real estate a written notice of each false alarm occurring at an alarm site and any false alarm service charge assessed pursuant to 3.10.1.1 of this Code article.

(b) The owner of the real estate shall be required to pay a false alarm service charge within thirty (30) days from the date of the notice.

(c) The money collected from false alarm service charges assessed shall be deposited into the General Fund.

(Ord. 4754, 10-2-2013)

### 3.10.1.3 Hearing; appeal.

Sec. 3 (a) The person or entity receiving a written notice of a false alarm or a notice of the assessment of any false alarm service charge may request a hearing before the Goshen Board of Public Works and Safety to dispute the existence of a false alarm occurring at the alarm site or to otherwise dispute the accuracy of a false alarm service charge. The request for a hearing must be in writing and received by the Mayor's Office within fifteen (15) days of the date of the written notice.

(b) The person or a representative of the entity will be given the opportunity to appear at the hearing before the Board of Public Works and Safety, with or without counsel, to present evidence to the Board to dispute the existence of a false alarm occurring at the alarm site or to otherwise dispute the accuracy of a false alarm service charge. Each person may cross examine those persons presenting testimony to the Board, and testify on their own behalf. The City will assist the person in obtaining witnesses, exhibits, and documentation to present at the hearing if such information is not otherwise 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 a false alarm occurred at the alarm site, and whether the false alarm service charge assessed is correct. The Board may affirm or modify the original notice consistent with the Board's findings.

(d) Any appeal from the findings of the Board of Public Works and Safety shall be taken in accordance with the provisions of Indiana Code § 36-1-6-9.

(Ord. 4754, 10-2-2013)

#### 3.10.1.4 Definitions.

Sec. 4 (a) Alarm site means the location or address served by an alarm system. Each location or address served by a separate alarm system shall be considered a separate alarm site.

(b) Alarm system means any device or set of devices intended to detect and signal the occurrence of an activity requiring an emergency response to the alarm site in which the device or set of devices are installed and operated. For the purposes of this Code article, an alarm system installed on a motor vehicle or on someone's person is excluded.

(c) False alarm means the activation of an alarm system resulting in notification of the Goshen Police Department and/or Goshen Fire Department which occurs as the result of mechanical or electronic failure, malfunction, improper installation, or the negligence or intentional conduct of the occupant of the alarm site or the occupant's employees, customers or invitees. For the purposes of this Code article, an alarm is false when, upon inspection by the Goshen Police Department and/or Goshen Fire Department, there is no evidence of criminal activity, fire, smoke, carbon monoxide, heat, or other threat of emergency of the kind for which the alarm system is designed to give notice.

A false alarm shall not include an alarm which can reasonably be determined to have been caused or activated by violent weather conditions. In addition, an alarm activated during an alarm system testing procedure shall not be considered a false alarm if the owner of the real estate first notifies the Goshen Police Department and Goshen Fire Department.

(Ord. 4754, 10-2-2013)

– End of Title 3 –



## TITLE 4. MOTOR VEHICLES AND TRAFFIC

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### Article 1. Motor Vehicles and Traffic

#### Chapter 1. In General

##### 4.1.1.1 Obedience required.

Sec. 1 It is unlawful for any person to do any act forbidden or fail to perform any act required in this Code title.

(Ord. 2678, 5-13-1980)

##### 4.1.1.2 Push carts, riding and driving animals, etc.

Sec. 2 Every person propelling any push cart or riding an animal upon a roadway, and every person driving any animal drawn vehicle, shall be subject to the provisions of this Code article applicable to the driver of any vehicle, except those provisions of this Code article which by their very nature can have no application.

(Ord. 1607, 5-6-1963)

##### 4.1.1.3 Regulation of traffic on school properties.

Sec. 3 (a) Applicability. This Code section shall be applicable and in full force and effect after adoption, publication and posting of signs with respect to all school properties located inside the City limits of the City which make up Goshen Community Schools.

(b) Speed limits; notification. The speed limit for all motor vehicles on all drives and roadways located upon the aforementioned school properties shall be twenty-five (25) miles per hour. The speed limit signs shall be erected to notify all motor vehicle operators of the speed limits.

(c) Responsibility for erection of signs. Stop signs, yield right-of-way signs, speed limit signs and one-way directional signs shall be erected at locations as determined by the Board of Public Works and Safety of the City, after consulting with the superintendent of Goshen Community Schools or the superintendent's designated representative.

(d) Payment for erection of signs. The cost of the signs to be placed upon the school properties shall be paid for by Goshen Community Schools.

(e) Violations; Penalties. It is unlawful for any person to violate any of the provisions of this Code section. Every person convicted of a violation of any of the provisions of this Code section shall, for the first conviction thereof, be punished by a fine of not more than One Hundred Dollars (\$100.00); for a second such conviction within one (1) year after the first conviction, such person shall be punished by a fine of not more than Five Hundred Dollars (\$500.00).

(Ord. 2309, 3-2-1976; Ord. 2679, 5-13-1980)

**4.1.1.4 Pedestrians subject to traffic control signals.**

Sec. 4 Pedestrians shall be subject to traffic-control signals, and at all places pedestrians shall be granted those rights and be subject to the restrictions stated in this Code article.

(Ord. 1607, 5-6-63)

**4.1.1.5 Obedience to official traffic control devices.**

Sec. 5 No driver of a vehicle or motorman of a street car shall disobey the instructions of any official traffic-control device placed in accordance with the provisions of this Code article unless otherwise directed by a police officer or a fireman.

(Ord. 1607, 5-6-1963)

**4.1.1.6 Evading signs, signals, etc.**

Sec. 6 No person shall drive through any filling station driveway, or other driveway, in order to evade an official traffic control sign, signal, device or other marking.

(Ord. 1607, 5-6-1963)

**4.1.1.7 Obedience to police officers.**

Sec. 7 No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer invested with authority to direct, control, or regulate traffic.

(Ord. 1607, 5-6-1963)

**4.1.1.8 Obedience to fireman.**

Sec. 8 No person shall willfully fail or refuse to comply with any lawful order of direction of a fireman.

(Ord. 1607, 5-6-1963)

**4.1.1.9 Play streets.**

Sec. 9 Whenever authorized signs are erected indicating any street or part thereof as a play street, no person shall drive a vehicle upon any such street or portion thereof except drivers of vehicles having business or who reside within such closed area, and then any said driver shall exercise the greatest care in driving upon any street or portion thereof.

(Ord. 1607, 5-6-1963)

**4.1.1.10 Passing restriction.**

Sec. 10 No person operating any motor vehicle having a gross weight of five thousand (5,000) pounds on any public highway or street, shall overtake and pass any motor vehicle traveling any such public highway or street, whether or not such highway or street is wide enough to accommodate more than two (2) lanes of traffic.

(Ord. 1607, 5-6-1963)

**4.1.1.11 Entering intersections so as to obstruct traffic.**

Sec. 11 No driver of any vehicle shall enter any intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.

(Ord. 149, 9-14-1903; Ord. 1607, 5-6-1963)

**4.1.1.12 Limitations on backing.**

Sec. 12 The driver of a vehicle shall not back the same unless movement can be made with reasonable safety and without interfering with other traffic.

(Ord. 1607, 5-6-1963)

**4.1.1.13 Drivers in a procession.**

Sec. 13 Each driver in a funeral or other procession shall drive as near to the right-hand edge of the roadway as practical and shall follow the vehicle ahead as closely as is practical and safe.

(Ord. 1607, 5-6-1963)

**4.1.1.14 Driving on sidewalk.**

Sec. 14 The driver of a vehicle shall not drive within any sidewalk area except at a permanent or temporary driveway.

(Ord. 1607, 5-6-1963)

**4.1.1.15 Pedestrians generally.**

Sec. 15 (a) No pedestrian shall cross a roadway at any place other than a route at right angles to the curb or by the shortest route to the opposite curb except in a crosswalk.

(b) No pedestrians shall cross a roadway other than in a crosswalk in central traffic district or in any business district.

(c) No pedestrians shall pass through, around, over, or under any crossing gate or barrier at railroad grade crossing gate or bridge while such gate or barrier is closed or is being opened or closed.

(Ord. 1607, 5-6-1963)

**4.1.1.16 Pedestrians soliciting employment.**

Sec. 16 No person shall stand on a street or highway for the purpose of soliciting employment, or business from the occupant of any vehicle.

(Ord. 1607, 5-6-1963)

**4.1.1.17 Vehicle doors.**

Sec. 17 No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so. No person shall leave a door open on the side of a motor vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

(Ord. 1607, 5-6-1963)

**4.1.1.18 Boarding or alighting from vehicles.**

Sec. 18 No person shall board or alight from any vehicle while such vehicle is in motion.

(Ord. 1607, 5-6-1963)



**4.1.1.19 Unlawful riding of vehicle.**

Sec. 19 No person shall ride on any vehicle upon any portion thereof not designed or intended for the use of passengers. This provision shall not apply to any employee engaged in the necessary discharge of his duty, or to persons riding within truck bodies in space intended for merchandise.

(Ord. 1607, 5-6-1963)

**4.1.1.20 Roller skating, etc.**

Sec. 20 No person upon roller skates, or riding in or by means of any coaster, toy vehicle, or similar device shall go upon any roadway except while crossing a street on a cross-walk and when crossing, such person shall be granted all of the rights and shall be subject to all of the duties applicable to pedestrians. This Code section shall not apply upon any street while set aside as a play street pursuant to this Code article.

(Ord. 1607, 5-6-1963)

**4.1.1.21 Impoundment of vehicles.**

Sec. 21 (a) Members of the police department are authorized to remove a vehicle from a street or highway to any garage or other place of safety, or to a garage designated or maintained by the police department or otherwise maintained by this City under any of the following circumstances:

- (1) When any vehicle is left unattended upon a bridge, viaduct, or causeway, or in any tube or tunnel where such vehicle constitutes an obstruction to traffic.
- (2) When a vehicle upon a highway is so disabled as to constitute an obstruction to traffic, and the person in charge of the vehicle is by reason of physical injury incapacitated to such an extent as to be unable to provide for its custody or removal, or when the person in charge of the vehicle refuses to move the vehicle to a safe place within a reasonable time after a lawful request or notice to move said vehicle.
- (3) When any vehicle is left unattended upon a street or alley and is so parked illegally as to constitute a definite hazard or obstruction to the normal movement of traffic.
- (4) Whenever such vehicle is parked in violation of this Code article or must be moved for any reasonable purpose, including cleaning of streets; the members of the police department are authorized to remove or cause to be removed such vehicle to any garage or other place designated by the police department.

(b) Whenever an officer removes a vehicle from a street as authorized in this Code section and the officer is able to ascertain from the registration records in the vehicle the name and address of the

owner thereof, such officer shall immediately give or cause to be given notice in writing to such owner of the fact of such removal and the reasons therefore, and the place to which such vehicle has been removed. In the event any such vehicle is stored in a public garage, a copy of such notices shall be given to the proprietor of such garage.

(Ord. 1607, 5-6-1963; Ord. 2504, 6-6-1978)

#### 4.1.1.22 Parental responsibility.

Sec. 22 It shall be unlawful for the parent of any child and the guardian of any ward to authorize or knowingly permit any such child or ward to violate any of the provisions of this Code article.

#### 4.1.1.23 Definitions.

Sec. 23 Whenever words and phrases used in this Code article are not defined in this Code but are defined in the Uniform Act Regulating Traffic on Highways, such definitions shall be deemed to apply to such words and phrases. As used in this Code article, the following terms shall have the meaning ascribed to them below:

- (1) ALLEY. A public roadway which affords only secondary means of vehicular access to abutting property and not over twenty (20) feet in width.
- (2) CENTRAL BUSINESS DISTRICT. All streets and portion of streets within the area bounded by Madison Street on the south, Sixth Street on the east to Lincoln Avenue, thence east on Lincoln to Penn Central Railroad track. Following Penn Central Railroad track northwesterly to Main Street, thence south to Pike Street, thence west on Pike to the Elkhart River, thence southerly along Elkhart River to Lincoln Avenue, thence east on Lincoln Avenue to Second Street south on Third to Madison.
- (3) COMMERCIAL VEHICLE. Every vehicle designed, maintained, or used primarily for the transportation of property.
- (4) STAND or STANDING. The halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers.
- (5) STOP. The complete cessation of movement.
- (6) STOP or STOPPING. Any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal.

(7) TRUCK. Every commercial vehicle having dual back wheels, over two (2) axles, or over four (4) wheels. This definition does not include those vehicle used primarily for personal use, delivery of goods to local residence, or municipally-owned vehicles.

(Ord. 1607, 5-16-1963; Ord. 2787, 5-6-1981)

## **Article 2. Administration and Enforcement**

### **Chapter 1. Administration and Enforcement**

#### **4.2.1.1 Emergency and experimental regulations.**

Sec. 1 (a) The chief of police, by and with the approval of the Board of Public Works and Safety, is hereby empowered to make regulations necessary to make effective the provisions of 4.2.1 of this Code, and to make and enforce temporary or experimental regulations to cover emergencies or special conditions. No such temporary or experimental regulation shall remain in effect for more than ninety (90) days.

(b) The Board of Public Works and Safety may test traffic control devices under actual conditions of traffic.

(Ord. 1607, 5-6-1963)

#### **4.2.1.2 Traffic commission.**

Sec. 2 (a) There is established a Traffic Commission to serve without compensation, consisting of the Board of Public Works and Safety, the chief of police, or in his discretion as his representative, a member of the police department, a member of the Common Council, such other City officers and representatives of unofficial bodies as may be determined and appointed by the mayor and may be removed by him.

(b) It shall be the duty of the Traffic Commission, and to this end, it shall have the authority within the limits of the funds at its disposal, to coordinate traffic activities, to carry on educational activities in traffic matters, to supervise preparation and publication and to recommend ways and means for improving traffic conditions and the administration and enforcement of traffic regulations.

(c) The traffic commission shall meet when called into session by the commission chairman or the mayor. The commission shall meet biannually, once in the first half and once during the second half of the fiscal year, with a reasonable advance notice. The number of sessions over the minimum requirements shall be left to the discretion of the mayor and the chairman of the commission.

(Ord. 1607, 5-6-1963)

#### 4.2.1.3 Authority of police and fireman.

Sec. 3 (a) It shall be the duty of the officers of the police department or such officers as are assigned by the chief of police to enforce all provisions of this Code article and all of the state vehicle laws.

(b) Officers of the police department or such officers as are assigned by the chief of police are hereby authorized to direct all traffic by voice, hand, or signal in conformance with traffic laws, provided that, in the event of a fire or other emergency or to expedite traffic or to safeguard pedestrians, officers of the police department may direct traffic as conditions may require notwithstanding the provisions of the traffic law.

(c) Officers of the fire department, when in uniform, may direct or assist the police in directing traffic.

(Ord. 1607, 5-6-1963)

#### 4.2.1.4 Presumption.

Sec. 4 In any prosecution charging a violation of any law, ordinance or regulation governing the parking or standing of a vehicle, proof that the defendant named in the complaint was at the time of such violation, the registered owner of such vehicle, shall constitute prima facie evidence that such registered owner was the person who parked such vehicle at the time and place and for the time during which such violation occurred.

(Ord. 1607, 5-6-1963)

#### 4.2.1.5 Notice for unattended cars.

Sec. 5 Whenever any a motor vehicle without a driver is found parked or stopped in violation of any of the restrictions imposed by this Code article and other ordinances relating to traffic, then the officer finding such vehicle shall take its registration number and may take any other information displayed on such vehicle which may identify its owner or user, and shall conspicuously affix to such vehicle a notice in writing on a duplicate form provided by the clerk treasurer, for the driver to answer to the charge against him within the time and at the place specified in the notice. The officer shall send one copy of such notice to the Traffic Violations Bureau.

(Ord. 1607, 5-6-1963)

4.2.1.6 Destruction of traffic ticket or notice for unattended cars.

Sec. 6 No person, whether the recipient thereof or otherwise, shall willfully throw away, mar, mutilate, destroy or discard a traffic ticket or the notice required in 4.2.1.5 of this Code.

(Ord. 1607, 5-6-1963)

4.2.1.7 Records.

Sec. 7 (a) The chief of police shall maintain or cause to be maintained, in connection with every traffic citation issued by a member of the police department a record of the disposition of the charge by the City judge or the traffic violations bureau.

(b) The chief of police shall also maintain or cause to be maintained, a record of all warrants issued by the City judge or by any other court on said traffic violation charges and which delivered to the police department for service, and of the final disposition of all such warrants.

(Ord. 1607, 5-6-1963)

4.2.1.8 Disposition of fines, fees, etc.

Sec. 8 All fines, forfeitures, fees and costs collected upon conviction or upon the forfeiture of bail of any person charged with a violation of any provisions of this Code article shall be paid into and received by the clerk-treasurer as required by law.

(Ord. 1607, 5-6-1963)

4.2.1.9 Parking enforcement personnel.

Sec. 9 (a) The Board of Public Works and Safety may enter into contracts for the employment of parking enforcement personnel.

(b) Parking enforcement personnel shall be uncommissioned personnel under the jurisdiction of the chief of police who shall be responsible for their supervision and direction. Their duties shall be to patrol assigned areas during periods designated and they are empowered to enforce all parking regulations and those parts of this Code pertaining to pedestrians and bicycles, to issue violation tickets or notices on forms prescribed by the police department, to answer inquiries and give direction to the public and to be of service within the range of the job assignment; to observe, record and report defective or damaged meters and to perform such other duties as are required to those enumerated. Parking enforcement personnel shall not be police officers and shall have no police powers to arrest. They shall wear a uniform prescribed by the chief of police.

(c) Parking enforcement personnel shall serve at the pleasure of the Board of Public Works and Safety and their salaries, uniforms, and others costs of operation shall be from time to time appropriated by the Common Council.

(Ord. 1864, 11-4-1968; Ord. 1939, 7-6-1970)

## **Article 3. Traffic Regulations**

### **Chapter 1. Traffic Control Signals**

#### **4.3.1.1 Generally.**

Sec. 1 (a) Vehicular movement or parking on all streets and highways under the jurisdiction of the City of Goshen shall be governed by the traffic control signals promulgated by the Board of Public Works and Safety.

(b) All changes and additions to the traffic signals or their location shall be made by action of the Board of Public Works and Safety after determining that the traffic control signals are warranted by the terms and conditions of the Indiana Manual of Uniform Traffic Control Devices for Streets and Highways. All changes and additions shall be promptly made available from the Engineering Department.

(Ord. 3424, 8-7-1990)

#### **4.3.1.2 Violations.**

Sec. 2 Any person who violates any provision of 4.3.2 of this Code chapter shall upon judgment of violation be fined not more than Five Hundred Dollars (\$500.00).

(Ord. 3424, 8-7-1990)

### **Chapter 2. Speed Limits**

#### **4.3.2.1 Established.**

Sec. 1 (a) The laws of the State of Indiana establishing or regulating speed limits for vehicles on public streets or highways shall apply to all public streets or highways within the City of Goshen, Indiana, except in the circumstances where, as properly authorized by state law, such limits have been increased or decreased by local authorities on the basis of an engineering and traffic investigation, which has determined such increase or decrease to be safe and reasonable. In such circumstances, it shall be unlawful for any person to drive or operate a vehicle in excess of any speed so determined, when signs are in place giving notice thereof.

(b) A listing of each City street or highway upon which the speed has been increased or decreased by local authorities of the City of Goshen, Indiana, has been compiled by the City and shall be known as the Goshen Speed Limits. The clerk-treasurer of the City of Goshen shall maintain the list of Goshen Speed Limits and make such listing available for public inspection. All changes in such listing by the City authorities shall be promptly attached to such listing by the clerk-treasurer.

(Ord. 2932, 12-7-1982)

#### 4.3.2.2 Penalties for violations.

Sec. 2 Any person who violates any provision of this Code chapter shall upon successful adjudication be fined not more than Two Thousand Five Hundred Dollars (\$2,500.00).

(Ord. 2932, 12-7-1982)

## **Article 4. Parking**

### **Chapter 1. Generally**

#### 4.4.1.1 Parking prohibitions generally.

Sec. 1 No vehicle shall be parked:

- (1) Across the main line or marking of a parking space or in a position that the vehicle shall not be entirely within the area designated by the lines or markings.
- (2) In a road right-of-way in the opposite direction of oncoming traffic.
- (3) In any area where parking is prohibited.
- (4) In any City-owned parking lot in violation of the regulations posted for the lot.
- (5) For a period of time in excess of the posted time limitation.
- (6) In a parking space reserved in accordance with Indiana Code § 5-16-9-2 for a vehicle of a person with a physical disability without displaying a placard issued under Indiana Code § 9-14-5 or under the laws of another state, a registration plate of a person with a physical disability, or a registration plate of a disabled veteran.

(Ord. 4174, 9-2-2003)

**4.4.1.2 City-owned or operated parking lots.**

Sec. 2 All rules and regulations regarding parking, standing, or moving vehicles embodied in this Code chapter, shall apply on all City-owned and operated parking lots.

(Ord. 1607, 5-6-1963)

**4.4.1.3 Violation.**

Sec. 3 (a) Upon discovery of any violation, a notice shall be attached to the vehicle that is parked in violation of this Code chapter.

(b) For the purposes of this Code chapter, the owner or person in whose name the vehicle is registered shall be liable for the violation.

(Ord. 4174, 9-2-2003)

**4.4.1.4 Penalties.**

Sec. 4 (a) Upon receiving notice of a violation of this Code chapter other than 4.4.1.1(6) of this Code, the owner or operator may, within twenty-four (24) hours of the time when the notice is attached to the vehicle, pay at the Goshen Police Department the sum of Ten Dollars (\$10.00) in full satisfaction of the violation. The overtime parking fee shall be increased to Twenty Dollars (\$20.00) if the violation exceeds the legally posted limit by more than two (2) hours but less than four (4) hours, and an additional fee of Ten Dollars (\$10.00) shall be paid for each additional two (2) hours of violation or fraction thereof, beyond four (4) hours.

(b) Upon receiving a notice of a violation of 4.4.1.1(6) of this Code, the owner or operator may, within twenty-four (24) hours of the time when the notice is attached to the vehicle, pay at the Goshen Police Department the sum of Forty Dollars (\$40.00) in full satisfaction of the violation.

(c) An administrative charge of Ten Dollars (\$10.00) shall be added to any violation which is not paid within twenty-four (24) hours but is paid within thirty (30) days of the notice of the violation.

(d) If the violation has not been paid within thirty (30) days, the parking violation shall be referred to the City Attorney to file an ordinance violation with the court. Upon such referral, the owner of the vehicle shall be liable for a fine not to exceed Five Hundred Dollars (\$500.00) and court costs.

(Ord. 4174, 9-2-2003)



4.4.1.5 Alleys.

Sec. 5 (a) No person shall park any vehicle within an alley, except while in the process of loading or unloading merchandise, in such a manner or under such conditions as to leave available less than ten (10) feet of the width of the roadway for the free movement of vehicle traffic.

(b) No person shall stop, stand, or park a vehicle within an alley in such position as to block the driveway entrance to any abutting property.

(Ord. 1607, 5-6-1963)

4.4.1.6 Repair or storage.

Sec. 6 No person shall park a vehicle upon any roadway for the principle purpose of repairing or storing such vehicle.

(Ord. 1607, 5-6-1963)

4.4.1.7 Display for sale.

Sec. 7 No person shall park a vehicle upon any roadway for the principal purpose of displaying it for sale.

(Ord. 1607, 5-6-1963)

4.4.1.8 Unloading permit.

Sec. 8 (a) The Board of Public Works and Safety is authorized to issue special permits to permit the backing of a vehicle to the curb for the purpose of loading or unloading merchandise or materials, subject to the terms and conditions of such permit. Such permits may be issued either to the owner or lessee of real property or to the owner of the vehicle and shall grant to such person the privileges as therein stated and authorized herein.

(b) It shall be unlawful for any permittee or other person to violate any of the special terms or conditions of any such permit.

(Ord. 1607, 5-6-1963)

4.4.1.9 Curb loading zones.

Sec. 9 (a) The Board of Public Works and Safety shall designate loading zones upon application for a permit for such zone requesting two (2) signs to indicate the ends of each zone. The Board upon granting the permit and issuing the signs shall collect from the applicant, and deposit in the City treasury, a fee per year or fraction thereof as set forth in the ordinance and may by general

regulations, impose conditions under the use of such signs and for reimbursement of the City for the value thereof in the event of their loss or damage, and their return in the event of misuse or upon expiration of permit. Every such permit shall expire at the end of one year.

(b) No person shall stop, stand, or park a vehicle for any purpose or period of time other than for expeditious loading or unloading of passengers in any place marked as a passenger curb loading zone during hours when regulations applicable to such curb loading zones are effective, and then only for a period not exceed three (3) minutes.

(c) No person shall stop, stand, or park a vehicle for any purpose or period of time other than for the expeditious unloading and delivery or pick-up and loading of materials in any place marked as freight curb loading zone during hours when the provisions applicable to such zones are in effect, except for the unloading or loading of passengers, with a three (3) minute time limit. In no case shall the stop for loading and unloading of materials exceed thirty (30) minutes.

(Ord. 1607, 5-6-1963)

#### 4.4.1.10 Taxi and bus stands.

Sec. 10 (a) The operator of a bus shall not stand or park such vehicle upon any street at any place other than a bus stand so designated as provided herein.

(b) The operator of a bus shall not stop such vehicle upon any place for the purpose of loading or unloading passengers or their baggage, other than at a bus stop, bus stand, or passenger loading zone so designated as provided herein, except in case of emergency.

(c) The operator of a bus shall enter a bus stop, bus stand, or passenger loading zone on a public street in such a manner that the bus, when stopped to load or unload passengers or baggage, shall be in a position with the right front wheel of such vehicle not further than eighteen (18) inches from the curb, and the bus approximately parallel to the curb so as not to unduly impede the movement of other vehicular traffic.

(d) The operator of a taxicab shall not stand or park such vehicle upon any street at any place other than in a taxicab stand so designated, as provided herein. This provision shall not prevent the operator of a taxicab from temporarily stopping in accordance with other stopping or parking regulations at any place for the purpose of and while actually engaged in expeditious loading or unloading of passengers.

(e) No person shall stop, stand or park a vehicle other than a bus in a bus stop, or other than a taxicab in a taxicab stand, when any such stop or stand has been officially designated and appropriately signed, except that the driver of the passenger vehicle may temporarily stop therein for

the purpose of and while actually engaged in loading or unloading of passengers when such stopping does not interfere with any bus or taxicab waiting to enter or about to enter such zone.

(Ord. 1607, 5-6-1963)

#### 4.4.1.11 Maximum parking.

Sec. 11 No person shall park a vehicle upon any roadway or any street for a period of time longer than seventy-two (72) hours.

(Ord. 1607, 5-6-1963)

## Chapter 2. Controlled Parking in Yards; Sidewalks

### 4.4.2.1 Prohibited parking areas.

Sec. 1 (a) It shall be unlawful to park a vehicle in a front yard, in a side yard on the street side of a corner lot, or in a rear yard that abuts a street.

(b) It shall be unlawful to park a vehicle over any part of the sidewalk or curb that is parallel to the public way, including the part of the sidewalk that is part of a driveway.

(Ord. 3900, 8-3-1999)

### 4.4.2.2 Exceptions.

Sec. 2 For the purposes of this Code chapter, parking is permitted in the following areas:

- (1) An improved space in the prohibited parking area used as a parking space before this Code chapter is adopted, provided that the entrance to the improved area is via a driveway or curb cut, except where adjacent to a paved street where there is no curb.
- (2) Parking in any portion of the driveway that may be located in the front yard, rear yard, or side yard, except the portion that is part of the sidewalk.
- (3) Parking within ten feet (10') of the edge of the street where no curb is present, within the existing right-of-way, and in an improved area.
- (4) Any improved area meeting setback requirements and other applicable zoning provisions. The Planning and Zoning Department must determine compliance with all such improved areas.

- (5) Parking in a front yard, side yard, or rear yard for the purpose of unloading a vehicle, washing a vehicle or some other similar purpose. The vehicle, however, must be removed from the front yard, side yard, or rear yard once the task is completed.

(Ord. 3900, 8-3-1999)

#### 4.4.2.3 Enforcement; citation; penalty.

Sec. 3 (a) The City of Goshen Ordinance Administrator, a representative of the Planning and Zoning Department, and representative of the Building Department, or any officer of the Police Department may enforce the provisions of this Code chapter. The preceding authorized persons shall be known as “officer” for the purposes of this Code chapter.

(b) An officer may issue a citation for a violation of this Code chapter, subjecting the violator to a fine up to Five Hundred Dollars (\$500.00). The citation shall be placed in a prominent place upon the vehicle.

(c) The citation shall be filed with the City of Goshen Violations Bureau or with any court of competent jurisdiction in Elkhart County, Indiana.

(d) For the purposes of this Code chapter, the violator shall be the person to whom the unlawfully parked vehicle is registered.

(Ord. 3900, 8-3-1999)

#### 4.4.2.4 Definitions.

Sec. 4 For the purpose of this Code chapter, the following terms, phrases and words shall have the following meanings:

- (1) FRONT YARD. The term “front yard” refers to a yard extending across the full width of the lot, lying between the front property line or the right-of-way, and the furthestmost projection of the principal building or group of buildings.
- (2) SIDE YARD. The term “side yard” refers to a yard lying between the furthestmost projection of a building and a side lot line and extending from the required front yard to the required rear yard.
- (3) REAR YARD. The term “rear yard” refers to a yard extending across the full width of a lot and lying between the rear lot line and the furthestmost projection of a building.
- (4) DRIVEWAY. The term “driveway” refers to a passage way for vehicles composed of concrete, asphalt, or gravel that serves to connect a public street or alley to a garage or legal parking space.

- (5) IMPROVED AREA. The term “improved area” refers to a section of the lot that has been altered and defined by concrete, asphalt, or gravel, with a positive boundary, for the means of providing a parking space for a vehicle. The improved area must be entered via a driveway or curb cut, except where adjacent to a paved street where there is no curb.

(Ord. 3900, 8-3-1999)

### **Chapter 3. Parking During Infrastructure Improvements**

#### **4.4.3.1 Parking on streets designated for infrastructure repair, snow removal or brush removal.**

Sec. 1 It shall be unlawful for any person to park any vehicle or to permit a vehicle to remain parked along any street designated for infrastructure repairs, snow removal, leaf removal or brush removal.

(Ord. 3874, 2-2-1999)

#### **4.4.3.2 Designation and notice.**

Sec. 2 (a) When required for infrastructure repairs, snow removal, leaf removal or brush removal, the area and duration of the prohibited parking on a street shall be designated by the City. The prohibited parking shall be as limited in scope as possible. All vehicles shall be prohibited from parking or remaining parked in the affected area until notice of the parking prohibition is removed.

(b) The designation shall be made by posting notice of the parking prohibition along the effected streets and on cars parked along the streets at the time the notice is posted, except if the need for the parking prohibition is for snow removal. In the case of snow removal, the designation shall be made by posting notice along the effected streets only. Notice shall be posted a minimum of 12 hours prior to the parking prohibition going into effect.

(Ord. 3874, 2-2-1999)

#### **4.4.3.3 Suspension of area parking restrictions authorized.**

Sec. 3 The Engineering Department or Police Department shall have the authority to suspend parking restrictions in areas neighboring the affected area during the duration of the parking prohibition.

(Ord. 3874, 2-2-1999)

#### 4.4.3.4 Enforcement; violations.

Sec. 4 (a) A representative of the Engineering Department or Police Department may cause vehicles to be towed that are parked on a street in violation of this Code chapter. The owner of the vehicle parked in violation of this Code chapter shall be responsible for all costs incurred by the City of Goshen for towing and storage of the vehicle. All costs shall be paid prior to release of the vehicle to the owner.

(b) In the event the City decides not to tow a vehicle parked on a street in violation of this Code chapter, the owner of a vehicle may be charged with an ordinance violation and subject to a fine of not more than Twenty-Five Dollars (\$25.00) and court costs. The City may initiate a violation of this Code chapter in accordance with 1.2.1 of this Code, as may be amended from time to time.

(Ord. 3874, 2-2-1999)

#### 4.4.3.5 Right to hearing; right to appeal.

Sec. 5 (a) The owner of a vehicle that has been towed by the City may appeal such enforcement action to the Board of Public Works and Safety by requesting a hearing. Such request must be made in writing and addressed to the Mayor's Office within 30 days of the date of the violation. Upon receipt of such request, a hearing shall be scheduled before the Board of Public Works and Safety within ten days of the written request unless a later date is agreed upon by the City of Goshen and the person requesting the appeal. The person requesting the appeal will be entitled to appear at the hearing, be represented by counsel, call and cross-examine witnesses, require the production of evidence, and have the City's cooperation in having subpoenas issued, served and executed.

(b) At the conclusion of the hearing before the Board of Public Works and Safety, the Board may make findings of fact and take action to affirm, modify or reverse any enforcement action taken by the City of Goshen.

(c) Any action taken by the Board of Public Works and Safety is subject to review by any court of competent jurisdiction within Elkhart County, Indiana. A person requesting judicial review must file the verified complaint, including the findings of fact and any action taken by the Board of Public Works and Safety. The complaint must be filed within 60 days after the date the action was taken. Any appeal will be heard by the court de novo. The court may affirm, modify or reverse the action taken by the Board of Public Works and Safety.

(Ord. 3874, 2-2-1999)

## Chapter 4. Customer/Visitor Parking

### 4.4.4.1 Prohibition.

Sec. 1 (a) Between the hours of 8:00 a.m. and 6:00 p.m. Monday through Saturday, no vehicle shall park in a municipally owned parking lot or within the right-of-way of a City street or alley in an area designated for customer/visitor parking unless the driver's or passenger's primary purpose for parking in the designated area is to purchase or look to purchase goods or services from the surrounding businesses, or to visit a governmental office, museum or other business entity in the area.

(b) Customer/visitor parking spaces are not available for the employees or owners of the area businesses unless employee's or owner's primary purpose is to purchase goods or services from another business entity in the area.

(c) Customer/visitor parking spaces are not available for downtown residents unless the resident's vehicle displays a duly-issued downtown residential parking pass and the resident's vehicle is parked in accordance with the limitations of the parking pass or the resident's primary purpose is to purchase goods or services from a business entity in the area. The downtown residential parking pass does not permit a person to park a vehicle displaying the parking pass in a space designated for customer/visitor parking on Main Street or on Lincoln Avenue.

(Ord. 4281, 2-1-2005; Ord. 4467, 12-27-2007)

### 4.4.4.2 Designation of customer / visitor parking spaces.

Sec. 2 The spaces reserved for customer/visitor parking shall be designated by posting signs within thirty feet (30) of the parking space designating the space for customer/visitor parking only. The sign shall be clearly visible to a driver of a vehicle parking in the designated space and shall clearly designate the space for customer/visitor parking only.

(Ord. 4281, 2-1-2005; Ord. 4467, 12-27-2007)

### 4.4.4.3 Enforcement.

Sec. 3 (a) Any person observing a violation of this Code chapter may file a report of the violation on a form supplied by the City. The form will contain two parts. One part of the form shall be filed with the City Attorney's Office and the other part of the form shall be placed on the offending vehicle's windshield.

(b) Upon receipt of a report of violation, the City Attorney or the City Attorney's designee shall review the report. If it is determined that action is warranted, the City Attorney shall file an ordinance violation

with the Goshen Ordinance Violations Bureau or with a court of competent jurisdiction within Elkhart County.

(c) For the purposes of this Code chapter, the party in whose name the vehicle is registered shall be liable for the violation.

(d) A police officer or Code Compliance officer of the City who observes a violation may issue a Parking ticket in the same manner that a parking ticket can be issued for a parking violation under 4.4.1.1, 4.4.1.3 and 4.4.1.4 of the this Code.

(Ord. 4281, 2-1-2005; Ord. 4467, 12-27-2007)

#### 4.4.4.4 Penalties.

Sec. 4 The amount of the fine to be imposed shall not exceed Fifty Dollars (\$50.00). In addition to the fine, the violator shall be liable for all court costs.

(Ord. 4281, 2-1-2005; Ord. 4467, 12-27-2007)

### Chapter 5. Annual Parking Pass in Central Retail District

#### 4.4.5.1 Downtown residential parking pass.

Sec. 1 (a) The owner of the real estate within the Central Retail District containing a residential dwelling unit of at least seven hundred twenty (720) square feet may purchase one (1) or two (2) parking passes for each such dwelling unit.

(b) Each parking pass purchased may only be used by a resident of the qualifying residential dwelling unit.

(c) The parking pass will permit a resident of a qualifying residential dwelling unit to park a vehicle displaying the parking pass in any municipally-owned parking lot in the Central Retail District and in any parking space designated for customer/visitor parking except for any customer/visitor parking space located on Main Street or on Lincoln Avenue. The parking pass will not permit a resident of a qualifying residential dwelling unit to park a vehicle displaying the parking pass in a space designated for customer/visitor parking on Main Street or on Lincoln Avenue.

(Ord. 4468, 12-27-2007)

#### 4.4.5.2 Annual fee.

Sec. 2 (a) A downtown residential parking pass may be purchased from the Goshen Clerk-Treasurer's Office by the owner of the real estate containing a qualifying residential dwelling unit for the sum of One Hundred Twenty-Five Dollars (\$125.00) per year per parking pass. The parking



passes will not be sold directly to the tenants of the qualifying residential dwelling units. If a qualifying residential dwelling unit is first occupied after April 1 of any year, then the cost of the parking pass will be prorated except a minimum charge of Thirty Dollars (\$30.00) will apply to any portion of the year.

(b) All proceeds from the sale of parking passes will be placed in a non-reverting fund to be used for the acquisition, construction, improvement, or maintenance of parking facilities for the benefit of the Central Retail District.

(Ord. 4468, 12-27-2007)

#### 4.4.5.3 Central retail district defined.

Sec. 3 For the purposes of this Code chapter, the Central Retail District is defined as the area west of the centerline of Fifth Street, south of Pike Street, east of the alley between Third Street and Second Street, and north of the centerline of Madison Street. In addition, the Central Retail District includes the real estate at 210 East Lincoln Avenue.

(Ord. 4468, 12-27-2007)

## **Article 5. Prohibiting Certain Commercial Vehicles on Kercher Road**

### **Chapter 1 Prohibition**

#### 4.5.1.1 Prohibited vehicles and area.

Sec. 1 In accordance with Indiana Code § 9-20-1-3, a commercial vehicle towing a trailer, semitrailer, or pole trailer in which the trailer, semitrailer, or pole trailer is in excess of a maximum length of forty feet (40') shall be prohibited upon Kercher Road from Main Street/State Road 15 to the western city limits.

(Ord. 4714, 11-29-2012)

#### 4.5.1.2 Violation; penalty.

Sec. 2 (a) A person may not drive a commercial vehicle which is towing a trailer, semitrailer, or pole trailer in which the trailer, semitrailer, or pole trailer is in excess of a maximum length of forty feet (40') upon Kercher Road from Main Street/State Road 15 to the western city limits.

(b) Any person found violating this Code article shall be subject to enforcement in accordance with Indiana Code § 34-28-5 et seq. and Indiana Code § 9-30-3 et seq., as each may be amended from time to time.

(c) The court may enter a judgment for violation of this Code article, including costs, in an amount not exceeding Two Thousand Five Hundred Dollars (\$2,500.00).

(Ord. 4714, 11-29-2012)

## **Article 6. Abandoned Vehicles**

### **Chapter 1. Removal and Disposal of Abandoned Vehicles**

#### **4.6.1.1 Adoption of Indiana Code 9-22-1 et seq.**

Sec. 1 This Code article specifically adopts the provisions of Indiana Code §§ 9-22-1-1 through 9-22-1-32 inclusive.

(Ord. 3879, 4-12-1999)

#### **4.6.1.2 Vehicle defined.**

Sec. 2 The term “vehicle” refers to an automobile, a motorcycle, a truck, a trailer, a semi-trailer, a tractor, a bus, a school bus, a recreational vehicle, or a motorized bicycle.

(Ord. 3879, 4-12-1999)

#### **4.6.1.3 Abandoned vehicle defined.**

Sec. 3 (a) The term “abandoned vehicle” means the following:

- (1) A vehicle located on public property illegally.
- (2) A vehicle left on public property without being moved for three (3) days.
- (3) A vehicle located on public property in such a manner as to constitute a hazard or obstruction to the movement of pedestrian or vehicular traffic on a public right-of-way.
- (4) A vehicle that has remained on private property without the consent of the owner or person in control of that property for more than forty-eight (48) hours.
- (5) A vehicle from which the engine, transmission, or differential has been removed or that is otherwise partially dismantled or inoperable and left on public property.
- (6) A vehicle that has been removed by a towing service or public agency upon request of an officer enforcing a statute, this Code or any other ordinance if the impounded vehicle is not claimed or redeemed by the owner or the owner’s agent within twenty (20) days after the vehicle’s removal.

(7) A vehicle that is at least three (3) model years old, is mechanically inoperable, and is left on private property continuously in a location visible from public property for more than twenty (20) days.

(b) A vehicle otherwise fitting the definition of an abandoned vehicle shall not be considered an abandoned vehicle if it is:

- (1) A vehicle in operable condition specifically adapted or constructed for operation on privately owned raceways.
- (2) A vehicle stored as the property of a member of the armed forces of the United States who is on active duty assignment.
- (3) A vehicle located on a vehicle sale lot or at a commercial vehicle servicing or leasing facility.
- (4) A vehicle located upon property licensed or zoned as an automobile scrap yard.
- (5) A vehicle registered and licensed under Indiana Code § 9-18-12 as an antique vehicle.

(c) A vehicle shall not be considered an abandoned vehicle if it is stored in a garage or other building or within a fenced area which blocks the vehicle from public view.

(Ord. 3879, 4-12-1999)

#### 4.6.1.4 Parts defined.

Sec. 4 The term "parts" refers to all components of a vehicle that as assembled do not constitute a complete vehicle.

(Ord. 3879, 4-12-1999)

#### 4.6.1.5 Enforcement authority.

Sec. 5 The City of Goshen Ordinance Administrator, a representative of the Goshen Building Department, a representative of the Goshen Planning and Zoning Department, or any member of the Goshen Police Department, including the Public Services Officer, is hereby designated to carry out the provisions of this Code article or the provisions of Indiana Code §§ 9-22-1-1 through 9-22-1-32. For the purposes of this Code article, the preceding authorized persons may hereafter be referred to as "officer."

(Ord. 3879, 4-12-1999)

#### 4.6.1.6 Responsibility and liability of owner of abandoned vehicle or parts.

Sec. 6 The person who owns an abandoned vehicle or parts is responsible for the abandonment and liable for all of the costs incidental to the removal, storage, and disposal of the vehicle or the parts. All costs incurred shall constitute a lien against the vehicle or parts, and the vehicle or parts shall not be released until all such costs are paid.

(Ord. 3879, 4-12-1999)

#### 4.6.1.7 Tagging abandoned vehicle or parts.

Sec. 7 An officer authorized under 4.6.1.5 of this Code finds or is notified of a vehicle or parts believed to be abandoned shall attach in a prominent place a notice tag containing the following information:

- (1) The date, time, officer's name, public agency, and address and telephone number to contact for information.
- (2) That the vehicle or parts are considered abandoned.
- (3) That the vehicle or parts will be removed after seventy-two (72) hours.
- (4) That the person who owns the vehicle will be held responsible for all costs incidental to the removal, storage, and disposal of the vehicle.
- (5) That the person who owns the vehicle may avoid costs by removal of the vehicle or parts within seventy-two (72) hours.

(Ord. 3879, 4-12-1999)

#### 4.6.1.8 Abandoned vehicle report.

Sec. 8 If a vehicle or a part tagged under 4.6.1.7 of this Code, is not removed within the seventy-two (72) hour period, the officer shall prepare a written abandoned vehicle report of the vehicle or parts, including information on the condition, missing parts, and other facts that might substantiate the estimated market value of the vehicle or parts. Photographs shall be taken to describe the condition of the vehicle or parts.

(Ord. 3879, 4-12-1999)

#### 4.6.1.9 Disposal of vehicle or parts.

Sec. 9 If, in the opinion of the officer, the market value of an abandoned vehicle or parts determined under 4.6.1.8 of this Code, is less than Five Hundred Dollars (\$500.00), the officer may immediately dispose of the vehicle to an automobile scrap yard. A copy of the abandoned vehicle

report and photographs relating to the abandoned vehicle shall be forwarded to the Indiana Bureau of Motor Vehicles. The City shall retain the original records and photographs for at least two (2) years.

(Ord. 3879, 4-12-1999)

#### 4.6.1.10 Towing and storage of vehicle or parts.

Sec. 10 If, in the opinion of the officer, the market value of the abandoned vehicle or parts determined under 4.6.1.8 of this Code, is at least Five Hundred Dollars (\$500.00), the officer, before placing a notice tag on the vehicle or parts, shall make a reasonable effort to ascertain the person who owns the vehicle or parts or who may be in control of the vehicle or parts. After seventy-two (72) hours, the officer shall require the vehicle or parts to be towed to a storage area.

(Ord. 3879, 4-12-1999)

#### 4.6.1.11 Non-liability for loss or damage.

Sec. 11 The City of Goshen shall not be liable for the loss or damage to a vehicle or parts occurring during the removal, storage or disposition of a vehicle or parts under this Code article.

(Ord. 3879, 4-12-1999)

#### 4.6.1.12 Search by Indiana Bureau of Motor Vehicles for owner or lien holder.

Sec. 12 (a) Within seventy-two (72) hours after removal of an abandoned vehicle to a storage area under 4.6.1.9 or 4.6.1.10 of this Code, the officer or storage lot shall prepare and forward to the Indiana Bureau of Motor Vehicles an abandoned vehicle report containing a description of the vehicle, including the following information concerning the vehicle:

- (1) The make.
- (2) The model.
- (3) The identification number.
- (4) The number of the license plate.

(b) The officer or storage lot shall request that the bureau advise the officer or storage lot of the name and most recent address of the person who owns or holds a lien on the vehicle.

(Ord. 3879, 4-12-1999)

#### 4.6.1.13 Charges allowed for towing and storage.

Sec. 13 (a) The owner of an abandoned vehicle which is not removed within the seventy-two (72) hour period is responsible for the towing and storage charges incurred by the City of Goshen. The

towing charge shall be the amount actually incurred by the City, but not exceed the sum of One Hundred Dollars (\$100.00). The storage charge shall be the amount actually incurred by the City, but not exceed One Thousand Dollars (\$1,000.00).

(b) All costs incurred by the City against the vehicle or parts must be paid before the vehicle or parts will be released.

(c) The proceeds from the sale of an abandoned vehicle or parts by the Indiana Bureau of Motor Vehicles shall be credited against the cost of the removal, storage, and disposal of the vehicle. (d) Should the proceeds from the sale of an abandoned vehicle or parts be insufficient to meet the total costs incurred for the removal, storage, and disposal of a vehicle or parts, the City may file suit in a court of competent jurisdiction against the person owning the abandoned vehicle or parts to collect the balance due.

(Ord. 3879, 4-12-1999)

**4.6.1.14 Abandoned vehicle fund.**

Sec. 14 (a) The Abandoned Vehicle Fund established under Ordinance 3494 shall continue.

(b) The fund shall be used to pay for the costs for removal and storage of an abandoned vehicle or parts not claimed by the person who owns or holds a lien on a vehicle.

(c) The costs incurred by the City in administering this Code article shall be paid from the abandoned vehicle fund.

(d) The Common Council shall annually appropriate sufficient money to the fund to carry out this Code article. Money remaining in the fund at the end of a year remains in the fund and does not revert to the general fund.

(Ord. 3879, 4-12-1999)

**Article 7. Bicycles, Skateboards, etc.**

**Chapter 1. Bicycles**

**4.7.1.1 Bicycle Registration Program.**

Sec. 1 (a) A bicycle owner may register their bicycle with the City of Goshen by completing a registration form and paying the following bicycle registration fee:

- (1) Resident Bicycle Registration Fee \$5
- (2) Non-Resident Bicycle Registration Fee \$10

(b) For the purpose of this Code chapter, a “Resident” shall mean a person who resides in the corporate boundaries of the City of Goshen. A “Non-Resident” shall mean a person who does not reside in the corporate boundaries of the City of Goshen.

(c) The bicycle registration shall be valid for a period of five (5) years.

(d) The City will issue the bicycle owner a registration sticker to be affixed on the owner’s bicycle and a card with the registration number for the bicycle. The identifying bicycle information is filed with the record of registration maintained by the City of Goshen Police Department.

(e) It shall be the responsibility of the bicycle owner to report a change of the owner’s address or phone number to the City of Goshen Police Department. It shall also be the responsibility of the bicycle owner to report the sale or transfer of a bicycle to the City of Goshen Police Department at the time of the sale or transfer. The bicycle registration is not transferrable, and it shall be the responsibility of the new owner to register the bicycle by completing a registration form and paying the bicycle registration fee if the new owner chooses to do so.

(f) The Goshen Board of Public Works and Safety will designate the locations and/or events in which bicycle registration will take place at least on an annual basis.

(g) The Goshen Board of Public Works and Safety may authorize waiving the payment of the bicycle registration fee for an event sponsored by the Goshen Police Department, Goshen Fire Department, or Goshen Parks and Recreation Department.

(h) All fees collected pursuant to the Bicycle Registration Program shall be deposited into the General Fund.

(Ord. 4599, 8-4-2010)

## **Chapter 2. Skateboards**

### **4.7.2.1 Operation in general.**

Sec. 1 It shall be unlawful for any person to operate or ride a skateboard, roller skates, in-line skates, toy vehicle, or other similar device upon a public street, sidewalk, pedestrian/bicycle trail, or public parking area in a manner that would reasonably result in a loss of control of the device, or cause damage to property or injury to another.

(Ord. 4348, 5-4-2006)

#### 4.7.2.2 Operation in downtown business district prohibited.

Sec. 2 (a) It shall be unlawful for any person to operate or ride a skateboard, roller skates, in-line skates, toy vehicle, or other similar device upon a sidewalk or public parking area within the downtown business district.

(b) For the purposes of this Code chapter, the downtown business district shall include the area described below, including the sidewalks and public parking areas within and adjacent to the streets listed, but excluding designated pedestrian/bicycle trails within and adjacent to the described downtown business district.

- (1) Madison Street from Third Street to Fifth Street;
- (2) Fifth Street from Madison Street to Pike Street;
- (3) Pike Street from Fifth Street to Second Street;
- (4) Second Street from Pike Street to Washington Street;
- (5) Washington Street from Second Street to Third Street; and
- (6) Third Street from Washington Street to Madison Street.

(Ord. 4348, 5-4-2006)

#### 4.7.2.3 Operation on privately owned real estate.

Sec. 3 It shall be unlawful for any person to operate or ride a skateboard, roller skates, in-line skates, toy vehicle, or other similar device upon any private parking area or parts of privately owned real estate without the real estate owner's consent.

(Ord. 4348, 5-4-2006)

#### 4.7.2.4 Enforcement.

Sec. 4 (a) 4.7.2.3 above may be enforced on privately owned real estate where the real estate owner has:

- (1) Executed a contract with the City of Goshen to authorize enforcement by the Goshen Police Department.
- (2) Posted signs within the private parking area or parts of privately owned real estate that skateboarding, roller skating, etc. is prohibited and a violation may be enforced by the Goshen Police Department.



(b) In all other respects, this Code chapter shall be enforced in accordance with 1.1.3 of this Code as adopted in 2004, and as the City Code may be amended from time to time.

(Ord. 4348, 5-4-2006)

4.7.2.5 Penalty.

Sec. 5 Any person who violates this Code chapter is subject to a fine of up to Five Hundred Dollars (\$500.00).

(Ord. 4348, 5-4-2006)

## **Article 8. Golf Carts**

### **Chapter 1. Permitted Use of Golf Carts**

4.8.1.1 Permitted use area.

Sec. 1 It shall be lawful for any person with a valid driver's license to operate a golf cart between sunrise and sunset within the Maple City Industrial Park on any of the following roads:

- (a) Corrie Drive;
- (b) Skyview Road;
- (c) Davis Drive;
- (d) Hackberry Drive;
- (e) Maple City Drive;
- (f) Firethorn Drive;
- (g) Elders Drive;
- (h) Sourwood Drive;
- (i) Linden Drive; and
- (j) Any private road with the Maple City Industrial Park.

(Ord. 4668, 8-10-2012)

4.8.1.2 Not permitted area.

Sec. 2 Golf cars are not permitted on any portion of the following roads:

- (a) Lincolnway East (US 33);
- (b) Kercher Road (County Road 38);
- (c) Dierdorff Road (County Road 27); and
- (d) Woodfield Road (County Road 40).

(Ord. 4668, 8-10-2012)

4.8.1.3 Definition of golf cart.

Sec. 3 For the purposes of this Code article, the term golf cart shall have the meaning set forth in Indiana Code § 9-13-2-69.7 which states that a golf cart is a four (4) wheeled motor vehicle originally and specifically designed and intended to transport one (1) or more individuals and golf clubs for the purpose of playing the game of golf on a golf course.

(Ord. 4668, 8-10-2012)

4.8.1.4 State and federal highways

Sec. 4. Notwithstanding any other provision of this Code article, this Code article does not permit a person to operate a golf cart on any state or federally designated highway.

(Ord. 4668, 8-10-2012)

4.8.1.5 Enforcement

Sec. 5 (a) Any person found violating this Code article shall be subject to enforcement in accordance with Indiana Code § 34-28-5 et seq., as amended from time to time.

(b) The court may enter a judgment for violation of this Code article, including costs, in an amount not exceeding Two Thousand Five Hundred Dollars (\$2,500.00).

(Ord. 4668, 8-10-2012)

– End of Title 4 –

## TITLE 5. PUBLIC WORKS AND UTILITIES

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### Article 1. Streets and Sidewalks

#### Chapter 1. In General

##### 5.1.1.1 Oil spills.

Sec. 1 It shall be unlawful for any person to pour, spill, or permit to drip, upon any asphalt or asphalt macadam pavement laid on any street, alley, or other public place, any kerosene, gasoline, therefore, or other similar oil or oily substance.

(Ord. 214, 8-3-1908)

#### Chapter 2. Right of Way Cuts

##### 5.1.2.1 In general.

Sec. 1 (a) Any person, firm, corporation, public utility or other entity performing work that requires the paved portion of the right-of-way, including curbs, to be cut in the City of Goshen, Indiana, shall perform such work in accordance with this Code chapter.

(b) Any person, firm, corporation, public utility or other entity performing work to construct, lay, repair or maintain utilities in the unpaved portion of the right-of-way in the City of Goshen, Indiana, shall perform such work in accordance with this Code chapter.

(Ord. 3659, 5-16-1995)

##### 5.1.2.2 Permit required.

Sec. 2 (a) No paved surface within the public right-of-way shall be cut without first obtaining a permit from the City of Goshen. Any cut of the right-of-way to construct, lay, repair or maintain utilities in the unpaved portion of the right-of-way shall also require a permit.

(b) Application for a right-of-way cut permit shall be made on forms furnished by the City of Goshen at least ten days prior to commencing the scheduled work. Applications and permit terms for right-of-way cuts may be obtained from the Street Department or the Engineering Department. All permit applications must be submitted to the Street Department.

(c) Both the Street Commission and the City Engineer shall review the application for a right-of-way cut permit, and approval shall be granted and a permit issued if the proposed work meets all requirements of this Code chapter, including all permit terms.

(d) If a right-of-way cut is necessitated by an emergency situation and it is impractical to make an application ten days prior to commencing work or the necessary work must be made during non-business hours of the City, the required right-of-way cut permit must be obtained the next business day. For the purposes of this Code section, an emergency situation is a situation that could not reasonably be foreseen and that threatens the public health, welfare or safety and requires immediate action to be taken.

(Ord. 3659, 5-16-1995)

#### 5.1.2.3 Permit fee.

Sec. 3 (a) Permits required by 5.1.2.2 of this Code, shall be issued upon prior payment of all permit fees. The permit fee for each right-of-way cut, including a non-pavement cut shall be as set forth in the ordinance.

(b) Upon approval of the Street Commissioner, public utilities may be allowed to apply for permits and then be billed monthly for the cost of those permits.

(c) Permit fees collected shall be deposited into the Motor Vehicle Highway Fund.

(Ord. 3659, 5-16-1995)

#### 5.1.2.4 Permit duration.

Sec. 4 A permit shall be valid for a period of three months from the date of issue. If work has not been completed within this time, a new application must be submitted and a new permit issued before the work can be continued, unless extended by the Street Commissioner.

(Ord. 3659, 5-16-1995)

#### 5.1.2.5 Bond required.

Sec. 5 (a) Any person, firm, corporation, or public utility or other entity performing work that requires a right-of-way cut permit shall be required to submit a surety bond to the City of Goshen in the amount of Five Thousand Dollars (\$5,000.00). The bond is to insure the faithful performance of the work involved in accordance with this Code chapter and other ordinances of the City with reference to replacing and repairing all infrastructure involved. The bond shall be in full force and effect one (1) year from final inspection and approval of the work by the City of Goshen.

(b) Any person, firm, corporation, public utility or other entity performing several projects that require a right-of-way cut permit may submit a blanket surety bond in incremental amounts of Five Thousand Dollars (\$5,000.00). The bond is to insure the faithful performance of the work involved in accordance with this Code chapter and other ordinances of the City with reference to replacing and repairing all infrastructure involved. The bond shall be in full force and effect one (1) year from final inspection and approval of the work by the City of Goshen.

(c) Upon approval of the Board of Public Works and Safety, a person, firm, corporation, public utility or other entity performing work that requires a right-of-way cut permit may submit a letter of surety, an irrevocable letter of credit or certificate of deposit for an equivalent amount in lieu of a bond. The same condition set forth in 5.1.2.5(a) and 5.1.2.5(b) of this Code, shall apply to the letter of surety, irrevocable letter of credit or certificate of deposit.

(d) The surety bond will be waived for a person performing work that requires a right-of-way cut permit for the construction of a residential driveway. The person is still required to obtain a right-of-way cut permit.

(Ord. 3659, 5-16-1995)

#### 5.1.2.6 Inspections.

Sec. 6 The City of Goshen Street Department shall be notified a minimum of twenty-four (24) hours prior to the commencement of work and upon completion of the work for required inspection to insure compliance with this Code chapter and the terms of the right-of-way cut permit.

(Ord. 3659, 5-16-1995)

#### 5.1.2.7 Violations.

Sec. 7 It shall be unlawful for any person, firm, corporation, public utility or other entity to perform any work contrary to or in violation of the provisions of this Code chapter and the terms of the right-of-way cut permit.

(Ord. 3659, 5-16-1995)

#### 5.1.2.8 Stop order.

Sec. 8 Whenever it is found that any work is being done contrary to or in violation of this Code chapter and the terms of the right-of-way cut permit, the Street Commissioner or a duly authorized representative may order the work stopped by serving notice in writing to any persons engaged in the

work. Such persons shall, without delay, stop such work until authorized by the Street Commissioner or a duly authorized representative to proceed.

(Ord. 3659, 5-16-1995)

#### 5.1.2.9 Right to hearing.

Sec. 9 (a) In the event any person, firm, corporation, public utility or other entity receiving notification of a violation of this Code chapter does not believe that they are in violation, the person, firm, corporation, public utility or other entity may request a hearing before the Board of Public Works and Safety. Such hearing shall be requested in writing to the Mayor's Office, and shall be held within ten days of receipt of the written request.

(b) At the hearing, the Board of Public Works and Safety shall enter a finding of fact designating that the party notified was performing work that requires a right-of-way cut permit and whether the party is in violation of this Code chapter. The Board shall take action to either affirm or rescind the decision of the Street Commissioner or a duly authorized representative.

(c) At the hearing before the Board of Public Works and Safety, the party requesting review may be represented by counsel, 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 also assist such persons in obtaining witnesses, exhibits and documentation to present at the time of the hearing where such information is not available to the person requesting assistance and can be obtained by the City.

(Ord. 3659, 5-16-1995)

#### 5.1.2.10 Penalties.

Sec. 10 (a) Any person, firm, corporation, public utility or other entity who violates any provisions of this Code chapter, shall be fined an amount not to exceed Five Hundred Dollars (\$500.00), in addition to court costs. Each day that a violation continues shall constitute a separate offense. The violator shall also reimburse the City of Goshen for its reasonable expenses in enforcing this Code chapter, including reasonable attorney's fees.

(b) The City of Goshen may bring action to enforce the provisions of this Code chapter in any court of competent jurisdiction within Elkhart County, Indiana.

(Ord. 3659, 5-16-1995)

**Chapter 3. Visual Obstructions****5.1.3.1 Prohibited.**

Sec. 1 On property at any corner formed by intersecting streets, it shall be unlawful to install, set out or maintain, or to allow the installation, setting out or maintenance of any sign, hedge, shrubbery, natural growth or other obstruction to the view, higher than thirty (30) inches above the level of the center of the adjacent intersection, within that triangular area between the property line and a diagonal line joining points on the property lines, thirty (30) feet from the point of their intersection. The tangents referred to are those at the beginning and at the end of the curve at the corner.

(Ord. 1607, 5-6-1963)

**5.1.3.2 Exceptions.**

Sec. 2 The provisions of this Code chapter shall not apply to permanent buildings, public utility poles, trees trimmed to the trunk to a line at least eight (8) feet above the level of the intersection, saplings, or plant species of open growth habits and not planted in the form of a hedge, which are so planted and trimmed as to leave at all seasons a clear and unobstructed crossview; supporting members of appurtenances to permanent buildings existing on June 18, 1963; official warning signs or signals to places where the contour of the ground is such that there can be no cross-visibility at the intersection; or to signs mounted ten (10 ) feet or more above the ground whose supports do not violate this Code chapter.

(Ord. 1607, 5-6-1963)

**5.1.3.3 Elimination by City.**

Sec. 3 Any obstruction maintained in violation of this Code chapter shall be removed within twenty (20) days after the posting upon the premises of notice to abate the violation. If the violation is not removed a representative of the City may enter upon the premises and remove or eliminate the obstruction and assess the expenses of its removal against such person or persons owning the real estate, and provide for collecting such expenses either by causing them to be placed on the tax duplicate or by suit.

(Ord. 1607, 5-6-1963)

## **Article 2. Water Utilities**

### **Chapter 1. Water Utilities Water System**

#### 5.2.1.1 Right to connect and connection charges.

Sec. 1 (a) A person shall have the right to connect a building located within the Goshen corporate limits to the Water Utility's water system upon payment of a connection charge in accordance with the schedule of rates as set forth in the ordinance establishing a schedule of rates and charges for services of the Goshen Water Utility, as amended from time to time.

(b) A building located outside the Goshen corporate limits may not connect to the Water Utility's water system unless the owner of the affected real estate executes an Agreement with the City of Goshen and the Agreement has been approved by the Common Council.

(c) A customer or developer shall pay a connection charge for each connection made to the Water Utility's water system. The connection fee is required for each connection, regardless if the connection is made to a public water main or to a privately-owned water line. A connection charge may be waived in whole or in part only upon the approval of the Common Council.

(d) Each new metered water service, except a residential metered sprinkling water service, must be connected directly to a public water main.

(e) Each building used for residential, commercial or industrial connected to the Water Utility's water system must be connected directly to a public water main unless otherwise approved in writing by the Board of Public Works and Safety pursuant to 5.2.1.1(f) of this Code.

(f) The Board of Public Works and Safety may approve, in writing, water service to a second building on a single zoning lot to be connected through the primary building's water service if the Board of Public Works and Safety finds that the two buildings have the same ownership and that one of the buildings is subordinate and serves the principal building on the zoning lot. The Board of Public Works and Safety must condition the approval upon a requirement for the second building to connect its water service directly to the public water main if the zoning lot is divided so that the two buildings are not on the same zoning lot and the ownership of the two buildings does not remain the same. The water service for the two buildings may not be separately metered.

(g) Connections to a Public Water Main.

(1) Effective January 1, 2005, the Goshen Water Department shall make all connections to a public water main in which the connection is twelve inches (12") or smaller in size unless the Board of Public Works and Safety gives a customer or developer the express prior written authorization to make the connection. All connections to a public water main in which the



connection is greater than twelve inches (12") in size shall be made by a private contractor at the expense of the customer or developer. All such connections shall be inspected and approved by the Water Department.

- (2) A public water main must be located in right-of-way dedicated to the City by the owner of the real estate for such purposes. Any water line on private real estate shall be deemed a privately-owned water line unless clear intent to the contrary is shown by prior written dedication of the water line to the City of Goshen accepted by the Board of Public Works and Safety.

(h) Connections to a Privately-Owned Water Line.

- (1) Upon recommendation of the Goshen Engineering Department and with the express prior written approval of the Board of Public Works and Safety, a privately-owned water line may be installed to service multiple buildings located on a single zoning lot as set forth in 5.2.1.1(f) of this Code.
- (2) All connections to a privately-owned water line shall be made by a private contractor at the expense of the customer or developer.

(i) Schedule of Connection Charges.

(1) Connections Made by the Goshen Water Department.

(A) The fee schedule as set forth in the ordinance establishing a schedule of rates and charges for services of the Goshen Water Utility, as amended from time to time, is applicable to all connections to a public water main in which the connection is made by the Goshen Water Department. The connection charge includes the right to connect to the water system, the City's cost to furnish and install the water service pipe from the public water main to the lot line, and the installation of a curb stop or valve. The connection charge does not include the cost to furnish and install the building line from the building to the curb stop or valve, the cost of the meter or meter horn, or the inspection charge.

(B) In the event that a connection was previously made to the public main and a curb stoop or valve was installed as part of another project, however, a building which would be serviced by the connection was not connected to the Water Utility's water system at that time, then the connection charge as set forth in the ordinance establishing a schedule of rates and charges for services of the Goshen Water Utility, as amended from time to time, will be for the right to connect to the water system. The connection charge does not

include the cost to furnish and install the building line from the building to the curb stop or valve, the cost of the meter or meter horn, or the inspection charge.

- (2) Connections Made by a Private Contractor. In the event that the Goshen Water Department is unable to make the connection to a public water main requiring the customer or developer to hire a private contractor to make the connection, or in the event the connection is to a privately-owned water line, the connection charge as set forth in the ordinance establishing a schedule of rates and charges for services of the Goshen Water Utility, as amended from time to time, will be for the right to connect to the water system. The connection charge does not include the cost to furnish and install the water service pipe from the public water main or privately-owned water line to the building, the curb stop or valve, the cost of the meter or meter horn, or the inspection charge.

(j) Inspection.

- (1) Each customer or developer, prior to making a connection to the Water Utility's water system shall pay an inspection fee as set forth in the ordinance establishing a schedule of rates and charges for services of the Goshen Water Utility, as amended from time to time. If a reinspection is required due to the improper installation of the water main or water line, the customer or developer shall pay a reinspection fee.
- (2) In the event that more than one (1) water main or water line are inspected on a single parcel of real estate at the same time, the Water Utility may elect to charge a single inspection fee.
- (3) If at the time of the inspection, the water main or water line to be inspected is not sufficiently exposed to allow inspection, the customer or developer will uncover the water main or water line to allow for an adequate inspection. A reinspection fee as set forth in the ordinance establishing a schedule of rates and charges for services of the Goshen Water Utility, as amended from time to time, will be assessed to the customer or developer.
- (4) The inspection shall be scheduled with the Water Utility at least two (2) working days in advance.

(Ord. 4290, 5-3-2005)

5.2.1.2 Injuring, obstructing, etc. of the waterworks.

Sec. 2 It shall be unlawful for any person to obstruct the free access or injure in any manner any building, machine, apparatus or fixture of the water works.

(Ord. 545, 4-6-1925)

### 5.2.1.3 Water meter required.

Sec. 3 Except for temporary service 5.2.2.2 of this Code, all water service shall be through lines to which is attached a water meter meeting the specifications of the City; provided, however, that all connections with the distribution pipes of the City water works shall be through lines which is attached a water meter equipped for remote reading meeting the specifications of the City; provided, further that where connections with distribution pipes of the City waterworks have been made prior to June 1, 1978, and the lines of such water utility do not have attached water meters equipped for remote reading, any change or transfer of any such water utility service to any new or different customer shall be subject to the replacement that such service be provided through lines of such water utility that have attached water meters equipped for remote reading, unless such replacement is waived by the Board of Public Works and safety on the ground that it is unnecessary or that it would cause undue hardship as applied to a particular user.

(Ord. 2472, 2-7-1978; Ord. 2490, 5-11-1978)

### 5.2.1.4 Water meter installation.

Sec. 4 (a) The installation of water meter(s) to monitor the water and sewer consumption in a multiple-unit building shall be pursuant to the requirements of this Code chapter.

(b) Water Meter. Each unit in a building will be separately metered unless the Board of Public Works and Safety gives the owner of the building express prior written approval to permit multiple units in the building to be serviced by a single meter. Such approval may not be given unless the owner of the real estate registers the water and sewer services in the owner's name and the owner pays all charges for the water and sewer services for that real estate.

(c) Installation of One Water Meter. If one water meter is installed to monitor the water and sewer consumption in more than one unit in a multiple-unit building, the owner of the building must register the water and sewer services in the name of the owner, and the owner will be billed and shall be responsible for payment of all water and sewer charges.

(d) Installation of Multiple Water Meters. If multiple water meters are installed to monitor the water and sewer consumption in a multiple-unit building, the owner of the building must comply with one of the following requirements for the installation:

- (1) If the water and sewer services for the building are registered in the name of the owner, the owner will be billed and shall be responsible for payment of all water and sewer charges.
- (2) The water and sewer services for each unit in the building may be registered in the name of the tenant, provided the owner agrees to install and maintain in working order, at the owner's

expense, an outside curb stop valve for each water meter installed so that utility services to a unit can be independently shut off without disrupting utility services to the other units in the building.

(e) Curb Stop or Valve.

- (1) Existing Service. The water and sewer services for any multiple-unit building that does not have sufficient outside curb stop valves for each water meter installed so that utility services can be independently shut off without disrupting utility services to the other units in the building may be billed to the individual tenants provided that the water and sewer charges were billed to the individual tenants prior to November 1, 2001 and have been continuously billed to the individual tenants since November 1, 2001 except for periods that are no longer than two (2) years in duration. If an existing tenant moves from the building, the water and sewer services may be registered in the name of the new tenant provided the new tenant pays a deposit for water services as established by the ordinance establishing a schedule of rates and charges for services of the Goshen Water Utility, as amended from time to time, and a deposit for sewer services as established by the current sewer rate ordinance.
- (2) Each building connected to the Water Utility's water system after September 1, 2004 and every new connection must have installed an outside curb stop or valve.
- (3) Each unit in a multi-unit building that is separately metered must have an outside curb stop or valve for each water meter installed so that utility services to a unit can be independently shut off without disrupting utility services to other units in the building.

(f) Building Water Line: Each customer shall maintain the building water line from the curb stop or valve to any building on the customer's real estate in good working order at the customer's expense. In the event that there is no curb stop or valve, the customer shall maintain the building water line from the edge of the City's right-of-way to any building on the customer's real estate at the customer's expense.

(g) Access to Premises: The owner of a multiple-unit building and/or tenant shall grant employees of the Water and Sewer Utilities immediate access to each water meter when necessary for the purpose of inspecting, repairing, removing, or replacing the meter.

(Ord. 4052, 2-5-2002; Ord. 4290, 5-3-2005)

5.2.1.5 Meter prohibited in pits.

Sec. 5 Water meters may not be located in a pit without prior written approval of the water department. The approval shall not be given unless the proposed pit meets the conditions and

specifications of the water department as approved by the Goshen City Board of Public Works and Safety.

(Ord. 3411, 6-5-1990)

#### 5.2.1.6 Unauthorized connection or use of water.

Sec. 6 (a) It shall be unlawful for any person to tap or make any connections with the distributing pipes of the City's water works unless duly authorized to do so.

(b) A person connecting a location to the Water Utility's water system without the knowledge and consent of the Water Utility shall be charged a fee as set forth in the ordinance establishing a schedule of rates and charges for services of the Goshen Water Utility, as amended from time to time, unless the Water Utility can establish that a greater fee should be charged by applying the schedule of rates and charges.

(c) Except as provided in 5.2.2.4 of this Code, a person taking water from any public or private fire hydrant, faucet or in any way using water for private use which is supplied by the Water Utility without the knowledge and consent of the Water Utility shall be charged a fee as set forth in the ordinance establishing a schedule of rates and charges for services of the Goshen Water Utility, as amended from time to time, unless the Water Utility can establish that a greater fee should be charged by applying the schedule of rates and charges.

(Ord. 545, 4-6-1925; Ord. 4290, 5-3-2005)

## Chapter 2. Water Rates and Charges

### 5.2.2.1 Monthly usage charge and monthly service charge.

Sec. 1 (a) Rates and charges are established for the use of and services rendered by the Goshen Water Utility.

(b) Each customer shall pay a monthly usage charge based on the metered cubic feet of water supplied and monthly service charge based on the applicable size of meter installed in accordance with the fee schedule set forth in the ordinance establishing a schedule of rates and charges for services of the Goshen Water Utility, as amended from time to time.

(Ord. 4290, 5-3-2005)

### 5.2.2.2 Temporary customers.

Sec. 2 Each temporary customer consuming water on an unmetered basis shall pay a monthly usage charge consistent with the usage charge set forth in the ordinance establishing a schedule of

rates and charges for services of the Goshen Water Utility, as amended from time to time, and based on the cubic feet of water used as established by the Utilities Superintendent. In addition, each temporary customer shall pay a monthly administrative fee as set forth in the ordinance establishing a schedule of rates and charges for services of the Goshen Water Utility, as amended from time to time.

(Ord. 4290, 5-3-2005)

#### 5.2.2.3 Billing cycle.

Sec. 3 For the purposes of billing and collecting the rates and charges for water use, the Goshen Water Utility will bill customers on a monthly basis.

(Ord. 4290, 5-3-2005)

#### 5.2.2.4 Fifth Street water fill station.

Sec. 4 A customer may dispense water into the person's own tank or other container from the water fill station located at the Water and Sewer Department at 308 North Fifth Street. The customer shall be charged in accordance with the fee set forth in the ordinance establishing a schedule of rates and charges for services of the Goshen Water Utility, as amended from time to time.

(Ord. 4290, 5-3-2005)

### Chapter 3. Fire Protection Services

#### 5.2.3.1 Fire hydrants.

Sec. 1 All hydrants constructed by the City are hereby declared to be public hydrants.

(Ord. 545, 4-6-1925)

#### 5.2.3.2 Unauthorized use of fire hydrants.

Sec. 2 It shall be unlawful for any person other than members of the fire department, for the use and purpose of said department and such other purposes as may be specifically authorized by the Superintendent of Water Works or the Board of Public Works and Safety, to open any public hydrant. It shall be unlawful for any such person, except as above set out and except in case of fire, to take water from any fire hydrant, or remove the cover therefrom, or to, at any time, place or deposit any earth or other material in or about any hydrant or the boxes or appendages thereto.

(Ord. 545, 4-6-1925)

5.2.3.3 Injuring, obstructing, etc. of the waterworks.

Sec. 3 It shall be unlawful for any person to obstruct the free access or injure in any manner any building, machine, apparatus or fixture of the water works.

(Ord. 545, 4-6-1925)

5.2.3.4 Rates and charges for fire protection services.

Sec. 4 Rates and charges are established for fire protection services rendered by the Goshen Water Utility:

(1) Public Fire Hydrants.

(A) The City of Goshen adopts the provisions of Indiana Code § 8-1-2-103(d). The Common Council provides that costs for the production, storage, transmission, sale and delivery, or furnishing of water for public fire protection purposes shall be recovered and included in the basic rates for all customers of the Goshen Water Utility.

(B) Effective January 1, 2005, the construction cost of any fire hydrant installed at the request of the City shall be paid for by the City or the developer if required by the City. The schedule of rates as set forth in the ordinance entitled "Goshen Water Utility Schedule of Rates and Charges", as amended from time to time, shall eliminate the fire protection charges billed directly to the City of Goshen, other than charges for the construction cost for new hydrants installed on or after January 1, 2005.

(C) Each customer of the Water Utility and/or Sewer Utility shall pay a monthly public fire protection charge as follows:

i. Water Utility Customers. Customers of the Water Utility will be charged a monthly public fire protection charge which is included in the monthly service charges set forth in the ordinance entitled "Goshen Water Utility Schedule of Rates and Charges", as amended from time to time, based on the applicable size of water meter installed. Sprinkling meters for lawn watering purposes shall be excluded from this charge.

ii. Sewer Utility Customers. Customers of the Sewer Utility within the Goshen corporate limits whose real estate is not connected to the Water Utility's water system will be charged a monthly public fire protection charge as set forth in the ordinance entitled "Goshen Water Utility Schedule of Rates and Charges", as amended from time to time, based on the applicable size of meter installed. Customers of the Sewer Utility who do not have a meter installed will be charged a

monthly public fire protection charge in accordance with the rate for a five-eighths inch (5/8") meter.

(2) Private Fire Hydrants.

(A) Each customer of the Water Utility with a private fire hydrant serving the customer's location shall pay an annual fire protection charge as set forth in the ordinance entitled "Goshen Water Utility Schedule of Rates and Charges", as amended from time to time, for private fire protection services for each private fire hydrant. The Water Utility billing office reserves the right to bill all customers for the charge on a monthly basis.

(B) Upon payment of this fire protection charge, the Goshen Water Department will provide periodic maintenance, flushing, and replacement parts for any outside private fire hydrant. The City will provide maintenance and flushing upon the condition that the Water Department is granted access to the private fire hydrant for such purposes upon the Water Department's request during regular business hours. Such maintenance and flushing will be provided at similar intervals as to what City now provides to the City's public fire hydrants. The replacement of a private fire hydrant is not covered by this charge.

(3) Private Fire Sprinkler Line Connections.

(A) Each customer of the Water Utility with a private fire sprinkler line connection serving the customer's location shall pay an annual fire protection charge for private fire protection services as set forth in the ordinance entitled "Goshen Water Utility Schedule of Rates and Charges", as amended from time to time, based on the size of sprinkler line connection for each private fire sprinkler line connection. The Water Utility billing office reserves the right to bill all customers for the charge on a monthly basis.

(Ord. 4290, 5-3-2005; Ord. 4848, 12-2-2015)

## **Chapter 4. Non-Recurring Charges**

### **5.2.4.1 Service deposit.**

#### **Sec. 1 (a) Residential Customers.**

(1) A residential customer who is not the legal owner of the real estate serviced by the Water Utility shall pay a service deposit as set forth in the ordinance establishing a schedule of rates and charges for services of the Goshen Water Utility, as amended from time to time, when applying for service.



- (2) A residential customer who is the legal owner of the real estate serviced by the Water Utility shall pay a service deposit as set forth in the ordinance establishing a schedule of rates and charges for services of the Goshen Water Utility, as amended from time to time, when applying for service, unless the residential customer had an account with the Water Utility in the customer's name for at least six (6) consecutive months prior, and all payments under the account are current and paid by their respective due dates during that six (6) month period.

(b) Non-Residential Customers.

- (1) A commercial, industrial, or other non-residential customer who is not the legal owner of the real estate serviced by the Water Utility shall pay a service deposit equal to one-sixth (1/6) of the estimated annual billing for that location or the rate as set forth in the ordinance establishing a schedule of rates and charges for services of the Goshen Water Utility, as amended from time to time, whichever is greater, when applying for service.
- (2) A commercial, industrial, or other non-residential customer who is the legal owner of the real estate serviced by the Water Utility shall also be required to pay a service deposit equal to one-sixth (1/6) of the estimated annual billing for that location or the rate as set forth in the ordinance establishing a schedule of rates and charges for services of the Goshen Water Utility, as amended from time to time, whichever is greater, unless the customer had an account with the Water Utility in the customer's name for at least six (6) consecutive months prior, and all payments under the account are current and paid by their respective due dates during that six (6) month period.

(c) The service deposit may be applied to any outstanding charges of the customer following the disconnection of service due to non-payment or when the account is closed. Any surplus balance will be refunded to the customer by mail within thirty (30) days after payment of the final bill. Should a balance exist on the account after application of the service deposit, the City reserves the right to collect any such balance as provided by law.

(Ord. 4290, 5-3-2005)

5.2.4.2 Late payment charge.

Sec. 2 A customer who has not paid all charges on an account on or before the due date stated on the bill, which due date will be at least fifteen (15) days after the bill is rendered, shall be assessed a late payment charge of ten percent (10%) on any outstanding balance.

(Ord. 4290, 5-3-2005)

**5.2.4.3 Service call charge.**

Sec. 3 A customer shall pay a service call charge as set forth in the ordinance establishing a schedule of rates and charges for services of the Goshen Water Utility, as amended from time to time, for any service calls requiring action before the next business day, whether or not the customer requests such service.

(Ord. 4290, 5-3-2005)

**5.2.4.4 Reconnection charge.**

Sec. 4 When water service is disconnected at any location for any reason, including the non-payment of a bill, a customer must pay a reconnection fee as set forth in the ordinance establishing a schedule of rates and charges for services of the Goshen Water Utility, as amended from time to time, before the service will be restored. Furthermore, if the service was disconnected due to the non-payment of a bill, the customer must also pay all delinquent charges and a service deposit as authorized by 5.2.4.1 of this Code, before service will be restored.

(Ord. 4290, 5-3-2005)

**5.2.4.5 Surcharge for a dishonored check, draft, order or like instrument.**

Sec. 5 If a check, draft, order or like instrument tendered to the City of Goshen is dishonored or returned unpaid for any reason, the City may charge and collect from the maker or drawer, or the person for whose benefit the instrument was given, an amount not to exceed Twenty Dollars (\$20.00) plus an amount equal to the actual charge by the depository institution for each returned or dishonored instrument. The charge shall not be considered an interest charge, a finance charge, a time-price differential, or any charge of a similar nature.

(Ord. 4290, 5-3-2005)

**5.2.4.6 Additional water utility products.**

Sec. 6 Any water utility product needed by a customer of the Goshen Water Utility may be furnished by the Water Utility and billed to the customer at the City's actual cost for the product plus an administrative fee as set forth in the ordinance establishing a schedule of rates and charges for services of the Goshen Water Utility, as amended from time to time.

(Ord. 4290, 5-3-2005)

5.2.4.7 Recalculation charge.

Sec. 7 A customer or developer shall pay an administrative fee as set forth in the ordinance establishing a schedule of rates and charges for services of the Goshen Water Utility, as amended from time to time, if, due to no fault of the Water Utility, any charge is required to be recalculated due to a change in the size of meter or size of line connection.

(Ord. 4290, 5-3-2005)

## **Chapter 5. Miscellaneous**

5.2.5.1 Payment obligation.

Sec. 1 Any customer over the age of eighteen (18) who occupies a location serviced by the Water Utility and who makes application to the City to have utility charges billed to him or her may be billed those charges directly from the date of application. The person making application to have the utility charges billed to him or her personally is obligated to pay all proper charges made to the account until the customer informs the City in writing of his or her intent to remove his or her name from the account.

(Ord. 4290, 5-3-2005)

5.2.5.2 Owner's right to examine records.

Sec. 2 The owner of a location in which the utility bill is sent to a person other than the owner shall have the right to examine the collection records of the Water Utility during regular business hours for the purpose of determining whether charges have been paid.

(Ord. 4290, 5-3-2005)

## **Chapter 6. Reasonable Return**

5.2.6.1 Reasonable return.

Sec. 1 In accordance with Indiana Code § 8-1.5-3-8, it is the intent of the Common Council that the rates and charges for the use of services rendered by the Goshen Water Utility produce an income sufficient to maintain the utility property in sound physical and financial condition to render adequate and efficient services. Further, the rates and charges shall be sufficient to include a reasonable return on the Goshen Water Utility plant.

(Ord. 4290, 5-3-2005)

## **Chapter 7. Payment in Lieu of Property Taxes**

### **5.2.7.1 Payment in lieu of property taxes.**

Sec. 1 In accordance with Indiana Code § 8-1.5-3-8(g), the Common Council elects to transfer to the City's general fund a payment in lieu of taxes from the rates and charges of the Goshen Water Utility in an amount sufficient to compensate the City for taxes that would be due the City on the Goshen Water Utility property if the property were privately owned.

(Ord. 4290, 5-3-2005)

## **Article 3. Goshen Sewer Utilities**

### **Chapter 1. Purpose and Application**

#### **5.3.1.1 Application.**

Sec. 1 This Code article shall apply to persons or entities within the jurisdiction of the City of Goshen's Sewer Utility.

(Ord. 4333, 12-20-2005)

### **Chapter 2. Regulations**

#### **5.3.2.1 General regulations.**

Sec. 1 (a) It shall be unlawful for any person to place, deposit, or permit to be deposited in an unsanitary manner upon public or private property in any area under the jurisdiction of the City of Goshen's Sewer Utility, any human excrement, garbage, or other objectionable waste.

(b) It shall be unlawful for any person or entity to discharge to any natural outlet or to any storm sewer in any area under the jurisdiction of the City of Goshen's Sewer Utility, any sanitary sewage, process water, industrial waste, or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this Code article and the provisions of Title 5, Article 7 of this Code. Such discharges must meet all applicable federal, state and local laws and regulations.

(c) No person or entity shall discharge or cause to be discharged any stormwater, surface water, ground water, roof runoff, subsurface drainage, non-contact cooling water or other unpolluted water to any sanitary sewer, except by permission of the Goshen Board of Public Works and Safety. Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers or to a natural outlet approved by the Board of Public Works and Safety. Industrial non-contact cooling water may be discharged to a storm sewer or natural outlet only upon

approval of the Board of Public Works and Safety. Such discharges shall meet all applicable federal, state and local laws and regulations.

(d) No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance or equipment which is a part of an enforcement action under this Code article or under Title 5, Article 7 of this Code.

(e) It shall be unlawful for any person or entity to construct or maintain any privy, privy vault, septic tank, cesspool or other facilities intended or used for the disposal of sewage, except as otherwise provided in this Code article and the provisions of Title 5, Article 7 of this Code.

(f) The owner of a dwelling, building, or property used for human occupancy, employment, recreation or other purposes in which there is now located or may in the future be located a public sewer is required at the owner's expense, to install suitable toilet facilities and to connect such facilities directly to the public sewer in accordance with the provisions of this Code article and the provisions of Title 5, Article 7 of this Code, within ninety (90) days after date of official notice to do so from the City, provided that a public sewer is within three hundred feet (300') of the owner's property line.

(g) The owner of a dwelling, building, or property used for human occupancy, employment, recreation, or other purposes shall operate and maintain any private sewage disposal facilities in a sanitary manner at all times, at no expense to the City.

(h) Where a public sanitary or combined sewer is not available under the provisions of 5.3.2.1(f) above, the building sewer shall be connected to a private sewage disposal system complying with all recommendations of the Indiana State Board of Health.

(i) At such times as a public sewer becomes available to a property served by a private sewage disposal system as provided in 5.3.2.1(h) above, and upon receipt of the official notice as provided in 5.3.2.1(f), above, a direct connection shall be made to the public sewer in compliance with this Code article and with Title 5, Article 7 of this Code, and any septic tanks, cesspools and similar private sewage disposal facilities shall be abandoned within ninety (90) days after the date of the official notice.

(j) No unauthorized person shall uncover, make any connections with or cut an opening into, alter or disturb any public sewer or appurtenance without first obtaining a building construction permit and paying all applicable fees as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges".

(Ord. 4333, 12-20-2005; Ord. 4625, 2-23-2011)

### Chapter 3. Construction and Connection Requirements

#### 5.3.3.1 General connection rights.

Sec. 1 (a) A person shall have the right to connect a building located within the Goshen corporate limits to the City's sewer system pursuant to this Code chapter and upon payment of a sewer connection fee as set forth in the ordinance "Goshen Sewer Utility Schedule of Rates and Charges" and construction of the infrastructure required by this chapter.

(b) The owner of a building located outside the Goshen corporate limits may not connect the building to the City's sewer system unless the owner of the affected real estate executes an Agreement with the City of Goshen and the Agreement has been approved by the Common Council.

(Ord. 4333, 12-20-2005; Ord. 4573, 3-22-2010)

#### 5.3.3.2 Building sewer construction and maintenance.

Sec. 2 (a) The owner of a lot, building, or parcel of real estate shall make application on a form furnished by the City of Goshen to construct a building sewer. The building sewer construction permit application shall be supplemented by any plans, specifications or other information considered pertinent by the Superintendent.

(b) A building sewer construction permit fee as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges" shall be paid at the time an application to construct a building sewer is made. The building sewer construction permit shall be paid to the Goshen Utilities Office. The building sewer construction permit is valid for a period of ninety (90) days after its issuance.

(c) The owner of a lot, building or parcel of real estate shall pay for all costs of constructing the building sewer in accordance with specifications approved by the Goshen Engineering Department. The Building sewer shall be inspected and approved by the Goshen Sewer Department. The owner shall pay the Goshen Utilities Office an inspection fee as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges".

(d) After the issuance of a building sewer construction permit to a single-family residential unit or residential duplex, inspection and approval of the building sewer by the Goshen Sewer Department, and payment of the inspection fee, the City will assume the repair of the building sewer except routine maintenance, cleaning to remove items placed in the building sewer by the owner and/or occupants of the building, or occasional cleaning to eliminate obstructions such as tree roots. The owner shall retain the duty to monitor the building sewer and promptly notify the City of any needed repair or malfunction. The City's obligation for repair or maintenance shall cease at the exterior wall of any

building. The owner will be responsible for maintenance and repair inside any building to and including the exterior wall of any building.

(e) The City does not assume and is not obligated for the repair or maintenance of any building sewer for any industrial, commercial or other non-residential use. The City does not assume and is not obligated for the repair or maintenance of any building sewer or private main which services more than two (2) residential units and/or buildings unless each such residential unit or building is separately metered and is a separate and distinct customer account of the Goshen Sewer Utility.

(f) All residential accounts of the Goshen Sewer Utility, except those accounts which provide service to more than two (2) residential units or buildings will include a monthly building sewer repair fee as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges". No such charge will be assessed to industrial, commercial or other non-residential customer accounts, or residential customer accounts that serve more than two (2) residential units and /or buildings.

(g) As a prerequisite for making a claim for the repair of a building sewer, the building owner must pay the Goshen Utilities Office a building sewer claim fee as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges". In return, the City Sewer Utility will clean and televise the building sewer and make all required repairs to the building sewer unless such repairs result from an inappropriate use of the sewer by the building owner and/or occupants of the building. City's obligation to repair the building sewer begins immediately outside the exterior wall of the building. City assumes no obligation for any defect inside the building. City assumes no obligation to monitor or inspect the building sewer for maintenance problems and assumes no obligation for routine maintenance of the building sewer. City will respond only upon notice of a problem from the party in whose name the sewer bill is maintained.

(h) If the owner of the building elects to do so, the building owner may inform the City Sewer Utility of a suspected problem with a building sewer and have a plumber televise and clean the building sewer and report their findings to the City. If the plumber used is bonded and approved by the Goshen Sewer Utility, this will eliminate the need to pay the Goshen Utilities Office a building sewer claim fee as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges".

(i) The owner of a lot, parcel of real estate or any building other than a single-family residential unit or residential duplex shall be responsible for all maintenance of the building sewer. The City's obligation for maintenance shall commence at the sewer main.

(j) All costs and expenses incidental to the installation and connection of the building sewer to the City's sewer main shall be borne by the owner. If there is no lateral sewer available to connect to the lot, building or parcel of real estate, the owner shall be responsible for all costs for connection to the public sewer in addition to the City's building sewer connection fee except for owners of a single-

family residential unit or a residential duplex who then owe the residential sewer connection fee when a lateral installation is required.

(k) The owner or the person installing the building sewer for the owner shall indemnify the City from any loss or damage that may be directly or indirectly occasioned by the installation.

(l) Each building used for residential, commercial or industrial purposes connected to the Sewer Utility's sewer system must be connected directly to a public sewer main by a separate and independent building sewer line unless otherwise approved in writing by the Board of Public Works and Safety. The Board of Public Works and Safety may approve, in writing, sewer service to a second building on a single zoning lot to be connected through the primary building's sewer service if the Board of Public Works and Safety finds that the two buildings have the same ownership and that one of the buildings is subordinate and serves the principal building on the zoning lot. The Board of Public Works and Safety must condition the approval upon a requirement for the second building to connect its sewer service directly to the public sewer main if the zoning lot is divided so that the two buildings are not on the same zoning lot and the ownership of the two buildings does not remain the same. The sewer service for the two buildings may not be separately metered.

(m) The building sewer shall be constructed of polyvinyl chloride (PVC) pipe schedule 40 for four inch (4") lines and standard dimension ratio (SDR) 35 for six inch (6") and larger, ASTM specification or equal, or other suitable materials approved by the Superintendent. Joints shall be tight and waterproof. Any part of the building sewer that is located within ten feet (10') of a water service pipe shall be constructed with polyvinyl chloride (PVC) pipe standard dimension ratio (SDR) 21 or other water grade pipe suitable to the Superintendent. If the sewer is installed in filled or unstable ground, the building sewer shall be of ductile iron pipe, except that non-metallic material may be accepted if laid on a suitable concrete bed or cradle as approved by the Superintendent.

(n) All joints between different pipe materials shall be made with approved joining material and installed in accordance with the latest edition of the Indiana Plumbing Code. Alternate joining materials and methods may be used only if approved by the Superintendent.

(o) The size and slope of the building sewers shall be subject to the approval of the Superintendent but in no event shall the slope be less than one-eighth inch (1/8") per one foot (1').

(p) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. No building sewer shall be laid parallel to or within three feet (3') of any bearing wall which might be weakened. The depth shall be sufficient to afford protection from frost, but not less than three feet (3'). The building sewer shall be laid at a uniform grade and in straight alignment in so far as possible. Change in direction shall be made only with proper fittings not greater than forty-five



(45) degrees. (Acceptable fitting bends are eleven and one-quarter (11.25) degrees, twenty-two and one-half (22.5) degrees, and forty-five (45) degrees.) Pipe shall not have any adverse grades.

(q) In all buildings in which a building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such drains shall be lifted by the artificial means approved by the Superintendent and discharged into the building sewer.

(r) All excavations required for the installation of a building sewer shall be open trench work unless otherwise approved by the Superintendent. Pipe laying and backfill shall be performed in accordance with ASTM specifications except that no backfill shall be placed until the work has been inspected by the Superintendent or his representatives.

(s) All excavations required for the installation of a building sewer shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner consistent with the right-of-way cut permit.

(Ord. 4333, 12-20-2005; Ord. 4573, 3-22-2010)

#### 5.3.3.3 Building sewer connection to sewer main.

Sec. 3 (a) The owner of a lot, building or parcel of real estate shall make application on a form furnished by the City of Goshen to connect the building sewer to the sewer main and to discharge sewage into the sanitary sewer system.

(b) A building sewer construction permit fee as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges" shall be paid at the time an application to construct a building sewer is made or at the time an application to connect the building sewer to the sewer main is made, whichever occurs first. The building sewer construction permit fee shall be paid to the Goshen Utilities Office. The building sewer construction permit is valid for a period of ninety (90) days after issuance.

(c) In the event that either the building sewer is connected to the public sewer or sewage is first discharged into the City's sanitary sewer system after the expiration of the building sewer construction permit, the City shall charge the owner of the lot, building or parcel of real estate the sewage flat rate based on the monthly sewer rates and charges for unmetered customers as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges" from the date of the expiration of the building sewer construction permit unless the owner can clearly establish the date upon which the City's sewer system was first used, in which case the City shall charge the owner of the lot, building or parcel of real estate one and one-half (1½) times the sewage flat rate based on the

monthly sewer rates and charges for unmetered customers as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges" beginning on such established date.

(d) The connection of the building sewer to the public sewer shall be made using a saddle connection. Service connections into thin wall main line sewers twenty-four inches (24") diameter, or smaller shall use a service saddle with double stainless steel straps. Service connections into concrete mainline sewers twelve inches (12") diameter and larger shall use a Kor-N-Tee connector, or approved equal. Special fittings may be used for the connection only when approved by the Superintendent.

(e) The applicant for the building sewer construction permit shall notify the Superintendent when the building sewer is ready for inspection and connection to the public sewer. At least forty-eight (48) hours prior notice shall be given to allow the Superintendent to schedule a time for inspection and supervision of connection. The connection shall be made under the supervision of the Superintendent or a representative.

(Ord. 4333, 12-20-2005)

#### 5.3.3.4 Combined sewers.

Sec. 4 The construction of new combined sewers are prohibited.

(Ord. 4333, 12-20-2005)

#### 5.3.3.5 Sewer connection fee.

Sec. 5 (a) The owner of a lot, building or parcel of real estate shall pay a sewer connection fee for each connection made to the City's sewer system. The sewer connection fee is required for each connection, regardless if the connection is made to a public sewer main or to a privately-owned sewer line that then connects to a public sewer main. A sewer connection fee may be waived in whole or in part only upon the approval of the Common Council.

(b) Residential Connection Fee. The City of Goshen will assess a sewer connection fee as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges" to the owner of a single-family residential unit or a residential duplex lot, building or parcel of real estate for connection of the building sewer, either directly or indirectly, into the public sewer.

(c) Standard Connection Fees.

- (1) The City of Goshen will assess the owner of any parcel of real estate which is not a single-family residential unit or a residential duplex a sewer connection fee as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges". The initial

connection to the City's sewer system for a parcel of real estate shall be based on an established rate per square foot of the entire parcel of real estate to be serviced, excluding those areas that are part of the road right-of-way or utility easements. The owner of a parcel of real estate that has already paid an initial standard sewer connection fee based on the rate per square foot shall be charged a subsequent standard sewer connection fee as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges" for each additional or subsequent connection for the same parcel of real estate.

- (2) In addition to the standard connection fee, the owner of the parcel of real estate shall also pay the cost of extending the sewer collection system to the owner's parcel of real estate. Extending the sewer collection system shall include extending the sewer main from the City's existing sewer main, constructing new lift stations, upgrading lift stations, construction of forced mains and construction of manholes where needed.
- (3) The owner of the parcel of real estate shall receive a credit against the standard sewer connection fee equal to the lesser of the actual cost of extending the sewer collection system or the estimated cost of extending the sewer collection system to the owner's real estate. The estimated cost of extending the sewer collection system must be submitted to the Goshen Engineering Department prior to construction. If the Goshen Engineering Department believes that the estimated cost of extending the sewer collection system substantially exceeds the cost that the City would incur if the City bid the construction of the sewer collection system extension, the City may elect to construct the extension at City's expense rather than grant the credit. If no estimate is submitted to the Goshen Engineering Department prior to the construction, the credit against the standard sewer connection fee can only be granted with the approval of the Board of Public Works and Safety, and then only for seventy-five percent (75%) of the actual construction cost.

(d) The sewer connection fee is in addition to the fee charged to reimburse the City for its costs in furnishing the meter. The fees for the meter cannot be waived.

(Ord. 4333, 12-20-2005; Ord. 4573, 3-22-2010)

#### 5.3.3.6 Inspections required.

Sec. 6 (a) Prior to constructing a building sewer or making a connection to the City's sewer system, the owner shall pay an inspection fee as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges".

- (1) In the event that more than one (1) connection is inspected on a single parcel of real estate at the same time, the Goshen Utilities Office may elect to charge a single inspection fee.

(b) If a reinspection is required due to the improper installation of the sewer main or building sewer, the owner shall pay a reinspection fee as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges".

(c) If at the time of the inspection, the sewer main or building sewer to be inspected is not sufficiently exposed to allow inspection, the owner will uncover the sewer main or building sewer to allow for an adequate inspection. A reinspection fee as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges" will be assessed to the owner.

(d) Except as provided in 5.3.3.6(a)(1) above, the inspection fee cannot be waived.

(Ord. 4333, 12-20-2005)

#### 5.3.3.7 Unauthorized connection.

Sec. 7 A customer shall not connect a building sewer into the City's sewer system until such time as the City of Goshen has been notified and is available to inspect and/or supervise the connection. A person connecting a building sewer to the City's sewer system without the knowledge and consent of the City shall be charged a fee as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges" for the unauthorized connection unless the sewer utility can establish that a greater fee should be charged by applying the schedule of rates and charges.

(Ord. 4333, 12-20-2005)

#### 5.3.3.8 Building sewer line inspection upon change in ownership.

Sec. 8 (a) Before the ownership of real estate upon which a building has been constructed is transferred to a new owner, the party transferring ownership shall notify the Superintendent of the party's intent to transfer title.

(b) Within twenty (20) days of such notification, the Goshen Sewer Department shall conduct an inspection of the building sewer line or waive the right to do so.

(c) The party transferring ownership shall grant the Goshen Sewer Department access to building and real estate so that the Sewer Department can conduct a thorough inspection of the building sewer line and lateral sewer.

(d) The inspection shall be conducted without cost. The inspection may include the televising and recording the condition of the lateral sewer and/or building sewer line. It may also include a visual inspection to determine if any sump pumps, foundation drains, down spouts or other prohibited, connections are made to the sanitary sewer system.

(e) If any sump pumps, foundation drains, down spouts or other prohibited connections are found, the owner of the real estate shall immediately have the sump pump, foundation drain, down spout or other prohibited connection disconnected from the sanitary sewer system. The disconnection from the sanitary sewer system will not relieve the owner from any enforcement actions of this Code chapter or any other chapter of this Code article or title, any other City ordinance, or any other state or federal statute or regulation.

(f) If the Goshen Sewer Department finds that a building sewer line or lateral sewer are in need of repair, the Sewer Department shall make arrangements to make such repairs within a reasonable time given the weather conditions and other demands on Sewer Department.

(g) The Superintendent shall issue a transfer permit under the following conditions:

- (1) If the Goshen Sewer Department waives the inspection. The Sewer Department may waive the inspection if an inspection has occurred within five (5) years although the Sewer Department is not required to waive the inspection if an inspection has occurred within the five (5) year period.
- (2) The inspection discloses that there are no prohibited connections.
- (3) The party requesting transfer of ownership proves that all described prohibited connections have been disconnected from the City's sanitary sewer system.

(h) City Water Utility and Sewer Utility shall refuse to transfer any water or sewer service to a new owner until evidence of the inspection or waiver from the Sewer Departments is presented.

(i) Any party transferring real estate who fails or refuses to have the real estate inspected before the transfer of the real estate violates this Code article and is subject to enforcement under 5.3.14 of this Code.

(Ord. 4333, 12-20-2005)

#### 5.3.3.9 Sewer connection fee fund.

Sec. 9 The non-reverting Sewer Connection Fee Fund is continued. All sums collected pursuant to this Code section shall be deposited into this fund. This fund may be used to pay for expenses incurred by the City for extending the sewer mains, improving or expanding any component of the collection system, the construction or improvement of lift stations or engineering studies relating to the impact proposed expansions may have on the sewer collection system. Any new infrastructure constructed with monies deposited into the fund from 5.3.3.5(c) of this Code.

(Ord. 4333, 12-20-2005)

## Chapter 4. Rates and Charges

### 5.3.4.1 Rates and charges.

Sec. 1 (a) The owner of each and every lot, building or parcel of real estate that is connected to the City's sanitary sewer system or otherwise discharges sanitary sewage, industrial waste water or other liquids either directly or indirectly into the City's sewer system shall be charged and is obligated to pay fees as set forth in the "Goshen Sewer Utility Schedule of Rates and Charges" ordinance as may be amended from time to time.

(b) The rates and charges shall be deemed to extend and cover any additional premises that are later served by the City's sewage works without the necessity of any notice or hearing.

(c) The City shall make and enforce such regulations as deemed necessary for the safe, economic and efficient management of the City's sewer system, including the sewer system and the treatment plant, for the construction and use of building sewers and connections to the sewer system and for the regulation, collection, rebating and refunding of rates and charges. The City shall reserve the right to increase or decrease the frequencies of sampling and testing of any waste water discharge if it deems necessary in order to make the pretreatment program more cost effective for the City of Goshen in regards to installation of pretreatment equipment.

(Ord. 4333, 12-20-2005)

### 5.3.4.2 Bill based on volumes discharged.

Sec. 2 (a) The sewage rates are based on the volume of sewage discharged into the City's sanitary sewer system from the premise or premises as the volume is measured by the water meter on the lot, building or parcel of real estate, except as otherwise provided in this Code chapter, plus a monthly service charge as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges".

(b) The City will use the total water meter reading to calculate sewer use charges unless a sewer meter is installed in conformity with 5.3.4.2(e) and (d) below, or the user can show proof that none of the water measured by a particular meter discharges into the sanitary system. This does not authorize the use of a subtract meter. Each meter must measure a separate parallel water system starting at the point of entry into the building.

(1) Notwithstanding 5.3.4.2(a) above, an account which presently has in operation a metering system making use of subtract meters will be allowed to continue such system upon establishing that the system accurately measures the sewage discharge into the sanitary system.

(c) All commercial or industrial customers on both City sewer and City water must have a water meter installed or must purchase a meter to directly measure the volume of sanitary sewage, industrial waste water, water or other liquids that are discharged into the City's sanitary sewer system. No monthly meter charge will be assessed to any industrial or commercial customer who purchases and adequately maintains a meter that accurately measures the discharge into the sanitary system if the meter is approved by the Superintendent and is not the type normally handled by the wastewater treatment facility.

(d) All commercial or industrial customers on City sewer and not on City water must purchase a meter that reads in cubic feet or an open channel meter approved by the Superintendent to measure the volume of sanitary sewage, industrial waste water, water or other liquids that are discharged into the City's sanitary system. Once the initial meter has been purchased, the City will maintain and replace the meter at the Utility's expense except for the normal monthly meter charge assessed to all sewer customers and provided the meter installed is of a type that the City of Goshen Wastewater Treatment Plant routinely handles. No monthly meter charge will be assessed to any industrial or commercial customer who purchases and adequately maintains an open channel meter. Maintenance and replacement of any open channel meter installed will be at the expense of the commercial or industrial customer.

(e) Any owner of a lot, building or parcel of real estate may request that the City of Goshen Utility install a sewer meter that directly measure the volume of sanitary sewage, industrial waste water or other liquids discharged into the sanitary system. Any owner of a lot, building or parcel of real estate who requests such a meter will be responsible for its initial cost. The City will maintain the meter once installed at the City's own expense other than the monthly meter charge imposed upon all sewer customers. However, the City will charge for any damage to the meter that results from the negligent or intentional conduct of the owner of the lot, building or parcel of real estate, or any person on the premises with the owner's permission.

(f) Any owner of a lot, building or parcel of real estate may install and maintain at their own expense an open channel meter to directly measure the volume of sanitary sewage, industrial waste water or other liquids discharged into the sanitary system. Prior to the installation of the open channel meter, the make and type of meter to be installed must be approved by the Superintendent. If such a meter is installed and maintained so it accurately measures the volume discharged into the sanitary system, the volume measured by the meter will be substituted for the volume as measured by the water meter for the purposes of calculating the amount of the sewage charge. The person using an open channel meter shall submit test results indicating that it is accurate every six (6) months.

(Ord. 4333, 12-20-2005)

**5.3.4.3 Sprinkling meters.**

Sec. 3 (a) Any sewer customer may install a sprinkling meter in addition to the regular water meter for the purpose of measuring the water used by an irrigation system or other sprinkling system used exclusively for watering lawns or other plantings. No additional fire hydrant rental billing fee or connection fee will be charged to customers electing to have the sprinkling meter installed, provided the customer already has one (1) or more water meters measuring water usage at the same location.

(b) All sprinkling meters will be purchased through the Goshen Water and Sewer Department. The sprinkling meter will be sold to customers for an amount equal to the Water and Sewer Department's cost to purchase the meter.

(c) A customer installing a meter will pay all plumbing costs to install the sprinkling meter and an inspection fee except the inspection fee will be waived if the installation is made by a licensed plumber.

(Ord. 4333, 12-20-2005)

**5.3.4.4 Residential summer sewer billing.**

Sec. 4 (a) This Code section applies to metered residential customers that do not have a sprinkling meter. A metered residential customer includes:

- (1) Metered customers residing in a building containing three (3) or fewer dwelling units.
- (2) Metered mobile home parks in which the mobile homes are not individually metered provided the manager of the mobile home park submits a written request for residential summer sewer billing to the Goshen Water and Sewer Utilities Billing Office by May 1 of each year.

(b) The sewer bills issued in the months of June, July, August, September and October shall be calculated based on the rates and charges set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges" and the lower of:

- (1) The actual volume of sewage discharged into the sanitary sewer system during the monthly billing period; or
- (2) The average monthly volume of sewage discharged into the sanitary sewer system for the sewer bills issued in the immediately preceding months of November, December, January, February, March, and April. Only those months in which the volumes one hundred (100) cubic feet or greater will be used in calculating the average. In cases where an existing customer has a monthly volume history of zero (0) cubic feet for each of the immediately preceding months, then an average monthly volume of three hundred (300) cubic feet will be



used. In cases where a new customer has no monthly volume history for each of the immediately preceding months, then an average monthly volume of seven hundred (700) cubic feet will be used.

(A) The Utilities Office Manager is authorized to eliminate one (1) or more monthly volumes for the sewer bills issued in the immediately preceding months of November, December, January, February, March, and April in calculating the average monthly volume when the monthly volume in a particular billing period does not accurately reflect the volume of sewage discharged and the volume is at least one hundred fifty percent (150%) of the customer's average monthly volume of sewage discharged at the premises.

(Ord. 4333, 12-20-2005; Ord. 4575, 03-16-2010; Ord. 4613, 10-05-2010)

#### 5.3.4.5 Sewer rates and charges.

Sec. 5 All customers connected to the City's sewer system shall pay the rates and charges as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges" for the use and services of the Goshen Sewer Utility. For the purposes of billing and collecting the sewer rates and charges, the Goshen Utilities Office will bill customers on a monthly basis.

(Ord. 4333, § 18.04, 12-20-2005)

#### 5.3.4.6 Free service prohibited.

Sec. 6 The City shall not grant free service or use of the City's sewage treatment system to any person, group or entity unless approved in writing pursuant to the policy established by the Board of Public Works and Safety.

(Ord. 4333, 12-20-2005)

#### 5.3.4.7 Catch basins.

Sec. 7 The City Sewer Department shall charge the civil City of Goshen's general fund an annual maintenance charge as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges" for each catch basin located within the City to reimburse the Sewer Department for maintaining catch basins.

(Ord. 4333, 12-20-2005)

**5.3.4.8 Billing procedures.**

Sec. 8 (a) Monthly Billing. The City of Goshen shall bill each owner of a lot, building or parcel of real estate connected to the City's sewer system on a monthly basis in accordance with the provisions of this Code chapter and other applicable ordinances and statutes.

(b) Application of Payments

(1) Any payment on a utility account will be applied first to taxes assessed on the water account over ninety (90) days old, then to penalties on the water account over ninety (90) days old, then to that portion of the water bill over ninety (90) days old, then to taxes assessed on the sewage account over ninety (90) days old, then to penalties on the sewage account over ninety (90) days old and then to the portion of the sewage bill over ninety (90) days old.

(2) Any portion of the payment remaining after applying 5.3.4.8(b)(1) above will be allocated in the manner described in 5.3.4.8(b)(1) above first by substituting sixty (60) days for ninety (90) days then substituting thirty (30) days for ninety (90) days and finally paying the current charges.

(3) Any remaining portion of the payment will be shown as a credit on the account.

(c) Payment Obligation. A person over the age of eighteen (18) who occupies a lot, building or parcel of real estate and who makes written application to the City to have the water and sewage charges billed to him or her may be billed those charges directly from the date of the application. The person making the application to have the water and sewer charges billed in the person's name is personally obligated to pay all proper water and sewage charges made to the account until the person informs the City in writing of the person's intent to have the person's name removed from the account. The application of the person occupying a lot, building or parcel of real estate does not relieve the obligation of the owner of the lot, building or parcel of real estate to pay the balance of the account if the person occupying the lot, building or parcel of real estate fails to pay, except that the owner shall not be obligated to pay unpaid penalties imposed until a demand for payment is made upon the owner by the City of Goshen. The City will not accept an application to transfer a bill into the name of a person occupying a lot, building or parcel of real estate unless the City of Goshen provides both water and sewer to the lot, building or parcel of real estate.

(d) Owner's Right to Examine Records. The owner of property on which the sewer bill is sent to a person other than the owner of the property shall have the right to examine the collection records of the Goshen Sewer Utility during regular business hours for the purpose of determining whether charges have been paid.

## (e) Other Billing.

- (1) The Goshen Sewer Department may request from the Board of Public Works and Safety permission to provide products, services, licenses and permits and to bill for those products, services, licenses and permits at a later date. The request of the Board of Public Works and Safety shall be accompanied by a policy statement which shall detail the product, service, license or permit involved, the method of billing, the method of collection of past due accounts and the official who is responsible for handling the billing.
- (2) Billings must be mailed within forty-five (45) days of the end of the month in which the product, service, license or permit was provided. Billings must state that the payment in full is due within ten (10) days of the receipt of the bill. The Goshen Utility Office is responsible for the billing and shall maintain financial records which show the name and address of the person or organization billed, the date, the product, service, license or permit that was provided, the amount which was billed, the date on which the payment was received and the date of the billing.
- (3) Products, services, licenses or permits for which authority to bill has been given by another City ordinance or state statute shall not fall under the scope of this Code article.

## (f) Service Deposit

(1) Residential Customers.

(A) When applying for service, a residential customer who is not the legal owner of the real estate serviced by the Sewer Utility shall pay a service deposit as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges".

(B) When applying for service, a residential customer who is the legal owner of the real estate serviced by the Sewer Utility shall pay a service deposit as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges", unless the residential customer had an account with the Sewer Utility in the customer's name for at least six (6) consecutive months prior, and all payments under the account are current and paid by their respective due dates during that six (6) month period.

(2) Non-Residential Customers.

(A) When applying for service, a commercial industrial, or other non-residential customer who is not the legal owner of the real estate serviced by the Sewer Utility shall pay a service deposit equal to one-sixth (1/6) of the estimated annual billing for that location or the amount as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges", whichever is greater.

(B) When applying for service, a commercial, industrial, or other non-residential customer who is the legal owner of the real estate serviced by the Sewer Utility shall also be required to pay a service deposit equal to one-sixth (1/6) of the estimated annual billing for that location or the amount as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges", whichever is greater, unless the customer had an account with the Sewer Utility in the customer's name for at least six (6) consecutive months prior, and all payments under the account are current and paid by their respective due dates during that six (6) month period.

(3) The service deposit shall be retained in a separate fund and each deposit, less any outstanding penalties and service fees, shall be refunded to the depositor after a notarized statement from the owner, lessee or user of the property served, that as of a certain date:

(A) the property being served has been conveyed or transferred to another person;

(B) the property being served no longer uses or is connected with any part of the municipal sewage system; or

(C) the user of the service has moved from the property being served.

A statement made under 5.3.4.8(f)(3)(A) above must include the name and address of the person to whom the property is conveyed or transferred. The owner, lessee or user of the property must supply the utility with a forwarding address.

(4) If the owner, lessee or user of the property served fails to satisfy costs and fees within sixty (60) days after the termination of use or ownership of the property served, the service deposit shall be forfeited and the forfeited amount shall be applied to the outstanding fees. Any excess that remains due after application of the forfeiture may be collected as provided by Indiana Code § 36-9-23-31 or § 36-9-23-32.

(5) The Board of Public Works and Safety may at any time it deems the City adequately secure, order the release and disbursement to the depositor of any sewage service deposit.

(g) Late Payment Penalty. Pursuant to Indiana Code § 36-9-23-31, a customer who has not paid all charges on an account on or before the due date stated on the bill, which due date will be at least fifteen (15) days after the bill is rendered, shall be assessed a late penalty of ten percent (10%) of the newly billed portion of the current month's bill.

(h) Delinquent Fee. Pursuant to Indiana Code § 36-9-23-33, Goshen Utilities is authorized to charge each delinquent account for which it files a lien a delinquent fee in an amount equal to the current

fees as established by the County Recorder to record the lien and the fee to release a lien, plus a service charge of Five Dollars (\$5.00).

(Ord. 4333, 12-20-2005; Ord. 4547, 9-30-2009)

## **Chapter 5. Modification of Rates and Charges**

### **5.3.5.1 Modification of rates and charges.**

Sec. 1 The City of Goshen reserves the right to modify the rates and charges for services of the Goshen Sewer Utility as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges" from time to time. The rates and charges shall be modified in accordance with the statutory procedures for the modification of sewer rates. All rates and charges referenced in this Code article shall be the rates and charges that are currently in effect at the applicable time.

(Ord. 4333, 12-20-2005)

## **Article 4. Design Standards and Construction Specifications**

### **Chapter 1. Design Standards and Construction Specifications**

#### **5.4.1.1 Design standards and construction specifications.**

Sec. 1 This Code article hereby approves and establishes the design standards and construction specifications for all areas throughout the City as adopted from time to time by the City Board of Public Works and Safety.

(Ord. 3713, 4-9-1996)

## **Article 5. Railroads**

### **Chapter 1. Traffic Control**

#### **5.5.1.1 Railroad crossings.**

Sec. 1 (a) The Penn-Central Railroad Company, or its successors in interest, shall install and maintain those automatic train warning devices commonly known as blinkers at the intersection of its tracks with the following streets:

Beaver Lane

Douglas Street

Indiana Avenue

Jefferson Street

Madison Street

Ninth Street

Purl Street

Reynolds Street

(b) The Penn-Central Railroad Company, or its successor in interest, shall install and maintain railroad crossing safety gates at the intersection of its tracks with the following places:

Cottage Avenue

Lincoln Avenue, East

First Street

Pike Street and Fifth Intersection

Main Street

Monroe Street

Wilkinson Street

(c) It shall be unlawful for any person to fail to comply with this Code chapter.

(Ord. 548, 4-6-1925; Ord. 560, 5-8-1925; Ord. 699, 6-5-1928; Ord. 726, 2-2-1931; Ord. 890, 7-1-1940)

#### 5.5.1.2 Blocking traffic.

Sec. 2 It shall be unlawful for the directing officer or the operator of any railroad train to direct the operation of or to operate the same in a manner as to prevent the use of any street for the purpose of travel for a period of time longer than five (5) minutes; this provision shall not apply to trains or cars in motion other than those engaged in switching.

(Ord. 1607, 5-6-1963)

## **Article 6. Underground Utility Districts**

### **Chapter 1. Establishment**

#### 5.6.1.1 District established.

Sec. 1 (a) An underground utility district is established in the City of Goshen for the area more particularly described as follows:

North US Hwy. 33/Elkhart Road/Railroad Corridor

The corridor along North US Hwy. 33/Elkhart Road extending southeasterly from the intersection of US Hwy. 33/Elkhart Road and Ferndale Road/County Road 15 to the intersection of US Hwy. 33/Elkhart Road and Chicago Avenue, including the US Hwy. 33/Elkhart Road right-of-way, the railroad right-of-way, and real estate parcel numbers 20-06-25-301-004.000-013; 20-07-31-376-010.000-009; and 20-07-31-456-001.000-013.

(b) The Common Council may designate additional areas in the City of Goshen as an underground utility district from time to time.

(Ord. 4619, 11-29-2010)

#### 5.6.1.2 Installation requirements.

Sec. 2 (a) The installation, construction or placement of any utility lines above ground within the boundaries of an underground utility district is prohibited except as specifically provided by this Code article.

(b) The alteration, conversion, construction, extension, improvement, modification, relocation, rebuilding, repair, replacement, reconstruction or upgrade of any existing utility lines or poles, overhead wires, and related overhead structures within the boundaries of an underground utility district shall require that the respective existing overhead utility service be installed underground. Nothing in this subsection shall prohibit:

- (1) The routine maintenance and operation of existing overhead utility service, or
- (2) The connection of underground utility lines to existing overhead poles, overhead wires, and related overhead structures.

(c) Plans for the utility lines and/or overhead utility services to be installed underground shall be submitted to, and meet the approval of, the City Engineer.

(d) Within a reasonable time after installation of the utility lines and/or overhead utility service underground within the boundaries of an underground utility district, the utility shall submit a drawing to the City Engineer specifying the location of the underground utility lines and any related facilities.

(Ord. 4619, 11-29-2010)

#### 5.6.1.3 Exceptions.

Sec. 3 The provisions of this Code article shall not apply to the following types of facilities within the boundaries of an underground utility district:

- (a) Poles or electroliers used exclusively for street lighting;

- (b) Overhead wires (exclusive of supporting structures) crossing any portion of an underground utility district, or connecting to buildings on the perimeter of an underground utility district, where such wires originate in an area from which poles, overhead wires, and related overhead structures are not prohibited;
- (c) Overhead wires attached to the exterior surface of a building by means of a bracket or other fixture and extending from one location on the building to another location on the same building or to an adjacent building;
- (d) An antennae and its associated equipment and supporting structure used for furnishing communication service;
- (e) Equipment appurtenant to underground utility lines, such as surface-mounted transformers, pedestal-mounted terminal boxes and meter cabinets, and concealed ducts;
- (f) Temporary poles, overhead wires, and related overhead structures used or to be used in conjunction with construction projects;
- (g) Police and fire alarm box or similar municipal equipment; and
- (h) Utility lines, and poles, overhead wires, and related overhead structures, used for the transmission of electrical energy at nominal voltage not in excess of thirty-four thousand five hundred (34,500) volts.

(Ord. 4619, 11-29-2010)

#### 5.6.1.4 Waiver of underground requirements.

Sec. 4 (a) The Board of Public Works and Safety may waive the requirements that utility lines be located underground under these circumstances if the Board finds that:

- (1) The installation underground involves a threat or danger to persons or property and cannot be reasonably accomplished within applicable safety regulations; or
- (2) The installation underground involves an unnecessary or unusual hardship.

(b) A person who desires a waiver shall file a request with the Board of Public Works and Safety. The request shall set forth reasons why the waiver should be granted. The Board of Public Works and Safety may require the applicant to provide supporting information, including reports relating to technical and economic aspects of construction and development.

(c) The Board of Public Works and Safety shall forward any such request to the Engineering Department for a recommendation. A hearing shall be scheduled before the Board of Public Works



and Safety so that the Engineering Department shall have at least fourteen (14) days to make the recommendation.

(d) In granting a waiver of underground requirements under this Code article, the Board of Public Works and Safety may impose such conditions as it considers necessary or desirable in the public interest.

(Ord. 4619, 11-29-2010)

#### 5.6.1.5 Enforcement and penalties.

Sec. 5 (a) Any person found to be in violation of any provision of this Code article shall be subject to a civil penalty up to Two Thousand Five Hundred Dollars (\$2,500.00) per day for each day that such violation continues.

(b) This Code article shall be enforced in accordance with 5.6.1.4 and Title 1, Article 1, Chapter 3 of this Code as may be amended from time to time.

(Ord. 4619, 11-29-2010)

#### 5.6.1.6 Definitions.

Sec. 6 Unless the context specifically indicates otherwise, the meaning of terms used in this Code article shall be as follows:

- (a) Installed Underground shall mean the placement of utility lines, (including the individual service lines, transmission lines and distribution lines) below the finished grade of the property and the removal (if appropriate) of all poles, overhead wires, and related overhead structures used to support overhead utility services.
- (b) Overhead Utility Service shall mean the location of utility lines, typically for utility service, or for traffic signals, above ground, supported by poles, overhead wires, and related overhead structures.
- (c) Poles, Overhead Wires, and Related Overhead Structures shall mean poles, towers, supports, wires, conductors, guys, stubs, platforms, cross arms, braces, transformers, insulator, cutouts, switches, amplifiers, communication circuits, appliances, and all other attachments and appurtenances used or useful in supplying utility service.
- (d) Underground Utility District shall mean those areas in the City depicted on the map(s) set forth in Appendix C to this Code.
- (e) Utility shall include all person or entities supplying utility services.

- (f) Utility Lines shall include any wire, cable, conduit or other material for the transmission or distribution of utility service.
- (g) Utility Service shall mean, but is not limited to, the transmission or distribution of electrical, communication, audio/visual or similar or associated service, or other signals, impulses or energy by means of electrical materials, devices, or continuous conductive material.

(Ord. 4619, 11-29-2010)

## **Article 7. Pretreatment Requirements and Standards**

### **Chapter 1. Purpose and Objectives**

#### 5.7.1.1 Purpose and Objectives.

Sec. 1 (a) This Article sets forth uniform requirements for users of the Publicly Owned Treatment Works (POTW) for the City and is intended to comply with all applicable state and federal laws including the Clean Water Act of 1977 (33 U.S.C. §§ 1251 et seq.) and the General Pretreatment Regulations for Existing and New Sources of Pollution (40 C.F.R. § 403).

(b) The objectives of this Code article are:

- (1) To prevent the introduction of pollutants into the POTW which will interfere with the operation of the POTW or contaminate the resulting biosolids;
- (2) To prevent the introduction of pollutants into the POTW which will pass through the POTW, inadequately treated, into receiving waters or otherwise be incompatible with the POTW;
- (3) To improve the opportunity to recycle and reclaim wastewaters and biosolids from the system;
- (4) To provide for equitable distribution of the costs of the POTW; and
- (5) To enable the City to comply with its National Pollutant Discharge Elimination System (NPDES) permit conditions, biosolids use and disposal requirements, and any other federal or state laws to which the POTW is subject.

(c) This Code article provides for the regulation of direct and indirect discharges to the POTW through the issuance of discharge permits to certain non-domestic users and through enforcement of general requirements for the other users; authorizes monitoring, compliance and enforcement activities;

requires user reporting; establishes administrative review procedures; and provides for the equitable distribution of costs resulting from the POTW program.

(Ord. 4625; 2-23-2011)

## **Chapter 2. General Regulations**

5.7.2.1 In general.

Sec. 1 (a) This Code article shall apply to all users of the POTW.

(b) Except as otherwise provided herein, the Superintendent shall administer, implement, and enforce the provisions of this Code article.

(c) No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance or equipment which is a part of an enforcement action under this Code article.

(Ord. 4625; 2-23-2011)

## **Chapter 3. Discharge Prohibitions**

5.7.3.1 Prohibitions.

Sec. 1 (a) The following prohibitions apply to all users of the POTW whether or not the user is subject to national categorical pretreatment standards or any other national, state, or local pretreatment standards or requirements. A user shall not contribute or cause to be contributed, directly or indirectly, the following substances to the POTW:

- (1) Any pollutant or wastewater which, due to its high concentration and/or flow rate, could interfere with POTW operation or pass through the treatment plant.
- (2) Any substances which by reason of their nature or quantity may create a fire or explosion hazard or be injurious to the POTW or to the operation of the POTW, including but not limited to, waste streams with a closed cup flashpoint of less than one hundred forty (140) degrees Fahrenheit (sixty (60) degrees Centigrade) using the test methods specified in 40 C.F.R. § 261.21. At no time shall two (2) successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five percent (5%) nor any single reading over ten percent (10%) of the Lower Explosive Limit (LEL) of the meter. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides and any other substances which the City, the state or EPA has notified the user is a fire hazard or a hazard to the system.

- (3) Solid or viscous substances which may cause obstruction to the flow in a sewer or other interference with the operation of the wastewater treatment facilities such as, but not limited to grease, garbage with particles greater than one-half inch (1/2") in any dimension, animal tissue, paunch, manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, wastepaper, wood, plastics, gas, tar, asphalt residues, residues from refining or processing of fuel or lubrication oil, mud, or glass grinding or polishing wastes.
- (4) Any wastewater having a pH less than 5.5 or greater than 10.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment, or personnel of the POTW unless approved in writing by the Superintendent.
- (5) Any wastewater containing toxic pollutants in sufficient quantity, either singly or by interaction with other pollutants, to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect in the receiving waters of the POTW, or to exceed the limitation set forth in a Categorical Pretreatment Standard. A toxic pollutant shall include but not be limited to any pollutant identified pursuant to section 307(a) of the Clean Water Act.
- (6) Any noxious or malodorous liquids, gases, or solids which either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.
- (7) Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall a substance discharged to the POTW cause the POTW to be in non-compliance with biosolids use or disposal criteria, guidelines or regulations developed under section 405 of the Act; any criteria, guidelines, or regulations affecting biosolids use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or state criteria applicable to the biosolids management method being used.
- (8) Any substance which will cause the POTW to violate its NPDES and/or Land Application Permit or the receiving water quality standards.
- (9) Any wastewater with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.

- (10) Heat in amounts which will inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW's treatment plant exceed forty (40) degrees Celsius or one hundred four (104) degrees Fahrenheit unless the Indiana Department of Environmental Management, upon request of the POTW, approves alternate temperature limits.
- (11) Any wastewater containing any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Superintendent in compliance with applicable state or federal regulations.
- (12) Any wastewater which causes a hazard to human life or creates a public nuisance.
- (13) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts greater than as allowed in 5.7.3.2(b) of this Code article that will cause interference or pass through.
- (14) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems.
- (15) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, non-contact cooling water, and unpolluted industrial wastewater, unless specifically authorized by the Superintendent.
- (16) Any sludges, screenings or other residues from the pretreatment of industrial wastes.
- (17) Any medical wastes, except as specifically authorized by the Superintendent in a significant industrial user discharge permit.
- (18) Any wastewater causing the treatment plant's effluent to fail a toxicity test.
- (19) Any wastes containing detergents, surface active agents (surfactants) or other substances which may cause excessive foaming in the POTW.
- (20) Any trucked or hauled pollutants or wastewater.
- (b) Wastes prohibited by 5.7.3.1(a) of this Code article shall not be processed or stored in such a manner that they could be discharged to the POTW through spills or accidental discharges. All floor drains located in process or storage areas must discharge to the industrial user's pretreatment facility or approved containment facility before connecting with the POTW.
- (c) When the Superintendent determines that a user is contributing to the POTW any of the above substances set forth in 5.7.3.1(a) of this Code article in such amounts as to interfere with the operation of the POTW, the Superintendent shall:

- (1) Advise the user of the impact of the contribution on the POTW, and
- (2) Develop effluent limitations for such user to correct the interference with the POTW.

(Ord. 4625, 2-23-2011)

5.7.3.2 Supplementary limitations.

Sec. 2 (a) Local Limits. Unless otherwise limited or authorized by the Board of Public Works and Safety and incorporated into a discharge permit, no user shall discharge wastewater containing concentrations of the following pollutants, exceeding the following values (daily maximum):

(1) Arsenic	0.07 mg/l
(2) Cadmium	0.08 mg/l
(3) Chromium (Total)	2.50 mg/l
(4) Copper	1.80 mg/l
(5) Cyanide	0.25 mg/l
(6) Lead	0.50 mg/l
(7) Mercury	430 ng/l
(8) Nickel	1.40 mg/l
(9) Phenols	1.00 mg/l
(10) Selenium	0.35 mg/l
(11) Silver	0.20 mg/l
(12) Zinc	2.50 mg/l
(13) TTO	1.50 mg/l

(b) Surcharges. Unless otherwise limited or authorized by the Board of Public Works and Safety and incorporated into a discharge permit, users may discharge wastewater containing the following pollutants but are subject to surcharges pursuant to 5.7.14.2 of this Code article for concentrations exceeding the following values (daily maximum):

(1) BOD5 (five-day biochemical oxygen demand)	200.00 mg/l
(2) TSS (total suspended non-filterable solids)	200.00 mg/l
(3) Ammonia	30.00 mg/l
(4) Phosphates	10.00 mg/l

(5) Fats Oil and Grease (FOG)	200.00 mg/l
(6) Hydrocarbon Oil and Grease	100.00 mg/l

(c) Concentrations apply at the point where the industrial waste is discharged to the POTW. All concentrations for metallic substances are for “total” metals unless indicated otherwise. The Superintendent may, impose mass based limitations in addition to or in place of the concentration based limitations above.

(d) The Superintendent may develop Best Management Practices (BMPs) in individual wastewater discharge permits to implement the supplementary limitations and requirements of 5.7.3.2 of this Code article.

(Ord. 4625, 2-23-2011; Ord. 4852, 1-6-2016)

#### 5.7.3.3 Dilution.

Sec. 3 No user shall ever increase the use of process water or, in any way, attempt to dilute a discharge as partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the federal categorical pretreatment standards, or in any other pollutant specific limitation developed by the City or state.

(Ord. 4625, 2-23-2011)

#### 5.7.3.4 Federal categorical pretreatment standards.

Sec. 4 (a) Upon the promulgation of the federal categorical pretreatment standards for a particular industrial subcategory, the federal standard, if more stringent than limitations imposed under this Code article for sources in that subcategory, shall immediately supersede the limitations imposed under this Code article. The Superintendent shall notify all affected users of the applicable reporting requirements under 40 C.F.R. § 403.12.

(b) Special Agreements. The City reserves the right to enter into special agreements with users setting out special terms under which they may discharge to the POTW. In no case will a special agreement waive compliance with any pretreatment standard or requirement. However, the user may request a net gross adjustment to a categorical standard in accordance with 40 C.F.R. § 403.15. They may also request a variance from the categorical pretreatment standard from EPA. Such a request will be approved only if the user can prove that factors relating to its discharge are fundamentally different from the factors considered by EPA when establishing that pretreatment standard. A user requesting a fundamentally different factor variance must comply with the procedural and substantive provisions in 40 C.F.R. § 403.13.

(Ord. 4625, 2-23-2011)

## Chapter 4. Pretreatment

### 5.7.4.1 Pretreatment requirements.

Sec. 1 (a) Users shall provide necessary wastewater treatment as required to comply with this Code article and shall achieve compliance with all federal categorical pretreatment standards within the time limitations as specified by the federal pretreatment regulations, and with any other pretreatment standards by applicable deadlines.

(b) Any facilities or equipment required to pretreat wastewater shall be provided, operated, and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the Superintendent for review, and shall be approved by the Superintendent before construction of the facility. The review and approval of plans and operating procedures does not relieve the user from complying with the provisions of this Code article and permit conditions. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and approved by the Superintendent prior to the user's initiation of the changes.

(c) Whenever deemed necessary, the Superintendent may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this Code article.

(d) Any user discharging into the POTW greater than twenty-five thousand (25,000) gallons per day of process wastewater or greater than five percent (5%) of the average daily flow in the POTW, whichever is lesser, may be required to install and maintain, on the user's property and at the user's expense, a suitable storage and flow control facility to insure equalization of flow over a twenty-four (24) hour period. Said facility shall have a capacity for at least twenty percent (20%) of the daily discharge volume and shall be equipped with alarms and a rate of discharge controller, the regulation of which shall be directed by the Superintendent. A discharge permit may be issued to any user solely for flow equalization.

(e) Industrial users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.

(f) Industrial users shall provide and maintain in safe and proper condition, at their own expense, facilities to allow the authorized representatives of the POTW, EPA or the state to inspect, sample or measure discharges subject to regulation pursuant to this Code article. There shall be ample space in or near such facilities to allow accurate sampling and preparation of samples for analysis.

(Ord. 4625, 2-23-2011)



5.7.4.2 Grease traps/grease interceptors.

Sec. 2 (a) Categories of Commercial Food Preparers. Any commercial user who sells food to be consumed on site or prepares food for sale or consumption must apply for a food service permit. At the time of original application or at the time or renewal of any existing permit, the Superintendent or a designee may require the applicant to submit information pertaining to the type of food prepared, the size of the operation, the food preparation facilities on site, and the hours of operation. Based on this information and the facility's records for water consumption at the location, an applicant shall be given points as set forth in 5.7.16.1 of this Code article.

(b) Category Requirements.

- (1) Category A. Any applicant for a food service permit who is designated as Category A must install a one thousand (1,000) gallon grease interceptor that captures flows from all floor drains, mop sinks, dishwashers and three (3) bay sinks. However, if a Category A applicant's building occupies at least ninety-five percent (95%) of the real estate on which the building is located, the Board of Public Works and Safety may allow a mechanical grease trap of at least thirty-five (35) gpm flow rate. The food service permit shall designate the minimum frequency that the grease interceptor or mechanical grease trap is serviced. The maintenance schedule shall be set to keep the grease interceptor or mechanical grease trap in good working order and to minimize the introduction of fats, oils and grease into the City's sewer system. All mechanical grease traps must include an alarm system to alert the user when the trap requires cleaning.
- (2) Category B. Any applicant for a food service permit who is designated as Category B must install a grease trap that captures flows from all kitchen floor drains, mop sinks, prep sinks and three (3) bay sinks. The food service permit shall designate the minimum frequency that the grease interceptor or grease trap is serviced. The maintenance schedule shall be set to keep the grease interceptor or grease trap in good working order and to minimize the introduction of fats, oils and grease into the City's sewer system. All grease traps shall have a flow restrictor that is properly sized to meet the design flow rate of the trap.
- (3) Category C. Any applicant for a food service permit who is designated as Category C shall install a manhole or port to facilitate inspections but no grease interceptor or grease trap will be required.
- (4) Best Management Practices. Best Management Practices (BMPs) may be included as part of the conditions of the food service permit and may serve to reduce the frequency of cleaning and/or the required size of the grease trap or interceptor.

(c) New Construction or Remodel. Any building constructed after December 31, 2010 for a commercial user who intends to use the building to sell food to be consumed on site or to prepare food for sale or consumption must design the building so a one thousand (1,000) gallon grease interceptor can be installed if and when the commercial user meets the Category A criteria. At the time of the original construction of such building, the building shall be plumbed in accordance with the standards set forth in 5.7.4.2(e) of this Code article.

(d) Grandfather Provision. Any applicant who installed a grease interceptor which is less than one thousand (1,000) gallon capacity may continue to use the smaller interceptor as long as it continues to operate properly and does not violate any requirements of the food service permit or other applicable local regulations or allows solids and grease to exceed thirty-three percent (33%) of the capacity of the interceptor.

(e) Installation and Maintenance of Grease Interceptors/Grease Traps.

- (1) Failure to install an interceptor when required or failure to inspect, clean and repair any interceptor as required may result in fines and penalties as outlined in chapter 10 of this Code article.
- (2) All interceptors shall be designed so that, when properly maintained, do not violate any requirements of the food service permit or other applicable local regulations or allows solids and grease to exceed thirty-three percent (33%) of the capacity of the interceptor.
- (3) All interceptors must be properly maintained in good working order at all times.
- (4) All interceptors shall be of a type and capacity approved by the Superintendent and shall be located to be easily accessible for inspection and cleaning.
- (5) All interceptors shall be installed in the building sewer in accordance with the latest edition of the Indiana Plumbing Code. Additionally, all interceptors shall include the following:
  - (A) A minimum of one (1) baffle;
  - (B) A sample well;
  - (C) Drop pipes at both influent and effluent; and
  - (D) An inspection and cleaning manhole - one (1) on each side of the baffle.
- (6) Detailed plans and specifications for all grease interceptors shall be submitted to and approved by the Superintendent before installation.
- (7) A septic tank shall not be substituted for a grease interceptor.
- (8) The required sample well shall, at a minimum, include the following:

- (A) An inspection manhole structure on the outflow pipe;
  - (B) The structure shall have a thirty inch (30") inside diameter if less than five feet (5') deep. Otherwise, a standard four foot (4') manhole structure with steps shall be used;
  - (C) The inflow pipe to the structure shall be no less than one foot (1') higher than the elevation of the outflow pipe, but shall be no more than two feet (2') off the structure floor;
  - (D) The inspection structure shall be within five feet (5') of the interceptor; and
  - (E) The inspection structure shall be readily accessible for inspection and testing.
- (9) When 5.7.4.2 of this Code article permits the installation of a grease trap instead of a grease interceptor, the internal trap must be sized in accordance with the Indiana Plumbing Code. All grease traps shall have a flow restrictor that is properly sized to meet the design flow rate of the trap.
- (f) Appeals. The Board of Public Works and Safety may upon application allow an existing food service facility to install an interceptor that is smaller than one thousand (1,000) gallons or a grease trap if the applicant can demonstrate one (1) or more of the following conditions:
- (1) More frequent cleaning of a smaller interceptor or trap will still meet the requirements of the food service permit and all other applicable local regulations.
  - (2) Interceptor size requirement is impractical because of space limitations.
- (g) Waiver of Food Service Requirements.
- (1) The food preparation/service surcharge will be waived if an applicant is in compliance with their food service permit requirements and all other applicable local regulations. At any time if the food service is in noncompliance, the surcharge will be reinstated and the surcharge cannot be waived for a minimum period of six (6) months.
  - (2) The Board of Public Works and Safety may issuer a waiver of selected grease interceptor installation requirements to remodeling projects only when, in the opinion of the Board, adequate space does not exist to install all required structures. Users must apply for the waiver and present their case for the issuance of a waiver to the Board of Public Works and Safety.

(h) Prohibition of Food Waste Disposal.

- (1) Any commercial user who sells food to be consumed on site or prepares food for sale or consumption is prohibited from installing or using a food waste disposal.
- (2) No construction or remodeling for any commercial food preparer shall include a food waste disposal.
- (3) All commercial food preparers who are using a food waste disposal shall discontinue such use and remove the disposal immediately.

(i) Inspection Fees.

- (1) An inspection fee will be imposed to inspect the installation of any pretreatment unit required by 5.7.4.2 of this Code article. The amount of the fee is set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges", as amended from time to time.
- (2) If a reinspection is required for the installation of any pretreatment unit mandated 5.7.4.2 of this Code article, the Superintendent may impose a reinspection fee. The amount of the fee is set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges", as amended from time to time.
- (3) If any user discharges wastewater containing concentrations of pollution in excess of limits established by 5.7.4.2 of this Code article, an inspection fee may be imposed by the Superintendent of any inspection or reinspection to establish that a reduction of the discharge concentrations to permitted levels has occurred or to establish continued compliance with the required concentration for a period of up to one (1) year from the time of the last violation. The amount of the fee is set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges", as amended from time to time.

(Ord. 4625, 2-23-2011)

5.7.4.3 Slug control plans.

Sec. 3 (a) All significant industrial users and other users as required shall provide protection from accidental discharge of materials which may interfere with or pass through the POTW by developing slug control plans. Such plans shall include, at a minimum, procedures for adequately containing accidental spills, responding to accidental spills and updated lists of contact persons which shall be posted in prominent locations. Users shall also develop best management plans to minimize the potential for accidental spills. Facilities necessary to implement these plans shall be provided and maintained at the user's expense. Slug control plans, including the facilities and operating procedures shall be approved by the Superintendent before construction of the facility.

(b) Users who store hazardous substances shall not contribute to the POTW unless and until a slug control plan has been approved by the Superintendent. Approval of such plans shall not relieve the user from complying with all other laws and regulations governing the use, storage, transportation, and disposal of hazardous substances.

(c) The Superintendent shall evaluate each significant industrial user at least once every permit cycle and other users as necessary, to determine whether such user requires a plan to control slug discharges. All new significant industrial users shall be evaluated for the need for a slug control plan within the first year of operation. If the Superintendent decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

- (1) Description of discharge practices, including non-routine batch discharges;
- (2) Description of stored chemicals;
- (3) Procedures for immediately notifying the Superintendent of slug discharges, including any discharge that would violate a prohibition under chapter 3 of this Code article, with procedures for follow-up written notification within five (5) days;
- (4) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.

(Ord. 4625, 2-23-2011)

## **Chapter 5. Notice of Discharge**

### **5.7.5.1 Notice.**

Sec. 1 In the case of any discharge in violation of this Code article or permit conditions, and in the case of any potential discharge that could cause problems to the POTW, including any slug loadings, the user shall immediately notify the Goshen wastewater treatment plant of the discharge by telephone. The notification shall include:

- (1) The date, time location and duration of the discharge;
- (2) The type of waste, including concentration and volume; and
- (3) Any corrective actions taken by the user.

### 5.7.5.2 Employee notification.

Sec. 2 (a) The user shall permanently post a notice in a prominent place advising all employees when to call in the event of a dangerous discharge for which notification is required. Employers shall advise all employees who may cause or be injured by such a discharge of the emergency notification procedure.

(b) Within five (5) days following such a discharge, the user shall submit to the Superintendent a written report describing the cause of the discharge and the measures that will be taken by the user to prevent similar future discharges.

(c) Such notification shall not relieve the user of any expense, loss, damage, or other liability resulting from the discharge, nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed under this Code article or other applicable state or federal law. The City of Goshen shall reserve the right to reevaluate the need for a slug control plan or other corrective actions deemed necessary to prevent such discharges.

(d) Failure to notify the Goshen wastewater treatment plant of potential problem discharges shall be deemed a separate violation of this Code article.

(Ord. 4625, 2-23-2011)

## Chapter 6. Discharge Permits

### 5.7.6.1 Discharge permit required.

Sec. 1 (a) The following users must obtain the type of discharge permit described below prior to discharging any wastewater into the POTW:

- (1) Any significant industrial user must obtain a significant industrial user discharge permit.
- (2) Any commercial user who sells food to be consumed on-site or prepares food for sale or for consumption must obtain a food service discharge permit.
- (3) Groups of significant industrial users that are substantially similar may be issued general permits.

(b) Extra Jurisdictional Users. Chapter 6 of this Code article applies to customers of the City's POTW even if such customers are located outside the corporate limits of the City of Goshen.

(c) Obtaining a discharge permit does not relieve the permittee of its obligation to comply with all federal and state pretreatment standards or requirements or with any other federal, state, or local law.

(Ord. 4625, 2-23-2011)

#### 5.7.6.2 Time period to obtain discharge permit.

Sec. 2 (a) Any existing user who is required by 5.7.6.1 of this Code article to obtain a discharge permit who does not currently have a discharge permit, must apply to the Goshen wastewater treatment plant for a discharge immediately.

(b) Any existing user who currently has a discharge permit shall make application for a renewal of the discharge permit ninety (90) days before the current permit expires. The procedure for renewal application is substantially the same as the procedure for the initial application.

(c) Any new user who is required by 5.7.6.2 of this Code article to obtain a discharge permit must obtain a discharge permit prior to beginning the discharge which requires the permit.

(Ord. 4625, 2-23-2011)

#### 5.7.6.3 Wastewater survey.

Sec. 3 When requested by the Superintendent, users must submit information on the nature and characteristics of their wastewater by completing a wastewater survey questionnaire prior to commencing their discharge. The Superintendent is authorized to prepare a form for this purpose and may periodically require users to update this survey. Failure to complete this survey shall be reasonable grounds for terminating service to the user and shall be considered a violation of this Code article.

(Ord. 4625, 2-23-2011)

#### 5.7.6.4 Discharge permit application contents.

Sec. 4 (a) Users required to obtain a discharge permit shall complete and file with the Goshen wastewater treatment plant, an application on a form prescribed by the Superintendent, and accompanied by a permit fee for the applicable discharge permit as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges", as amended from time to time. This fee shall include the charge for inspections and permit reviews performed during the duration of the discharge permit.

(b) In support of the application, the user shall submit their:

- (1) Name, address, and location (if different from the address), and name of owners and operator; and
- (2) Any other information as may be deemed necessary by the Superintendent to be necessary to evaluate the permit application.

(c) In addition to information required of all users required to obtain a discharge permit, a significant industrial user shall submit the following information:

- (1) SIC number according to the "Standard Industrial Classification Manual," Bureau of the Budget, (1972), as amended;
- (2) Wastewater constituents and characteristics, including but not limited to those mentioned in 5.7.15.1(61) of this Code article, as determined by an approved analytical laboratory; sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to section 304(g) of the Act and contained in 40 C.F.R. §136, as amended;
- (3) Time and duration of discharge;
- (4) Average daily and thirty (30) minute peak wastewater flow rates, including daily, monthly and seasonal variations, if any;
- (5) Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections, and appurtenances by the size, location and elevation and a current water use schematic;
- (6) Description of activities, facilities and plant processes on the premises including all materials which are or could be discharged;
- (7) The nature and concentration of any pollutants in the discharge which are limited by any City, state or federal pretreatment standards, and a statement signed by an authorized representative of the user and certified by a qualified professional regarding whether or not the pretreatment standards are being met on a consistent basis, and if not, whether additional operation and maintenance and/or additional pretreatment is required for the user to meet applicable pretreatment standards;
- (8) If additional pretreatment and/or operation and maintenance will be required to meet the pretreatment standards; the shortest schedule by which the user will provide such additional pretreatment and/or operation and maintenance shall be provided. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. The following conditions shall apply to this schedule:
  - (A) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for user to meet the applicable pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction, etc.).



- (B) No increment referred to in 5.7.6.4(c)(8)(A) of this Code article shall exceed nine (9) months.
- (C) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the Superintendent including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for delay, and the steps being taken by the user to return the construction to the schedule established. In no event shall more than nine (9) months elapse between such progress reports to the Superintendent.
- (9) Each product and/or byproduct produced by type, amount, process or processes and rate of production;
- (10) Type and amount of raw materials processed (average and maximum per day);
- (11) Number and type of employees, and hours of operation of plant and proposed or actual hours of operation of pretreatment system; and
- (12) List of any environmental control permits held by or for the facility.
- (d) All discharge permit applications and user reports must contain the following certification statement and be signed by an authorized representative of the user:
- “I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”
- (e) Incomplete or inaccurate applications will not be processed and will be returned to the user for revision. Within thirty (30) days of receipt of a complete discharge permit application, the Superintendent will determine whether or not to issue a discharge permit. If no determination is made within this time period, the application will be deemed denied. The Superintendent reserves the right to deny any application for a discharge permit.
- (Ord. 4625, 2-23-2011)

## 5.7.6.5 Discharge permit contents.

Sec. 5 Discharge permits shall include such conditions as are reasonably deemed necessary by the Superintendent to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate biosolids management and disposal, protect ambient air quality and protect against damage to the POTW. Permits may contain, as appropriate, the following:

- (a) Statement of duration, including issuance and expiration dates;
- (b) Effluent limitations applicable to the user based on applicable standards in federal, state and local law;
- (c) Discharge prohibitions as established by chapter 3 of this Code article;
- (d) Requirements to pay fees for the wastewater to be discharged to the POTW;
- (e) User-specific Best Management Practice requirements, as appropriate;
- (f) Limitations on the average and maximum rate and time of discharge or requirements for flow regulation and equalization;
- (g) Requirements for installation and maintenance of inspection and sampling facilities;
- (h) Requirements for self-monitoring, sampling, reporting, notification and record-keeping. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency and sample type based on federal, state or local law;
- (i) Compliance schedules (if applicable);
- (j) Development and implementation of slug control plans to reduce the amount of pollutants discharged to the POTW and development and implementation of best management practices to minimize the potential for accidental discharge of pollutants to the POTW;
- (k) Requirements for collecting/retaining and providing access to plant records, including the right of the Superintendent to copy records, and for providing entry for sampling and inspection;
- (l) Requirements for notification of any new introduction of wastewater constituents or any substantial change in the volume or character of the wastewater treatment system;
- (m) Requirements for notification of spills, potential problems to the POTW, including slug loadings, upsets or violations;
- (n) Requirements for installation, operation and maintenance of pretreatment technology, pollution control or construction of appropriate containment devices, designed to reduce, eliminate or prevent the introduction of pollutants into the POTW;

- (o) Requirements to develop and implement spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated or nonroutine discharges;
- (p) Other conditions as deemed appropriate by the Superintendent to ensure compliance with this Code article, state and federal pretreatment standards and requirements;
- (q) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements;
- (r) Statement of non-transferability;
- (s) Statement that compliance with the discharge permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the discharge permit; and
- (t) Re-opener clause.

(Ord. 4625, 2-23-2011)

#### 5.7.6.6 Discharge permit duration.

- Sec. 6 (a) A significant industrial user discharge permit shall be valid for a specified period of time not to exceed five (5) years.
- (b) A general permit shall be valid for a specified period of time not to exceed five (5) years
- (c) A food service discharge permit shall be valid for a period of one (1) year.

(Ord. 4625, 2-23-2011)

#### 5.7.6.7 Discharge permit modification.

Sec. 7 (a) The Superintendent may modify the discharge permit for good cause including, but not limited to, the following:

- (1) To incorporate any new or revised federal, state or local pretreatment standards or requirements;
- (2) To address significant alterations or additions to the user's operation, processes or wastewater volume or character since the time of discharge permit issuance;
- (3) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
- (4) Information indicating that the permitted discharge poses a threat to the City's POTW, personnel or the receiving waters;

- (5) Violation of any terms or conditions of the discharge permit;
- (6) Misrepresentations or failure to fully disclose all relevant facts in the discharge permit application or in any required reporting;
- (7) Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 C.F.R. 13;
- (8) To correct typographical or other errors in the discharge permit;
- (9) To reflect a transfer of the facility ownership and/or operation to a new owner/operator.

(b) Users may seek a waiver from the Superintendent from monitoring for a pollutant neither present nor expected to be present in their effluent. Any user seeking such a waiver must present supporting documentation to the Superintendent, including, but not limited to, sampling results and other technical factors. Approval of said waiver is subject to conditions as further explained in 40 C.F.R. § 403.12(e)(2). Any waiver granted shall be included as a condition of the user's discharge permit.

(c) The filing of a request by the permittee for a discharge permit modification or waiver does not stay any discharge permit condition.

(Ord. 4625, 2-23-2011)

#### 5.7.6.8 Discharge permit transfer.

Sec. 8 (a) Discharge permits may be reassigned or transferred to a new owner and/or operator only if the permittee gives at least sixty (60) days advance written notice to the Superintendent and the Superintendent approves the discharge permit transfer. The notice must include a written certification by the new owner and/or operator which:

- (1) States that the new owner and/or operator have no immediate intent to change the facility's operations or processes;
- (2) Identifies the specific date on which the transfer is to occur;
- (3) Acknowledges full responsibility for complying with the existing discharge permit.

(b) Failure to comply with any portion of 5.7.6.8 of this Code article renders the discharge permit voidable on the date of the facility transfer.

(Ord. 4625, 2-23-2011)

#### 5.7.6.9 Discharge permit revocation.

Sec. 9 (a) Discharge permits may be revoked for the following reasons:

- (1) Failure to notify the Superintendent of significant changes to the wastewater prior to the changed discharge;
- (2) Failure to provide prior notification to the Superintendent of changed conditions pursuant to 5.7.7.5 of this Code article;
- (3) Misrepresentation or failure to fully disclose all relevant facts in the discharge permit application;
- (4) Falsifying self-monitoring reports or any other required records;
- (5) Tampering with monitoring equipment;
- (6) Refusing to allow the Superintendent timely access to the facility premises and records;
- (7) Failure to meet effluent limitations;
- (8) Failure to pay fines or surcharges;
- (9) Failure to pay sewer charges;
- (10) Failure to meet compliance schedules, including reporting dates;
- (11) Failure to complete a wastewater survey or the discharge permit application;
- (12) Failure to provide advance notice of the transfer of a permitted facility;
- (13) Violation of any pretreatment standard or requirement, or any terms of the discharge permit or this ordinance;
- (14) Failure to comply with any order given by the Board of Public Works and Safety or the Superintendent pursuant to a show-cause hearing or any other administrative order or enforcement action.

(b) Discharge permits shall be deemed voidable upon nonuse, cessation of operations or transfer of business ownership. All discharge permits are void upon the issuance of a new discharge permit

(Ord. 4625, 2-23-2011)

#### 5.7.6.10 Discharge permit appeals.

Sec. 10 (a) Any person, including the user, may petition the Board of Public Works and Safety to reconsider the terms of a discharge permit within thirty (30) days of its issuance.

(b) Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.

(c) In its petition, the appealing party must indicate the discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the discharge permit.

(d) The effectiveness of the discharge permit shall not be stayed pending the appeal.

(e) If the Board of Public Works and Safety fails to act within thirty (30) days, a request for reconsideration shall be deemed to be denied.

(f) The Superintendent shall perform periodic reviews of each current discharge permit. These reviews shall be used to determine the current status of the user with regard to operations, discharge rates and other aspects pertaining to the terms of the discharge permit. Discharge permits may be modified or amended following the permit review and petitions may be considered at that time.

(Ord. 4625, 2-23-2011)

## **Chapter 7. Reporting and Monitoring**

### **5.7.7.1 Baseline monitoring reports.**

Sec. 1 (a) Within one hundred eighty (180) days after the effective date of a federal categorical pretreatment standard, or one hundred eighty (180) days after a final administrative decision has been made upon a categorical determination submission in accordance with 40 C.F.R. § 403.6(a)(4), whichever is later, industrial users which are existing sources subject to such federal categorical pretreatment standards and currently discharging to the POTW shall submit a baseline report to the Superintendent which contains the information listed in 5.7.7.1(c) of this Code article.

(b) New sources, when subject to a federal categorical pretreatment standard, and sources that become industrial users subsequent to the promulgation of an applicable pretreatment standard, shall submit a baseline report to the Superintendent which contains the information listed in 5.7.7.1(c) of this Code article at least ninety (90) days prior to commencement of discharge to the POTW. A new source shall also be required to report to the Superintendent the method of pretreatment it intends to use to meet applicable pretreatment standards. A new source shall also be required to provide to the Superintendent estimates of its anticipated flow and quantity of pollutants discharged.

(c) The industrial user shall submit the information required by 5.7.7.1 of this Code article including:

- (1) Name and address of the facility, including the name of the operator and owners.
- (2) List of any environmental control permits held by or for the facility.

- (3) Brief description of the nature, average rate of production, and SIC of the operation(s) carried out by such user. This description shall include a schematic process diagram indicating points of discharge to the POTW from the regulated processes.
- (4) Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from each of the following:
  - (A) Regulated process streams, and
  - (B) Other streams as necessary to allow use of the combined waste stream formula as per 40 C.F.R. § 403.6(e).
- (5) The industrial user shall identify the federal categorical pretreatment standards applicable to each regulated process, and shall:
  - (A) Submit the results of sampling and analysis identifying the nature and concentration of regulated pollutants in the discharge from each regulated process. Both daily maximum and average concentrations shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in 5.7.7.8 of this Code article.
  - (B) Sampling must be performed in accordance with procedures set out in 5.7.7.9 of this Code article.
  - (C) The user shall take a minimum of one (1) representative sample to compile that data necessary to comply with the requirements of 5.7.7.1 of this Code article.
  - (D) Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the user should measure the flows and concentrations necessary to allow the use of the combined waste stream formula of 40 C.F.R. § 403.6(e) in order to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 C.F.R. § 403.6(e), this adjusted limit along with supporting data shall be submitted to the Superintendent.
  - (E) The Superintendent may allow the submission of a baseline report which utilizes only historical data as the date provides information sufficient to determine the need for industrial pretreatment measures.

- (F) The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.
- (6) The industrial user shall provide a statement, reviewed by an authorized representative of the industrial user and certified by a qualified professional, indicating whether federal categorical pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance or additional pretreatment is required for the industrial user to meet the federal categorical pretreatment standards.
- (7) If additional pretreatment or operation and maintenance will be required to meet the federal categorical pretreatment standards, the industrial user will provide the shortest schedule which will provide such additional pretreatment or operation and maintenance. The completion date of this schedule shall not be later than the compliance date established for the applicable federal categorical pretreatment standard.
- (8) The following conditions shall apply to any schedule submitted in response to 5.7.7.1(c)(7) of this Code chapter:
- (A) The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable federal categorical pretreatment standards (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contracts for major components, commencing construction, etc.).
- (B) No increment referred to in 5.7.7.1(c)(8) of this Code chapter shall exceed nine (9) months.
- (C) Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the Superintendent, including, at a minimum, whether or not it complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason for the delay, and the steps being taken by the industrial user to return the construction to the schedule established.
- (D) In no event shall more than nine (9) months elapse between such progress reports to the Superintendent.
- (9) Where the industrial user's federal categorical pretreatment standard has been modified by a removal allowance (40 C.F.R. § 403.7), the combined waste stream formula (40 C.F.R. §



403.6(e)), or net/gross calculations (40 C.F.R. § 403.15), at the time the industrial user submits a baseline report, the information required in 5.7.7.1(c) of this Code chapter shall pertain to the modified limits.

(10) If the federal categorical pretreatment standard for the industrial user is modified after the baseline report is submitted, the industrial user shall make any necessary amendments to information provided as a response to 5.7.7.1(c) of this Code chapter and submit them to the Superintendent within sixty (60) days after the modified limit is approved.

(11) Such other information as may be reasonably requested by the POTW Superintendent.

(12) All baseline monitoring reports must be signed and certified as outlined in 5.7.6.4(d) of this Code article.

(Ord. 4625, 2-23-2011)

#### 5.7.7.2 Report on compliance with federal pretreatment standard deadline.

Sec. 2 Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards or, in the case of a new source, following commencement of the introduction of wastewater into the POTW, any user subject to categorical pretreatment standards shall submit to the Superintendent a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by such standards and the average and maximum daily flow for these process units in the user facility which are limited by such pretreatment standards or requirements. Where equivalent mass or concentration based limits are established by the Superintendent for a user, this report shall contain a reasonable measure of the user's long-term production rate. Where a user is subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production, the report shall include the user's actual production during the appropriate sampling period. The report shall state whether the applicable pretreatment standards are being met on a consistent basis and, if not, what additional operation and maintenance and/or pretreatment is necessary to bring the user into compliance with the applicable pretreatment standards. All compliance reports must be signed and certified as outlined in 5.7.6.4(d) of this Code article.

(Ord. 4625, 2-23-2011)

#### 5.7.7.3 Periodic compliance reports.

Sec. 3 (a) Any user subject to a categorical pretreatment standard, after the compliance date of such pretreatment standard, or, in the case of a new source, after commencement of the discharge into the POTW, shall submit to the Superintendent during the months of June and December, unless required more frequently in the pretreatment standard or by the Superintendent, a report indicating

the nature and concentration of pollutants in the effluent which are limited by such pretreatment standards. In addition, this report shall include a record of all average and maximum daily flows for the reporting period. At the discretion of the Superintendent and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Superintendent may agree to alter the months during which the above reports are to be submitted. In cases where the pretreatment standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the user must submit documentation required by the Superintendent or the pretreatment standard necessary to determine the compliance status of the user.

(b) The Superintendent may impose mass based limitations on users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases where the imposition of mass based limits are appropriate. In such cases, the report required by 5.7.7.3(a) of this Code chapter shall indicate the mass of pollutants regulated by pretreatment standards in the effluent of the user. These reports shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the Superintendent, of pollutants contained therein which are limited by the applicable pretreatment standards.

(c) For industrial users subject to equivalent mass or concentration limits established by the Superintendent in accordance with the procedures in 40 C.F.R. § 403.6(c), the report required by 5.7.7.3(a) of this Code chapter shall contain a reasonable measure of the user's long-term production rate.

(d) For all other industrial users subject to categorical pretreatment standards expressed only in terms of allowable pollutant discharge per unit of production (or other measure of operation), the report required by section 5.7.7.3(a) of this Code chapter shall include the user's actual average production rate for the reporting period.

(e) Significant non-categorical industrial users shall submit to the Superintendent at least once every six (6) months (on dates specified by the Superintendent in the significant industrial user's discharge permit) a description of the nature, concentration, and flow of the pollutants required to be reported by the Superintendent.

(f) The reports required by 5.7.7.3 of this Code chapter shall include the certification statement as outlined in 5.7.6.4(d) of this Code article and shall be signed by an authorized representative.

(Ord. 4625, 2-23-2011)

#### 5.7.7.4 Monitoring and analysis in support of self-monitoring requirements.

Sec. 4 (a) The reports required by 5.7.7.4 of this Code chapter shall be based on sampling and analysis performed in the period covered by the report, and performed in accordance with the

techniques described in 40 C.F.R. § 136 and amendments thereto. Where 40 C.F.R. § 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the Superintendent or other persons, approved by the EPA. This sampling and analysis may be performed by the Superintendent in lieu of the user. Where the Superintendent collects all the information required for the report, the user will not be required to submit the report.

(b) If sampling performed by a user indicates a violation, the user shall notify the Superintendent within twenty-four (24) hours of becoming aware of the violation. If a slug load occurs, it shall also be reported to the Superintendent within twenty-four (24) hours. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the Superintendent within thirty (30) days after becoming aware of the violation, except the user is not required to re-sample if:

- (1) The Superintendent performs sampling at the user at a frequency of at least once per month,  
or
- (2) The Superintendent performs sampling at the user between the time when the user performs its initial sampling and the time when the user receives the results of this sampling.

(c) The reports required in 5.7.7.4 of this Code chapter shall be based upon data obtained through appropriate sampling and analysis performed during the period covered by the report, which data is representative of conditions occurring during the reporting period. The Superintendent shall require that frequency of monitoring necessary to assess and insure compliance by users with applicable pretreatment standards and requirements.

(d) If a user subject to the reporting requirement in and of 5.7.7.4 of this Code chapter monitors any pollutant more frequently than required by the Superintendent, using the procedures prescribed in 5.7.7.4 of this Code chapter, the results of this monitoring shall be included in the report.

(e) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

(f) The reports required by 5.7.7.4 of this Code chapter shall include the certification statement as outlined in section 5.7.6.4(d) of this Code article and shall be signed by an authorized representative.

(g) All samples and sample reports submitted by any user shall follow specific chain-of-custody procedures and shall record chain-of-custody on a form provided by the City. Chain of custody shall include, at a minimum, the following:

- (1) Name and address of user;
- (2) Location of sampling site;
- (3) Date and time of sample collection;
- (4) Parameters to be analyzed;
- (5) Sample preservation used; and
- (6) Name of person collecting sample.

(Ord. 4625, 2-23-2011)

#### 5.7.7.5 Report of changed conditions.

Sec. 5 (a) Each industrial user is required to notify the Superintendent of any planned significant changes to the industrial user's operations or system which might alter the nature, quality or volume of its wastewater at least thirty (30) days before the change.

(b) The Superintendent may require the industrial user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a discharge permit application.

(c) The Superintendent may issue a new discharge permit or modify an existing discharge permit as conditions dictate.

(d) No industrial user shall implement the planned changed condition(s) until and unless the Superintendent has responded to the industrial user's notice.

(e) For purposes of this requirement, flow increases of ten percent (10%) or greater, and the discharge of any previously unreported pollutants, shall be deemed significant.

(Ord. 4625, 2-23-2011)

#### 5.7.7.6 Reporting requirements for nonsignificant industrial users.

Sec. 6 The City shall require appropriate reporting from those industrial users that are not subject to categorical pretreatment standards and are not required to obtain a significant industrial user discharge permit.

(Ord. 4625, 2-23-2011)

5.7.7.7 Hazardous waste notification.

Sec. 7 (a) Any user which discharges to the POTW any substance which, if otherwise disposed of, would be listed as a hazardous waste under 40 C.F.R. § 261, shall notify the POTW Superintendent, the EPA Regional Waste Management Division Director and State of Indiana hazardous waste authorities in writing of such discharge.

(b) All hazardous waste notifications shall include:

- (1) The name of the hazardous waste as set forth in 40 C.F.R. § 261;
- (2) The EPA hazardous waste number;
- (3) The type of discharge (continuous, batch, or other); and
- (4) A copy of the Material Safety Data Sheet (MSDS).

(c) In addition to the information submitted in 5.7.7.7(b) of this Code chapter, users discharging more than one hundred (100) kilograms of hazardous waste per calendar month to the POTW shall contain, to the extent such information is known and readily available to the user:

- (1) An identification of the hazardous constituents contained in the waste;
- (2) An estimation of the mass and concentration of such constituents in the waste stream discharged during that calendar month; and
- (3) An estimation of the mass of constituents in the waste stream expected to be discharged during the following twelve (12) months.

(d) All hazardous waste notifications shall be submitted no later than one hundred eighty (180) days from the discharge of the wastes. Any notification under this provision need be submitted only once for each hazardous waste discharged, although notifications of changed discharges must be submitted under 5.7.7.5 of this Code chapter.

(e) Users are exempt from the hazardous waste notification requirement during a calendar month in which they discharge fifteen (15) kilograms or less of non-acute hazardous wastes. Discharge of any quantity of acute hazardous waste as specified in 40 C.F.R. §§ 261.30(d) and 261.33(e) requires a one-time notification. Subsequent months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.

(f) In the case of any new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the Superintendent, the EPA Regional Waste Management Division Director and State of

Indiana hazardous waste authorities of the discharge of such substance(s) within ninety (90) days of the effective date of such regulation.

(g) In the case of any notification made under 5.7.7.7 of this Code chapter, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(h) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this Code article, a permit issued hereunder, or any applicable Federal or State law.

(Ord. 4625, 2-23-2011)

#### 5.7.7.8 Analytical requirements.

Sec. 8 All pollutant analyses, including sampling techniques, to be submitted as part of a discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 C.F.R. § 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 C.F.R. § 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the 40 C.F.R. § 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by the EPA.

(Ord. 4625, 2-23-2011)

#### 5.7.7.9 Sample collection.

Sec. 9 (a) Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.

(b) Except as indicated in 5.7.7.9(c) of this Code chapter, the user must collect wastewater samples using flow proportional composite collection techniques. In the event flow proportional sampling is not feasible, the Superintendent may authorize the use of time proportional sampling through a minimum of four (4) grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows: for cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field; for volatile organics and oil and grease, the samples may be composited in the laboratory. Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the Superintendent, as appropriate. In addition, grab samples

may be required to show compliance with instantaneous discharge limits. Specific sampling requirements shall be described in discharge permits.

(c) Samples for oil and grease, temperature, pH, cyanide, phenols, toxicity, sulfides and volatile organic chemicals must be obtained by using grab sample techniques.

(d) The Superintendent may use a grab sample(s) to determine noncompliance with pretreatment standards.

(Ord. 4625, 2-23-2011)

#### 5.7.7.10 Date of report.

Sec. 10 Written reports will be deemed to have been submitted on the date postmarked. For reports which are not mailed, postage prepaid, into a mail facility serviced by the US Postal Service, the date of receipt of the report shall govern.

(Ord. 4625, 2-23-2011)

#### 5.7.7.11 Record keeping.

Sec. 11 Users shall retain, and make available for inspection and copying, all records and information required to be retained under this ordinance, as required by a discharge permit, and documentation associated with Best Management Practices established under 5.7.3.2(d) of this Code article. Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning compliance with this ordinance, or where the user has been specifically notified of a longer retention period by the Superintendent.

(Ord. 4625, 2-23-2011)

#### 5.7.7.12 Report certification.

Sec. 12 All reports required under this Code article shall require official certification by the authorized representative as per 5.7.6.4(d) of this Code article.

(Ord. 4625, 2-23-2011)

**Chapter 8. Compliance Monitoring****5.7.8.1 Right of entry; inspection and sampling.**

Sec. 1 (a) The Superintendent, State or EPA, upon showing proper identification, shall have the right to enter and inspect the facilities of any user who may be subject to the requirements of this ordinance to ascertain whether the purpose of this Code article, and any permit or order issued, is being met and whether the user is complying with all requirements. Users shall allow the Superintendent, State or EPA ready access to any parts of the premises for the purposes of inspection, sampling, records examination and copying and the performance of any additional duties.

(b) Where a user has security measures in force which require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, personnel from the City of Goshen, the State of Indiana and EPA will be permitted to enter without delay, for the purposes of performing their specific responsibilities.

(c) The personnel from the City of Goshen, the State of Indiana and EPA shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.

(d) The Superintendent may require the user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated at factory recommended intervals, or more frequently if conditions require, 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 industrial user at the written or verbal request of the Superintendent and shall not be replaced. The costs of clearing such access shall be borne by the user.

(f) Where a user has security or safety measures in force which would require clearance, training, or wearing of special protective gear, the user shall make necessary arrangements at its own expense, to enable the Superintendent, State or EPA to enter and inspect the premises as guaranteed by 5.7.8.1 of this Code chapter.

(g) Unreasonable delays in allowing the Superintendent access to the user's premises shall be considered a violation of this Code article.

(Ord. 4625, 2-23-2011)



**Chapter 9. Tenant Responsibility**

## 5.7.9.1 Tenant responsibility.

Sec. 1 Where an owner of property leases premises to any other person as a tenant under any rental or lease agreement, either or both may be held responsible for compliance with the provisions of this Code article.

(Ord. 4625, 2-23-2011)

**Chapter 10. Enforcement**

## 5.7.10.1 Minor infraction.

Sec. 1 (a) When the Superintendent finds that any user has experienced a minor infraction of this Code article or any permit issued hereunder, the Superintendent may, at the Superintendent's discretion, notify the user of the infraction by telephone call. Said telephone call may be considered the first step in any enforcement action that may subsequently occur. The telephone call shall:

- (1) Notify the user of the type and duration of the infraction.
- (2) Request that the user respond to the notification in writing within a period of time required by the Superintendent.

(b) A minor infraction may include, but is not limited to, one time missed reporting deadlines, short-term excursions of pollutant limitations (provided that no pass-through, interference or environmental or health damage occurs), improper disposal of non-hazardous wastes or unintentional discharge of a prohibited substance provided the discharge is a one-time occurrence and immediate steps were taken to minimize the discharge.

(c) Telephone notification will be waived in the event of repeated violations or intentional discharges of prohibited substances. Enforcement activity in the case of more serious or repeat violations shall be initiated through a formal letter or Notice of Violation listing the type, date and duration of the violation and a requirement for a written response.

(Ord. 4625, 2-23-2011)

## 5.7.10.2 Notice of violation.

Sec. 2 Whenever the Superintendent finds that any user has violated or is violating this Code article, a discharge permit, any prohibition, limitation or requirement, or any order issued hereunder, the Superintendent or the Superintendent's agent may serve upon the user a written notice of violation setting forth the nature of the violation(s). The notice may also include specific corrective actions and compliance schedules to which the Superintendent requires the user to adhere. Within

ten (10) days of the date of receipt of this notice, the user shall submit to the Superintendent a written explanation of the violation and a plan for the satisfactory correction and prevention thereof, consistent with the terms of the notice (to include specific corrective actions and compliance schedules). Compliance with the conditions, requirements and terms of this notice shall not be construed to relieve the user of its obligation to comply with its discharge permit which remains in full force and effect nor does such compliance excuse violations occurring before or after receipt of this notice of violation. Additional enforcement action may be pursued if corrective actions are not accomplished as scheduled and the Superintendent expressly reserves the right to seek any and all remedies available to it under this Code article for any violations cited by the notice. The notice shall be served upon the user in accordance with 5.7.10.16 of this Code chapter. The notice is effective on the date considered given in accordance with 5.7.10.17 of this Code chapter. Nothing in 5.7.10.2 of this Code chapter shall limit the authority of the City to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

(Ord. 4625, 2-23-2011)

#### 5.7.10.3 Increased sampling frequency.

Sec. 3 The City may amend any discharge permit to increase the monitoring frequency and/or penalty amount in the event of repeated violations of numerical limits. Said increase shall be in place until the facility demonstrates six (6) consecutive months of compliance. Once six (6) consecutive months of compliance are demonstrated, the permit shall be reopened and amended to return to the original sampling frequency.

(Ord. 4625, 2-23-2011)

#### 5.7.10.4 Show cause order and hearing.

Sec. 4 (a) The Superintendent may serve upon any user who causes, allows or contributes to a violation of this Code article, its discharge permit, or any order issued hereunder, or an unauthorized discharge to enter the POTW a written show cause order. Said order must be given at least ten (10) days prior to the hearing in accordance with 5.7.10.15 of this Code chapter. The show cause order must contain:

- (1) The name and address of the user to whom the show cause order is issued;
- (2) The address or the parcel number of the property that is the subject of the order, if different from subsection (1) above;
- (3) The nature of the violation(s);

- (4) An order to the user to appear before the Board of Public Works and Safety to show cause as to why the City should not initiate formal enforcement action against the user or discontinue service to the user;
  - (5) A statement indicating the exact time and place of the hearing, and that the person to whom the show cause order was issued is entitled to appear at the hearing with or without legal counsel, present evidence, cross examine opposing witnesses and present arguments;
  - (6) A statement of the proposed enforcement action and the reasons therefore;
  - (7) A statement indicating that a failure to comply with any of the conditions, requirements or terms of the show cause order shall constitute a violation of this Code article and may subject the user to such other enforcement response that may be appropriate;
  - (8) The name, address and telephone number of the Pretreatment Coordinator of the City.
- (b) The Board of Public Works and Safety may itself conduct a hearing and take the evidence, or may designate any of its members or any officer or employee of the Utility Department to:
- (1) Issue in the name of the Board of Public Works and Safety notices of hearings requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in such hearing;
  - (2) Take the evidence;
  - (3) Transmit a report of the evidence and hearing, including transcripts and other evidence, together with recommendations to the Board of Public Works and Safety for action thereon.
- (c) A hearing must be held relative to each show cause order of the City and the hearing shall be held on a business day no earlier than ten (10) days after notice of the show cause order is given. In this regard, the show cause order shall be served upon the user in accordance with 5.7.10.16 of this Code chapter and the show cause order is effective on the date considered given in accordance with 5.7.10.17 of this Code chapter. At any hearing held pursuant to this Code article, testimony taken must be under oath and recorded stenographically or mechanically. The person to whom the show cause order was issued, or any other person with an interest in the proceedings may appear in person or by counsel at the hearing. Whether or not a duly notified user appears as noticed, enforcement action may be pursued as appropriate. Each person appearing at the hearing is entitled to present evidence, cross examine opposing witnesses and present arguments. The transcript, so recorded, will be made available to any member of the public or any party to the hearing upon payment of the usual charges therefore.

(d) After the Board of Public Works and Safety has reviewed the evidence and if it finds any violation(s) of this Code article, any prohibition, limitation or requirement contained herein or of the user's discharge permit, or of any order issued hereunder, it shall make findings and it may issue to the user responsible for the discharge any orders or directives as are necessary and appropriate. Issuance of a show cause order shall not be a prerequisite to taking any other action against a user.

(e) The findings of the Board of Public Works and Safety and any order issued thereto shall be in writing and shall be available to the public upon request. However, neither the City nor the Board of Public Works and Safety is required to give any person notice of the findings and orders issued thereto other than the user to whom said orders may be directed. The findings and any orders issued by the Board of Public Works and Safety shall be served upon the user in accordance with 5.7.10.16 of this Code chapter and the notice is effective on the date considered given in accordance with 5.7.10.17 of this Code chapter.

(f) Compliance with the conditions, requirements and terms of any of the orders issued by the Board of Public Works and Safety pursuant to 5.7.10.4(d) of this Code chapter will not be construed to relieve the user of its obligation to comply with its wastewater contribution permit which remains in full force and effect nor does such compliance excuse previous violations. Additional enforcement action may be pursued if corrective actions are not accomplished as scheduled and the City expressly reserves the right to seek any and all remedies available to it under this Code article for any violation found by the Board of Public Works and Safety. Further, a failure to comply with any of the conditions, requirements or terms of the orders shall constitute a further violation of this Code article and may subject the user to such other enforcement response that may be appropriate.

(g) Any action taken by the Board of Public Works and Safety under this Code article is subject to review by the Circuit or Superior Court of the County of Elkhart, Indiana on the request of any user to whom the respective order was issued or to any interested party. Any person requesting judicial review under 5.7.10.4 of this Code chapter must file a verified complaint within ten (10) days of the date when the Board of Public Works and Safety issued its findings of fact and accompanying order. An appeal under 5.7.10.4 of this Code chapter is an action de novo. The court may affirm, modify or reverse the action taken by the Board of Public Works and Safety.

(Ord. 4625, 2-23-2011)

#### 5.7.10.5 Consent order.

Sec. 5 The Superintendent is hereby empowered to enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement any user responsible for noncompliance. Such orders will include specific action to be taken by the user to correct the noncompliance including, but not limited to, compliance schedules, stipulated fines or remedial

actions, and signatures of the Superintendent and user representatives. Consent orders shall have the same force and effect as any other orders issued by the Board of Public Works and Safety under 5.7.10.4 of this Code chapter.

(Ord. 4625, 2-23-2011)

#### 5.7.10.6 Compliance order.

Sec. 6 When the Superintendent finds that a user has violated or continues to violate this Code article, discharge permits or orders issued hereunder, or any other pretreatment standard or requirement, he may issue an order to the user responsible for the discharge directing that the user come into compliance within a specified time period. If the user does not come into compliance within the specified time period, sewer service shall be discontinued to the user unless and until adequate treatment facilities, devices or other related appurtenances are installed and properly operated. Such service shall not recommence until such time as the user is able to demonstrate that it can and will maintain compliance. Failure to comply with this compliance order may subject the user to having its connection to the sanitary sewer sealed by the City and assessed the costs therefore. Compliance orders may also contain such other requirements as might be reasonable necessary and appropriate to address the noncompliance, including, but not limited to, the installation of pretreatment technology, additional self-monitoring and improved management practices designed to minimize the amount of pollutants discharged to the POTW. A compliance order may not extend the deadline for compliance established for a federal pretreatment standard or requirement, nor does a compliance order release the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a prerequisite to taking any other action against the user.

(Ord. 4625, 2-23-2011)

#### 5.7.10.7 Cease and desist order.

Sec. 7 (a) When the Superintendent finds that a user is violating this Code article, the user's discharge permit, any order issued hereunder, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the Superintendent may issue an order to the user directing it to cease and desist all such violations and directing the user to:

- (1) Immediately comply with all requirements;
- (2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and terminating the discharge.

(b) In an emergency, the order to cease and desist may be given by the Superintendent by telephone. In non-emergency situations, the cease and desist order may be used to suspend or revoke a

discharge permit. Issuance of a cease and desist order shall not be a prerequisite to taking any other action against the user.

(Ord. 4625, 2-23-2011)

#### 5.7.10.8 Revocation order.

Sec. 8 When the Superintendent finds that a user is violating this Code article, the user's discharge permit, any order issued hereunder, any other pretreatment standard or requirement, or any order or directive issued by the Board of Public Works and Safety pursuant to a show cause hearing, the Superintendent may issue an order to the user revoking the user's discharge permit and directing the user to immediately stop or eliminate non-domestic contribution into the City of Goshen's POTW. Failure to comply with this order may subject the user to having any or all connections to the sanitary sewer sealed by the City of Goshen and assessed the costs therefore. Revocation orders may be issued by the Superintendent pursuant to 5.7.6.9 of this Code chapter and shall not be a prerequisite to taking any other action against the user.

(Ord. 4625, 2-23-2011)

#### 5.7.10.9 Emergency suspension of service.

Sec. 9 (a) The City may, upon informal notice to the user, immediately suspend a user's discharge whenever such suspension is necessary, in the opinion of the Superintendent, in order to stop an actual or threatened discharge which presents or may present an immediate or substantial endangerment to human health, to the environment, that threatens to interfere with the operation of the POTW or is causing or will cause the City of Goshen to violate any condition of its NPDES permit.

(b) Any user notified of a suspension of the wastewater treatment service and/or the discharge permit shall immediately stop or eliminate the discharge. In the event of a failure of the person to comply voluntarily with the suspension order, the Superintendent shall take such steps as deemed necessary, including, but not limited to, immediate severance of the sewer connection, to minimize damage to the POTW system or endangerment to any individuals or to the environment.

(c) The Superintendent shall allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the City of Goshen that the period of endangerment has passed, unless the termination proceedings set forth in 5.7.10.10 of this Code chapter are initiated against the user.

(d) A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the Superintendent prior to the date of any show cause or termination hearing.

(e) Compliance with the conditions, requirements and terms of the suspension order shall not be construed to relieve the user of its obligation to comply with its discharge permit which remains in full force and effect nor does such compliance excuse previous violations. Additional enforcement action may be pursued if corrective actions are not accomplished as required and the City expressly reserves the right to seek any and all remedies available to it under this Code article for any violations cited by the suspension order. Further, a failure to comply with any of the conditions, requirements or terms of the suspension order shall constitute a further violation of this Code article and may subject the user to such other enforcement response that may be appropriate.

(f) The Superintendent may deny or condition new or increased discharges by a user or changes in the nature of pollutants discharged by the user if the discharge does not meet applicable pretreatment standards or will cause the City of Goshen to violate its NPDES permit.

(g) Nothing in 5.7.10.9 of this Code chapter shall be interpreted as requiring a hearing prior to any emergency suspension under this section.

(Ord. 4625, 2-23-2011)

#### 5.7.10.10 Termination of discharge.

Sec. 10 (a) In addition to those provisions in 5.7.6.9 of this Code article, any user that violates the following conditions of this ordinance, discharge permits or orders issued hereunder, is subject to discharge termination:

- (1) Violation of discharge permit conditions;
- (2) Failure to accurately report the wastewater constituents and characteristics of its discharge;
- (3) Failure to report significant changes in operations or wastewater volume, constituents or characteristics prior to discharge;
- (4) Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring or sampling;
- (5) Violation of the pretreatment standards in section 4 of this ordinance;
- (6) Falsifying self-monitoring reports or any other required records;
- (7) Tampering with monitoring equipment.

(b) Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under 5.7.10.4 of this Code chapter why the proposed action should not be taken.

(Ord. 4625, 2-23-2011)

**5.7.10.11 Injunctive relief.**

Sec. 11 Whenever a user has violated a pretreatment standard or requirement or continues to violate the provisions of this Code article, discharge permits or orders issued hereunder, or any other pretreatment requirement, or any order or directive issued by the Board of Public Works and Safety pursuant to 5.7.10.4(d) of this Code chapter, the Superintendent may petition the Circuit or Superior Court of Elkhart County, Indiana through the City of Goshen Attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the discharge permit, order, or other requirements imposed by this Code article on activities of the industrial user. Such other action as appropriate for legal and/or equitable relief may also be sought by the City. A petition for injunctive relief need not be filed as a prerequisite to taking any other action against a user.

(Ord. 4625, 2-23-2011)

**5.7.10.12 Civil penalties.**

Sec. 12 (a) Any user which has violated or continues to violate this Code article, any order or discharge permit issued hereunder, or any other pretreatment standard or requirement shall be liable to the City for a civil penalty of up to but no more than Two Thousand Five Hundred Dollars (\$2,500.00) per violation per day. In the case of a monthly or other long-term average discharge limit, penalties shall accrue for each day during the period of the violation.

(b) The City may recover reasonable attorney's fees, court costs and other expenses associated with enforcement activities, including sampling and monitoring expenses and the cost of any actual damages incurred by the City, including fines, penalties, costs or damages imposed upon the City by the State of Indiana, EPA or other governmental entities pursuant to chapter 12 of this Code article.

(c) In determining the amount of civil liability, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user and any other factor as justice requires.

(d) Filing a suit for civil penalties shall not be a prerequisite for taking any other action against a user.

(Ord. 4625, 2-23-2011)

**5.7.10.13 Remedies nonexclusive.**

Sec. 13 The provisions set forth in chapter 10 of this Code article are not exclusive remedies. The City reserves the right to take any, all or any combination of these actions against a non-compliant user. Enforcement of pretreatment violations will generally be in accordance with the City's



enforcement response plan. However, the City reserves the right to take other action against any user when the circumstances warrant. Further, the City is empowered to take more than one enforcement action against any non-compliant user. These actions may be taken concurrently.

(Ord. 4625, 2-23-2011)

#### 5.7.10.14 User's right of interpretation.

Sec. 14 Any user or any interested party has the right to request in writing an interpretation or ruling by the City on any matter covered by this Code article and is entitled to a prompt written reply. In the event that such an inquiry is by the affected discharger and deals with matters of compliance with this Code article or deals with a discharge permit, receipt of the discharger's request will not delay any enforcement proceedings.

(Ord. 4625, 2-23-2011)

#### 5.7.10.15 Annual publication of violators.

Sec. 15 The City shall publish at least annually in the largest daily newspaper circulated in the service area of the POTW, a list and description of those industrial users which were found to be in significant noncompliance as defined in 5.7.15.1(a)(48) of this Code article, or were subject to the enforcement proceedings pursuant to the provisions of chapter 10 of this Code article, or state or federal regulations, or exhibited a pattern of noncompliance or where violations remained uncorrected forty-five (45) days after notification of noncompliance during the previous calendar year or during the period since the previous publication.

(Ord. 4625, 2-23-2011)

#### 5.7.10.16 Service.

Sec. 16 (a) Any notice of noncompliance, notice of orders, notice of any other directives issued by the City or by the Board of Public Works and Safety may be served upon any principle executive, general partner, corporate officer, or the individual in charge of the user's wastewater treatment program as designated by the user, and shall be given by either:

- (1) Sending a copy of the notice, order or statement by registered or certified mail to the place of business or employment of the person to be notified, with return receipt requested; or
- (2) Delivering a copy of the notice, order or statement personally to the person to be notified; or
- (3) Leaving a copy of the notice, order or statement at the place of business or employment of the person to be notified.

(b) When service is made by any of the means described, the person making service must make an affidavit stating that he has made this service, the manner in which the service was made, to whom the notice, order or statement was issued, the nature of the notice, order or statement and the date of service. The affidavit must be placed on file with the City.

(c) If, after reasonable effort, service is not obtained by a means described in 5.7.10.16(a) of this Code chapter, service may be made by publishing a notice of the notice, order or statement in the Elkhart Truth and the Goshen News. Publication may be made on consecutive days. If service of an order is made by publication, the publication must include a statement indicating generally what action is required by the notice, order or statement and that the exact terms of the notice, order or statement may be obtained from the City.

(Ord. 4625, 2-23-2011)

#### 5.7.10.17 Effective date of notice, order or statement.

Sec. 17 The date when the notice, order or statement is considered given is as follows:

- (1) If the notice, order or statement is delivered personally or left at the usual place of business or employment, notice is considered given on the day when the notice, order or statement is delivered to the person or left at the person's usual place of business or employment.
- (2) If the notice, order or statement is mailed, notice is considered given on the date shown on the return receipt, or, if no date is shown, on the date when the return receipt is received by the City of Goshen.
- (3) Notice by publication is considered given on the date of the second day that publication was made.

(Ord. 4625, 2-23-2011)

#### 5.7.10.18 Supplemental enforcement remedies.

Sec. 18 In addition to those enforcement actions, remedies or proceedings addressed in chapter 10 of this Code article, the City may, at its option, utilize any or all of the following enforcement remedies:

(a) Performance Bonds. The Superintendent may decline to reissue a discharge permit to any user which has failed to comply with the provisions of this Code article or any order or previous discharge permit issued hereunder unless such user first files with it a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the Superintendent to be necessary to achieve consistent compliance.

(b) Liability Insurance. The Superintendent may decline to reissue a discharge permit to any user which has failed to comply with the provisions of this Code article or any order or previous discharge permit issued hereunder, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair POTW damage caused by its discharge.

(c) Water Supply Severance. Whenever a user has violated or continues to violate the provisions of this Code article or an order or discharge permit issued hereunder, water service to the user may be severed and service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply.

(d) Public Nuisances. Any violation of the prohibitions on effluent of this Code article or permit or order issued hereunder may be hereby declared a public nuisance and, as such, shall be corrected or abated as directed by the Superintendent or the Superintendent's designee. Any person(s) creating a public nuisance shall be subject to the applicable provisions of this Code governing such nuisance, including reimbursing the City for any costs incurred in removing, abating or remedying said nuisance.

(e) Contractor Listing. Consistent noncompliance with applicable pretreatment standards and requirements may be the basis for the City determining that a user is not a responsible party for the purpose of rejecting the user's bid for the sale of goods or services to the City.

(Ord. 4625, 2-23-2011)

#### 5.7.10.19 Search warrant.

Sec. 19 If the Superintendent has been refused access to a building, structure or property or any part thereof, and if the Superintendent has demonstrated probable cause to believe that there may be a violation of this Code article or that there is a need to inspect as part of a routine inspection program of the City designed to verify compliance with this Code article or any permit or order issued hereunder, or to protect the overall public health, safety and welfare of the community or the environment, then upon application by the City Attorney, a judge of a court of competent jurisdiction including the Municipal Court Judge of the City shall issue a search and/or seizure warrant describing the specific location subject to the warrant. The warrant shall specify what, if anything, may be searched and/or seized on the property described. Such warrant shall be served at reasonable hours by the Superintendent in the company of a uniformed police officer of the City. In the event of an emergency affecting public health and safety or environmental quality, inspections shall be made without the issuance of a warrant.

(Ord. 4625, 2-23-2011)

## Chapter 11. Affirmative Defenses to Discharge Violations

### 5.7.11.1 General/specific prohibitions.

Sec. 1 A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general and specific prohibitions in chapters 2, 3 and 4 of this Code article if it can prove that it did not know or have reason to know that its discharge, alone or in conjunction with other discharges, would cause pass through or interference and that either:

- (1) A local limit exists for each pollutant discharged and the industrial user was in compliance with each limit directly prior to, and during, the pass through or interference, or
- (2) No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the City was regularly in compliance with its NPDES permit, and in the case of interference, was in compliance with applicable biosolids use or disposal requirements.

(Ord. 4625, 2-23-2011)

### 5.7.11.2 Bypass.

Sec. 2 (a) Bypass Not Violating Applicable Pretreatment Standards or Requirements. A user may allow any bypass to occur which does not violate pretreatment standards or requirements, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to 5.7.11.2(b) and 5.7.11.2(c) of this Code chapter.

(b) Notice to POTW.

- (1) If a user knows in advance of the need for a bypass, it shall submit prior notice to the POTW, if possible at least ten (10) days before the date of the bypass.
- (2) A user shall orally notify the POTW of an unanticipated bypass that exceeds applicable pretreatment standards or requirements within twenty-four (24) hours of becoming aware of the bypass. A written submission shall also be provided within five (5) days of becoming aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact times and dates, and if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the bypass.

(c) Bypass Prohibited; Exceptions.

- (1) Bypass is prohibited and the POTW may take enforcement action against an individual user for a bypass, unless:

- (A) Bypass was unavoidable to prevent loss of life, personal injury or severe property damage. Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- (B) There are no feasible alternatives to bypass, such as use of auxiliary treatment facilities, retention of wastes or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed to prevent bypass which occurred during normal periods of equipment downtime or preventative maintenance; and
- (C) The user submitted notices as required by 5.7.11.2(b) of this Code chapter.
- (2) The POTW may approve an anticipated bypass, after considering its adverse effects, if the POTW determines that it will meet the three (3) conditions listed in 5.7.11.2(c)(1) of this Code chapter.

(Ord. 4625, 2-23-2011)

#### 5.7.11.3 Upset provisions.

Sec. 3 (a) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of 5.7.11.3(b) of this Code chapter are met.

(b) A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (1) An upset occurred and the user can identify the cause(s) of the upset;
- (2) The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures.
- (3) The user has submitted the following information to the POTW and treatment plant operator within twenty-four (24) hours of becoming aware of the upset, (if this information is provided orally, a written submission must be provided within five (5) days):
  - (A) A description of the indirect discharge and cause of noncompliance;
  - (B) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue;

(C) Steps being taken and/or planned to reduce, eliminate and prevent recurrence of the noncompliance.

(c) In any enforcement proceeding the user seeking to establish the occurrence of an upset shall have the burden of proof.

(d) The user shall control production or all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

(e) The user will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

(Ord. 4625, 2-23-2011)

## **Chapter 12. Recovery of Costs and Fines**

### **5.7.12.1 Recovery of costs.**

Sec. 1 Any person violating any Code article provisions or who discharges or causes a discharge that produces a deposit or obstruction, or causes damage to the City's wastewater treatment or collection system will be liable to the City for any expense, loss or damage caused by the violation or discharge. The City will bill the discharger for the costs incurred for any cleaning, repair or replacement work caused by the violation or discharge. Refusal to pay the assessed cost shall constitute a violation enforceable under provisions of this Code article.

(Ord. 4625, 2-23-2011)

### **5.7.12.2 Recovery of fines.**

Sec. 2 Any person violating any provision of this ordinance or who discharges or causes a discharge that results in the City of Goshen being fined by the EPA, IDEM or any other state or federal administrative agency will be liable to the City of Goshen for reimbursement of such fines, penalties, costs or damages and the City of Goshen shall be reimbursed from the violator. Refusal to pay the assessed fine would constitute a violation enforceable under provisions of this ordinance.

(Ord. 4625, 2-23-2011)

**Chapter 13. Confidential Information**

## 5.7.13.1 Confidential information.

Sec. 1 Information and data (other than effluent data) about a user obtained from reports, questionnaires, permit applications, permits and monitoring programs and from inspections shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of the City, that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the user. Any such request must be asserted at the time of submission of the information or data. When such a confidentiality claim is asserted, the information shall be treated as such until a determination is made by the POTW. Effluent data shall be available to the public without restriction.

(Ord. 4625, 2-23-2011)

## 5.7.13.2 Information availability to government

Sec. 2 When the person furnishing a report satisfies the POTW that such person has made the demonstration required by 5.7.13.1 of this Code chapter, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection except by governmental agencies for uses related to this Code article, the NPDES permit or the pretreatment program. Confidential portions of a report shall be available for use by the State of Indiana or EPA in judicial review or enforcement proceedings involving the person furnishing the report. Wastewater characteristics and constituents and other effluent data as defined by 40 C.F.R. § 2.302 will not be recognized as confidential information and will be available to the public without restriction.

(Ord. 4625, 2-23-2011)

**Chapter 14. Surcharges**

## 5.7.14.1 Sampling and testing.

Sec. 1 The City shall make and enforce such regulation as deemed necessary for the safe, economic and efficient management of the City's POTW. The City shall reserve the right to increase or decrease the frequencies of sampling and testing of any wastewater discharger if it deems necessary in order to make the pretreatment program more cost effective for the City in regards to installation of pretreatment equipment.

(Ord. 4625, 2-23-2011)

## 5.7.14.2 Surcharges.

Sec. 2 (a) In order that the rates and charges may justly and equitably be adjusted to services rendered, the City shall impose, in addition to the charges previously set forth in this Code article, a surcharge based upon the strength and character of the sewage and waste which it is required to treat and dispose. The City shall have the right to measure and determine or cause to be measured and determined, the strength and content of all sewage and waste discharged either directly or indirectly into the City's sewage system in such a manner and by such methods as may be deemed practical in light of the conditions and attending circumstances in order to determine the proper charge.

(b) Any and all commercial and industrial installations having an effluent discharge into the City's sewage system with an average Biochemical Oxygen Demand (CBOD) exceeding 200 milligrams per liter (mg/l), and/or an average daily Suspended Solids (SS) exceeding 200 mg/l, and/or an average Phosphorus (P) exceeding 10 mg/l, and/or an average Ammonia-Nitrogen (NH<sub>3</sub>-N) exceeding 30 mg/l, and/or an average Fats Oil and Grease (FOG) concentration exceeding 200 mg/l, and/or Hydrocarbon Oil and Grease (O&G) exceeding 100 mg/l shall be deemed to be discharging wastewater of such strength as to require a surcharge for its treatment and disposal.

(c) The surcharge to be imposed by the City for the treatment of such wastewater shall be based on the following formula:

$$(1) \text{ Surcharge} = [(BOD - Ba)(V)(8.34)(bo)] + [(SS - Sa)(V)(8.34)(So)] + [(PP - Pa)(V)(8.34)(Po)] + [(NH_3 - N - na)(V)(8.34)(no)] + [(GC - Ga)(V)(8.34)(Go)]$$

(2) For the purposes of the foregoing formula, the following shall apply:

- (A) bo = average unit cost of treatment, chargeable to CBOD, dollars per pound as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges", as amended from time to time
- (B) BOD = the concentration of CBOD in the wastewater from a specific user, mg/l
- (C) Ba = maximum concentration of CBOD in mg/l which can be discharged into the City's collection system without a surcharge = 200 mg/l
- (D) So = average unit cost of treatment (including biosolids treatment) chargeable to suspended solids, dollars per pound as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges", as amended from time to time
- (E) SS = the concentration of suspended solids in the wastewater from a specific user in mg/l



- (F) Sa = maximum concentration of suspended solids in mg/l which can be discharged into the City's collection system without a surcharge = 200 mg/l
- (G) V = volume in million gallons
- (H) Po = average unit cost of treatment chargeable to phosphorus, dollars per pound as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges", as amended from time to time
- (I) PP = the concentration of phosphorus in the wastewater from a specific user in mg/l
- (J) Pa = maximum concentration of phosphorus in mg/l which can be discharged into the City's collection system without a surcharge = 10 mg/l
- (K) no = average unit cost of treatment, chargeable to NH<sub>3</sub>-N, dollars per pound as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges", as amended from time to time
- (L) NH<sub>3</sub>-N = the concentration of NH<sub>3</sub>-N in the wastewater from a specific user in mg/l
- (M) na = maximum concentration of NH<sub>3</sub>-N in mg/l which can be discharged into the City's collection system without a surcharge = 30 mg/l
- (N) Go = average unit cost of treatment chargeable to oil and grease, dollars per pound as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges", as amended from time to time
- (O) GC = the concentration of oil and grease in the wastewater from a specific user in mg/l
- (P) Ga = maximum concentration of oil and grease in mg/l which can be discharged into the City's collection system without a surcharge = 200 mg/l

(Ord. 4625, 2-23-2011)

#### 5.7.14.3 Pretreatment charges.

Sec. 3 A pretreatment charge shall be collected from users of the City's wastewater disposal system, which charges shall be as follows:

- (1) A charge for laboratory analysis of each significant industrial user sample collected by the POTW will be as set forth in the ordinance entitled "Goshen Sewer Utility Schedule of Rates and Charges", as amended from time to time. Non-significant industrial user sample analysis that is performed by contract laboratory will be charged based on the prevailing fee of the contract laboratory.

(2) In-house laboratory analysis fees will be as set forth in the ordinance entitled “Goshen Sewer Utility Schedule of Rates and Charges”, as amended from time to time.

(3) A sampling fee as set forth in the ordinance entitled “Goshen Sewer Utility Schedule of Rates and Charges”, as amended from time to time, will be charged for each composite sample collected.

(Ord. 4625, 2-23-2011)

#### 5.7.14.4 Miscellaneous charges.

Sec. 4 (a) Non-Permitted Manufacturing/Industrial Surcharge. A surcharge as set forth in the ordinance entitled “Goshen Sewer Utility Schedule of Rates and Charges”, as amended from time to time, for each cubic foot of wastewater discharged to the wastewater treatment plant shall be assessed to all non-permitted manufacturing/industrial accounts.

(b) Food Preparation/Service Surcharge. A surcharge as set forth in the ordinance entitled “Goshen Sewer Utility Schedule of Rates and Charges”, as amended from time to time, for each cubic foot of wastewater discharged to the wastewater treatment plant shall be assessed to all commercial facilities engaged in food preparation or service. The purpose of this surcharge is to recover the cost of treatment and maintenance created by the discharge of grease. This surcharge may be waived if the facility implements best management practices to eliminate the discharge of fats, oil and grease as approved by the Environmental Compliance Administrator and the Board of Public Works and Safety and as outlined in the a food service establishment (FSE) permit.

(c) Sewer Cleaning Service. If any user discharges waste causing the City to utilize sewer cleaning equipment to remove the grease or other obstruction from sewer lines, lift stations or wet wells, a fee as set forth in the ordinance entitled “Goshen Sewer Utility Schedule of Rates and Charges”, as amended from time to time, with a minimum of four (4) hours will be imposed. If the City purchases chemicals, hardware or other material for the purpose of cleaning or maintaining sewer lines, lift stations or wet wells due to the discharge of grease or other obstructive substances by any user, the City shall maintain the right to assess the user for the cost of said materials.

(d) Televisual Inspection Service. The Goshen Sewer Department will provide a televisual inspection of a building sewer or public sewer at the request of a user or contractor upon the user’s or contractor’s payment of the televisual inspection fee as set forth in the ordinance entitled “Goshen Sewer Utility Schedule of Rates and Charges” as amended from time to time.

(Ord. 4625, 2-23-2011)

## Chapter 15. Definitions and Abbreviations

### 5.7.15.1 Definitions and abbreviations.

Sec. 1 (a) The following terms, phrases, and abbreviations shall apply in the interpretation and enforcement of this Code article:

- (1) Act. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.
- (2) Applicable Pretreatment Standard. Any pretreatment limit or prohibitive standard (federal, state and/or local) contained in the ordinance and considered to be the most restrictive with which users will be required to comply.
- (3) Authorized Representative of the User. An authorized representative of an user may be:
  - (A) A principal executive officer or an individual designated as an authorized representative by the principle executive officer if the industrial user is a corporation;
  - (B) The managing member or an individual designated as an authorized representative by the member(s) if the user is a limited liability company;
  - (C) A general partner or proprietor if the industrial user is a partnership or proprietorship respectively;
  - (D) A director or the highest official appointed or designated to oversee the operation and performance of activities if the industrial user is a federal, state or local governmental facility.
- (4) Best Management Practices (BMPs). Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 40 C.F.R. § 403.5(a)(1) and (b), and chapters 3 and 4 of this Code article. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. BMPs also include alternative means (i.e., management plans) of complying with, or in place of certain established categorical pretreatment standards and effluent limits.
- (5) Biochemical Oxygen Demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five (5) days at twenty (20) degrees Centigrade expressed in terms of weight and concentration (milligrams per liter [mg/l]).
- (6) Biosolids. Any solid, semi-solid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control

facility or any other waste having similar characteristics and effects as defined in standards issued under sections 402 and 405 of the federal Act and in the applicable requirements under sections 3001, 3004, and 4004 of the Solid Waste Disposal Act (PL 94-580).

- (7) BOD. Biochemical Oxygen Demand.
- (8) Building Drain. That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet (5') outside the inner face of the building wall.
- (9) Building Sewer. A sewer conveying wastewater from the premises of a user to the property line.
- (10) Bypass. The intentional diversion of waste streams from any portion of an industrial user's treatment facility.
- (11) Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limitations promulgated by the EPA in accordance with sections 307(b) and (c) of the Act (33 U.S.C. § 1317) which apply to a specific category of users and which appear in 40 C.F.R. § Chapter I, Subchapter N, Parts 405-471.
- (12) City. City of Goshen, Indiana.
- (13) Composite Sample. A composite sample should contain a minimum of eight (8) discrete samples taken at equal time intervals over the compositing period or proportional to the flow rate over the composite period. More than the minimum number of discrete samples will be required where the wastewater loading is highly variable.
- (14) Daily Discharge. Discharge of a pollutant measured during a calendar day or any twenty-four (24) hour period that reasonably represents the calendar day for purposes of sampling.
- (15) Daily Maximum. The arithmetic average of all effluent samples for a pollutant collected during a calendar day.
- (16) Direct Discharge. The discharge of treated or untreated wastewater directly to the waters of the State of Indiana.
- (17) Discharge Permit. A permit issued by the Superintendent which authorizes:
  - (A) Any significant industrial user; or
  - (B) Any commercial user who sells food to be consumed on-site or prepares food for sale or for consumption to deposit or discharge wastewater into any sanitary sewer.

- (18)EPA. United States Environmental Protection Agency.
- (19)Existing Source. Any source of discharge, the construction or operation of which commenced prior to the publication of proposed categorical pretreatment standards which will be applicable to such source if the standard is thereafter promulgated in accordance with section 307 of the Act.
- (20)General Permit. A type of discharge permit issued at the discretion of the Superintendent and used to control significant industrial user discharges to the POTW provided all the following conditions are met. All facilities, to be covered by a general permit, must:
- (A) Involve the same or substantially similar types of operations;
  - (B) Discharge the same types of wastes;
  - (C) Require the same effluent limitations;
  - (D) Require the same or similar monitoring; and
  - (E) In the opinion of the Superintendent, are more appropriately controlled under a general permit than under individual wastewater discharge permits.
- (21)Grab Sample. A sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and without consideration of time.
- (22)Grease Interceptor. A device located underground and outside a food service facility designed to collect, contain, or remove food wastes and grease from the waste stream while allowing the balance of the liquid waste to discharge to the wastewater collection system by gravity.
- (23)Grease Trap. A device located inside a food service facility or under a sink designed to collect, contain, or remove food wastes and grease from the waste stream while allowing the balance of the liquid waste to discharge to the wastewater collection system by gravity.
- (24)Indirect Discharge. The discharge or the introduction of non-domestic pollutants from any source regulated under section 307(b), (c) or (d) of the Act (33 U.S.C. § 1317), into the POTW, including holding tank waste discharged into the system and infiltration.
- (25)Industrial Wastes. The liquid wastes in liquid-borne waste resulting from any commercial, manufacturing or industrial operation or process as distinguished from sanitary sewage.
- (26)Instantaneous Limit. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

(27)Interference. A discharge which alone or in conjunction with a discharge or discharges from other sources:

- (A) Inhibits or disrupts the POTW, its treatment processes or operations, or its biosolid processes, use or disposal; and
- (B) Therefore is a cause of a violation of the City's NPDES permit or of the prevention of sewage biosolid use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Act; the Solid Waste Disposal Act (SWDA), including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any state regulations contained in any state biosolid management plan prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research and Sanctuaries Act.

(28)Medical Waste. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

(29)New Source.

- (A) Any building, structure, facility or installation from which there may be a discharge of pollutants, the construction of which is commenced after the publication of proposed pretreatment standards under section 307(c) of the Act which will be applicable to such source, if such standards are thereafter promulgated in accordance with that section, provided that:
  - (i) The building, structure, facility or installation is constructed at a site at which no other source is located; or
  - (ii) The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
  - (iii) The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

- (B) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of 5.7.15.1(a)(29)(A)(ii) or 5.7.15.1(a)(29)(A)(iii) of this Code article but otherwise alters, replaces or adds to existing process or production equipment.
- (C) Construction of a new source as defined under 5.7.15.1(a)(29) of this Code article has commenced if the owner or operator has:
- (i) Begun, or caused to begin as part of a continuous on-site construction program:
    - (a) Any placement, assembly or installation of facilities or equipment; or
    - (b) Significant site preparation work including clearing, excavation or removal of existing buildings, structures or facilities which is necessary for the placement, assembly or installation of new source facilities or equipment; or
  - (ii) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering and design studies do not constitute a contractual obligation under 5.7.15.1(a)(29) of this Code article.
- (30)Non-contact Cooling Water. Water used for cooling which does not come into direct contact with any raw material intermediate product, waste product or finished product, to which the only pollutant added is heat.
- (31)Non-significant Industrial User. An industrial user that discharges no more than one hundred (100) gallons per day of total categorical wastewater and all other conditions are met in accordance with 40 C.F.R. § 403.3(v)(2).
- (32)NPDES. National Pollutant Discharge Elimination System.
- (33)Pass-Through. A discharge which exits the POTW into waters of the state in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, causes a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).
- (34)Person. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents, or assigns. The masculine gender shall include the feminine, the

singular shall include the plural where indicated by the context. This definition includes all federal, state or local governmental entities.

- (35)pH. The logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.
- (36)Pollutant. Any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into water.
- (37)POTW. Publicly Owned Treatment Works.
- (38)Pretreatment or Treatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical or biological processes, or process changes by other means, except as prohibited by 40 C.F.R. § 403.6(d).
- (39)Pretreatment Standard or Standard. Any local, state or federal regulation containing pollutant discharge limits. This term includes local limits, prohibitive discharge limits including those promulgated under 40 C.F.R. § 403.5, § 307(b) and (c) of the Act, and categorical pretreatment standards.
- (40)Publicly Owned Treatment Works (POTW). A treatment works as defined by section 212 of the Act, (33 U.S.C. § 1292) which is owned, in this instance, by the City of Goshen. This definition includes the treatment plant plus any sewers that convey wastewater to the treatment plant, but does not include pipes, sewers or other conveyances not connected to a facility providing treatment. For the purpose of this ordinance, "POTW" shall also include any sewers that convey wastewaters to the treatment plant from persons outside the City of Goshen who are, by contract or agreement with the City of Goshen, users of the City of Goshen POTW.
- (41)RCRA. Resource Conservation and Recovery Act.
- (42)Receiving Waters. The watercourse, stream, or body of water receiving the waters finally discharged from the wastewater treatment plant.
- (43)Sanitary Sewage. The wastes from water closets, urinals, lavatories, sinks, bathtubs, showers, household laundries, basement drains, garage floor drains, bars, soda fountains,



cuspidors, refrigerator drains, drinking fountains, stable floor drains and all other waterborne wastes except that which is defined in this ordinance as industrial waste.

(44)Sanitary Sewer. A sewer which carries sewage, and to which storm, surface and ground waters are not intentionally admitted.

(45)Sewage. Wastewater.

(46)Sewer. A pipe or conduit for carrying sewage.

(47)SIC. Standard Industrial Classification.

(48)Significant Industrial User. Any industrial user of the City's wastewater disposal system who:

- (A) Has a process discharge flow of twenty-five thousand (25,000) gallons or more per average work day; or
- (B) Has a total discharge flow greater than five percent (5%) of the flow in the City's wastewater treatment system; or
- (C) Has in the user's waste toxic pollutants as defined pursuant to section 307 of the Act or State of Indiana statutes and rules; or
- (D) Is found by the City, Indiana Department of Environmental Management or the USEPA to have significant impact, either singly or in combination with other contributing industries, on the wastewater treatment system, the quality of biosolids, the system's effluent quality, or air emissions generated by the system.

Upon a finding that an industrial user meeting the above criteria has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the POTW may at any time, on its own initiative or in response to a petition receive from an industrial user or POTW, and in accordance with 40 C.F.R. § 403.8(f)(6), determine that such industrial user is not a significant industrial user.

(49)Significant Noncompliance.

- (A) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all of the measurements taken during a six (6) month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 40 C.F.R. § 403.3(l).
- (B) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of all the measurements taken for the same pollutant parameter during a six (6) month period equal or exceed the product of the numeric pretreatment

- standard or requirement, including instantaneous limits, as defined by 40 C.F.R. § 403.3(l) multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH).
- (C) Any other violation of a pretreatment standard or requirement as defined by 40 C.F.R. § 403.3(l) (daily maximum, long-term average, instantaneous limit, or narrative standard) that the City determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public).
- (D) Any discharge of a pollutant that has caused imminent endangerment to human health or welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge.
- (E) Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in a discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance.
- (F) Failure to provide, within forty-five (45) days after the due date, any required reports such as baseline monitoring reports, ninety (90) day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules.
- (G) Failure to accurately report noncompliance.
- (H) Any other violation or group of violations, which may include a violation of Best Management Practices, which the City determines will adversely affect the operation or implementation of the local pretreatment program.
- (50)Slug Load. Any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge.
- (51)Standard Industrial Classification (SIC). A classification pursuant to the "Standard Industrial Classification Manual" issued by the Executive Office of the President, Office of Management and Budget, (1972).
- (52)Storm Water. Any flow occurring during or following any form of natural precipitation and resulting therefrom.
- (53)Suspended Solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering.
- (54)Superintendent. The City of Goshen Utilities Wastewater Superintendent or his or her duly authorized representative.

- (55)SWDA. Solid Waste Disposal Act, 42 U.S.C. §§ 6901, et seq.
- (56)Toxic Pollutant. Any pollutant or combination of pollutants identified as toxic pursuant to section 307(a) of the Federal Water Pollution Control Act or other federal statutes or in regulations promulgated by the state under state law.
- (57)TSS. Total Suspended Solids.
- (58)Upset. An exceptional incident in which a discharger unintentionally and temporarily is in a state of noncompliance with the applicable pretreatment standard due to factors beyond the reasonable control of the discharger, and excluding noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation of the facilities.
- (59)User Class. The division of wastewater treatment customers by source, function, waste characteristics and process or discharge similarities:
- (A) Residential User. A user of the treatment works whose premises or building is used primarily as a residence for one (1) or more persons, including all dwelling units, etc.
  - (B) Commercial User. Any establishment involved in a commercial enterprise, business or service which, based on a determination by the City, discharges primarily segregated domestic wastes or wastes from sanitary conveniences.
  - (C) Institutional User. Any establishment involved in a social, charitable, religious and/or educational function which, based on a determination by the City, discharges primarily segregated domestic wastes or wastes from sanitary conveniences.
  - (D) Governmental User. Any federal, state or local governmental user of the wastewater treatment works.
  - (E) Industrial User. Any establishment involved in manufacturing, processing or related activity that discharges industrial waste to the POTW, or who introduces or has the potential to introduce pollutants into a POTW from any manufacturing, non-commercial or non-domestic source regulated under the Act, state law or local ordinance.
- (60)Wastewater. Liquid and water-carried industrial wastes and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.
- (61)Wastewater Constituents and Characteristics. The individual chemical, physical, bacteriological and radiological parameters including volume, flow rate and other parameters

that serve to define, classify or measure the contents, quality, quantity and strength of wastewater.

(62) Waters of the State.

(A) Both surface and underground waters within the boundaries of the State of Indiana subject to its jurisdiction, including all ponds, lakes, rivers, streams, public ditches, tax ditches and public drainage systems within the state, other than those designed and used to collect, convey or dispose of sanitary sewage; and

(B) The flood plain free-flowing waters determined by the Department of Natural Resources on the basis of one hundred (100) year flood frequency.

(Ord. 4625, 2-23-2011)

**Chapter 16. Categories of Commercial Food Preparers**

5.7.16.1 Categories of commercial food preparers.

Food service operating hours per week:

- One hundred (100) hours or more ..... five (5) points
- Between fifty (50) and ninety-nine (99)..... four (4) points
- Between twenty-five (25) and forty-nine (49) hours..... three (3) points
- Between fifteen (15) and twenty-four (24) hours ..... two (2) points
- Less than fifteen (15) hours ..... one (1) point

Monthly flow attributable to food service by cubic feet:

- 8,021 cubic feet or more ..... five (5) points
- Between 6,684 and 8,020 cubic feet ..... four (4) points
- Between 5,348 and 6,683 cubic feet ..... three (3) points
- Between 4,011 and 5,347 cubic feet ..... two (2) points
- Less than 4,011 cubic feet..... one (1) point

Seating capacity or maximum number of meals normally served at one time if less than seating capacity (not assessed for church facilities):

- One hundred fifty (150) seats/meals or more ..... five (5) points
- Between seventy-five (75) and one hundred forty-nine (149) seats/meals ..... four (4) points
- Between fifty (50) and seventy-four (74) seats/meals ..... three (3) points
- Between twenty-five (25) and forty-nine (49) seats/meals ..... two (2) points
- Less than twenty-five (25) seats/meals ..... one (1) point

Serving practices:

- Full kitchen and serves food on dishes that are washed on site ..... five (5) points
- Full kitchen and serves food on disposable dishes or dishes that are not washed on site ..... four (4) points
- Prepares prepackaged food and serves food on dishes that are washed on site..... three (3) points

- Prepares prepackaged food and serves food on disposable dishes ..... two (2) points
- Limited use kitchen - bakery or carry-in food prep and clean-up ..... one (1) point
- Deep fryer used as part of normal food preparation..... five (5) points
- Deep fryer present but not part of normal food preparation ..... two (2) points
- Facility has commercial dishwasher ..... four (4) points
- Facility has three (3) bay sink and/or prep sink..... five (5) points
- Facility has mop sink ..... three (3) points
- Facility has floor drains ..... three (3) points
- Facility has drive-thru ..... one (1) point

An applicant shall be assigned a category by the Superintendent based on the following point total:

- Twenty-four (24) or more points - Category A
- Six (6) to twenty-three (23) points - Category B
- Less than six (6) points - Category C

(Ord. 4625, 2-23-2011)

**- End of Title 5 -**



## TITLE 6. LAND USE AND DEVELOPMENT

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### 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, 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, 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, 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, 4-9-1996)

#### 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, 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, 4-9-1996)



**6.1.1.7 Permit required.**

Sec. 7 (a) A permit shall be obtained before a person begins to construct, alter, remodel, rehabilitate, or add to any building or structure, or the placement of a mobile home. A permit shall be obtained before a person begins work on new or altered electrical, mechanical or plumbing systems. The required permits and fees are set forth in the current Building Department Fee Ordinance.

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

(c) The application for a permit shall be on forms furnished by the Building Department and all required fees shall be paid to the Goshen Building Department.

(Ord. 3714, 4-9-1996; Ord. 4692, 8-24-2012)

**6.1.1.8 Permit duration.**

Sec. 8 A permit shall expire one (1) year from the date of issue.

(Ord. 3714, 4-9-1996; Ord. 4692, 8-24-2012)

**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, 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 as set forth in the current Building Department Fee Ordinance.

(b) All fees assessed and received pursuant to the Building Department Fee Ordinance shall be deposited into the general fund.

(Ord. 3714, 4-9-1996; Ord. 4211, 4-13-2004; Ord. 4692, 8-24-2012)

**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, 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 is subject to assessment of reinspection fees as prescribed by the current Building Department Fee Ordinance.

(Ord. 3714, 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, 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, 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, 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, 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, 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, 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, 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, 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, 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, 4-9-1996)

## **Article 2. Licensing of Contractors**

### **Chapter 1. Mechanical and 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 shall be required to first obtain the appropriate license and register 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, 2-4-1997; Ord. 4702, 10-18-2012)

### 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 that satisfies the 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.

(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 must successfully complete an examination unless the applicant holds the license from another locality whose requirements equal or exceed the City of Goshen's requirements.

(d) To qualify for an electrical contractor, class A mechanical contractor or class B mechanical contractor license, the applicant must also provide to the City of Goshen Building Department evidence of the applicant's training, experience and past work record.

(Ord. 3757, 2-4-1997; Ord. 4702, 10-18-2012)

### 6.2.1.3 Examinations.

Sec. 3 (a) Applicants for a license as an electrical contractor, class A mechanical contractor or class B mechanical contractor must pass an examination approved 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 70 percent or better.

(c) An examination/sponsorship fee in the amount as required by the current Building Department Fee Ordinance shall accompany an application to take an examination for each licensing category.

(d) No refund of the examination/sponsorship fee will be made to an applicant.

(Ord. 3757, 2-4-1997; Ord. 4692, 8-24-2012; Ord. 4702, 10-18-2012)

### 6.2.1.4 Licensing approval.

Sec. 4 (a) The applications of all new applicants scoring 70 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 that 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 finds an applicant to be responsibly qualified based on the information submitted on the application and other information brought to the Board's attention, the Board shall approve the applicant's license as 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 the three (3) year licensing fee in the current amount as indicated in the Building Department Fee Ordinance.

(Ord. 3757, 2-4-1997; Ord. 4702, 10-18-2012)

#### 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 the last year for which the license is valid.

(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. Upon receipt of the application for renewal and payment of the required renewal fee in the amount as indicated in the applicable Building Department Fee Ordinance, the Building Commissioner shall issue to the applicant a renewal license and registration.

(c) Each renewed license shall be issued for three (3) years and will be charged three (3) times the annual fee. Each new license will be issued for the remaining portion of the current year and two additional years. The licenses will be charged three (3) times the annual fee.

(d) In the event any licensee fails to renew their license within thirty (30) days of receiving a written notice to renew the license, the licensee shall pay a late fee equal to the late fee for registration of units established by the current Building Department Fee Ordinance for the Neighborhood Preservation Ordinance for registration of units. However, no late fee will be imposed as long as the renewal fee is paid by February 28 of the year in which the renewal is due.

(Ord. 3757, 2-4-1997; Ord. 4702, 10-18-2012)

**6.2.1.6 Suspension, revocation or restriction of license.**

Sec. 6 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, 2-4-1997)

**6.2.1.7 Violations.**

Sec. 7 (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, 2-4-1997)

**6.2.1.8 Enforcement and penalties.**

Sec. 8 (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 thirty (30) days from the date of the Board's action.

(c) 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.

(d) 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, 2-4-1997)

### 6.2.1.9 Definitions.

Sec. 9 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 is any individual who, for hire, does himself or herself or by employing others 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 shall be considered any individual who, for hire, does himself or herself or by employing others 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 is any individual who, for hire, does himself or herself or by employing others on his or her behalf, installs, alters, repairs, replaces, designs or performs any other work to an electrical system.
- (4) LICENSEE. A licensee is 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, 2-4-1997; Ord. 4702, 10-18-2012)

## **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:

(a) Every supplied facility, piece of equipment, or utility which is required under this Code article shall be so constructed or installed that it will function safely and effectively, and shall be maintained in satisfactory working condition. All electrical systems, fuel connections, mechanical systems, or plumbing systems must be in proper working order and maintained in a manner that the systems will work safely.

(b) 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. All foundation systems must be firmly supported and free from open cracks and breaks. All foundation systems must be capable of supporting all nominal loads and capable of resisting all load effects.

(c) 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.

(d) 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.

(e) 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. Other than surface rust, metal fire escapes shall be maintained in a rust free condition.

(f) Every handrail and guard shall be firmly fastened and capable of supporting normally imposed loads and shall be maintained in good condition.

(g) 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. All painted surfaces shall be properly coated and weather tight.

(h) 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.

(i) 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.

- (j) All concrete on the real estate shall be free of significant fractures, fissures, and exposed reinforcement that create a hazardous condition.
- (k) All exterior wood shall be free of significant deterioration, damage from insects, rodents or other vermin, fire, splits or shear cracks. Any wood shall be properly attached to the structure.
- (l) All structural members shall be maintained so that such members safely support all live and dead loads for the purpose for which the structural members were intended.
- (m) 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.
- (n) 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.
- (o) All sidewalks, walkways, driveways, parking spaces and similar areas shall be kept in a proper state of repair and maintained free from hazardous conditions.
- (p) 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.
- (q) Any structures or fences shall not be maintained in a condition that is manifestly unsafe or hazardous to persons or property.
- (r) The building or structure shall not be in such a condition that it is likely to partially or completely collapse due to:
- (1) dilapidation, deterioration, or decay;
  - (2) faulty construction;
  - (3) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; or
  - (4) the deterioration, decay or inadequacy of its foundation.
- (s) 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. The exterior walls shall be free of holes, cracks, breaks, or loose or rotting materials. The exterior walls shall be properly anchored.
- (t) 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.

- (u) 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.
- (v) 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.
- (w) 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.
- (x) 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.
- (y) The anchorage of the floor or roof to walls or columns and of the walls and columns to foundations must be capable of resisting all nominal loads or load effects.
- (z) Chimneys, cooling towers, smoke stacks and similar appurtenances must be structurally sound, properly anchored, support all nominal loads, and properly resist all load effects.
- (aa) Every interior door shall fit reasonably well within its frame and be securely attached to the jambs, headers or tracks. Each interior door shall be capable of being opened and closed.
- (bb) All siding and masonry joints, including the perimeter of all windows, doors and skylights must be in good repair and weathertight.
- (cc) A portion of the building or structure shall not remain on the real estate more than three (3) months after demolition or destruction.
- (dd) Swimming pools shall be maintained in a clean and sanitary condition, and in good repair.
- (ee) Access to a residential swimming pool shall be restricted by one of the following means:
- (1) Walls or fencing not less than four feet (4') high and completely surrounding the pool and deck area with the exception of self-closing and latching gates and doors which are capable of being locked.
  - (2) Other means not less than four feet (4') high and deemed impenetrable by the City at the time of construction and completely surrounding the pool and deck area when the pool is not in use.
  - (3) A combination of subdivisions 6.3.1.1(ee)(1) and 6.3.1.1(ee)(2) of this Code chapter that completely surrounds the pool and deck with the exception of self-closing and latching gates and doors which are capable of being locked.

(4) A power safety pool cover that:

- (A) shall provide a continuous connection between the cover and the deck, so as to prohibit access to the pool when the cover is completely drawn over the pool;
- (B) shall be mechanically operated such that the cover cannot be drawn open or retracted without the use of a key, key and switch, or touch pad with a personal access code;
- (C) is installed with track, rollers, rails, guides, or other accessories necessary to accomplish clauses 6.3.1.1(ee)(4)(A) and 6.3.1.1(ee)(4)(B) of this Code chapter in accordance with the manufacturer's instructions; and
- (D) shall bear an identification tag indicating the cover satisfies the requirements of ASTM F 1346-19 (Reapproved 2003), Standard Performance Specifications for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas, and Hot Tubs.

For the purposes of this subsection 6.3.1.1(ee), a residential swimming pool means any in-ground or on-ground pool capable of a water depth greater than forty-two inches (42") and all pools installed inside a residence, regardless of water depth, whether or not served by electrical circuits of any nature, and which is intended for noncommercial use as a swimming pool by not more than two owner families and their guests. This subsection 6.3.1.1(ee) does not apply to a public swimming pool. Safety requirements for a public swimming pool shall be covered under the Indiana Swimming Pool, Spa and Water Attraction Code, as may be amended from time to time.

(ff) If a building, garage, accessory or structure is vacant, all exterior doors, exterior windows, exterior basement entrances and any other points of entry shall be locked and secured from intrusion by unauthorized persons.

(Ord. 4860, 9-27-2016)

#### 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:

- (a) 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.
- (b) Every dwelling unit, except as otherwise permitted under 6.3.1.2(d) of this Code chapter, 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.

(c) Every dwelling unit, except as otherwise permitted under 6.3.1.2(d) of this Code chapter 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.

(d) 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:

- (1) 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
- (2) the habitable area of each of the dwelling units shall equal not more than two hundred fifty (250) square feet of floor area; and
- (3) 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.

(e) Every kitchen sink, bathroom sink, and bathtub or shower required under 6.3.1.2(a) through 6.3.1.2(d) of this Code chapter shall be properly connected with both hot and cold water lines when used for rental or lease occupancy.

(f) Every dwelling 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 6.3.1.2(e) of this Code chapter 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 one hundred (100) degrees Fahrenheit. Such supplied water heating facilities shall be capable of meeting the requirements of this subsection when the dwelling unit heating facilities required under 6.3.1.3(e) of this Code chapter are not in operation.

(g) Every dwelling unit shall be supplied with adequate solid waste disposal facilities and storage containers as required by the City's Accumulation of Materials ordinance as may be amended from time to time.

(h) 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.

(i) Every dwelling unit shall provide a sufficient space and equipment to store and prepare food in a sanitary manner.

(j) A gas-burning water heater shall not be located in any bathroom, toilet room, bedroom or other occupied room normally kept closed, unless adequate combustion air is provided. An approved combination temperature and pressure relief valve and relief valve discharge pipe shall be properly installed and maintained on water heaters.

(Ord. 4860, 9-27-2016)

### 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:

(a) Every window, other than a fixed window, shall be easily operable and capable of being held in position by window hardware.

(b) Every habitable room and every bathroom and toilet 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.

(c) From May 1st through October 31st, every window opening to outdoor space, used or intended to be used for ventilation, shall be supplied with screens for protection against mosquitoes, flies, and other insects, unless the dwelling unit is adequately air conditioned.

(d) 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").

(e) 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 sixty-five (65) degrees Fahrenheit, and whenever the outside winter conditions are at least zero (0) degrees Fahrenheit. Unvented fuel burning space heaters shall not be used to provide primary heating.



(f) Every public hall and stairway in every dwelling containing three (3) or more dwelling units shall be adequately lighted. Every public hall and stairway in structures with one (1) or more dwelling units shall be supplied with conveniently located light switches controlling an adequate lighting system.

(g) Duct systems shall be maintained free of obstruction and shall properly function.

(Ord. 4860, 9-27-2016)

#### 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:

(a) 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.

(b) 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.

(c) 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 6.3.1.4(c) of this Code chapter 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.

(d) 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.

(e) All plumbing systems shall be adequately vented, installed and free from significant deterioration or damage. The plumbing system shall not permit improper cross connections and shall prohibit back siphonage.

(f) The water supply system shall be installed and maintained to provide a supply of water to plumbing fixtures, devices, and appliances in sufficient volume and pressure to enable the fixtures to function properly and safely.

(g) All electrical equipment, wiring and appliances shall be properly and safely installed in accordance with the provisions of any applicable Building, Plumbing or Electric Code adopted by the City or the State of Indiana and thereafter properly maintained.

(Ord. 4860, 9-27-2016)

**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:

(a) 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.

(b) 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.

(c) At least one-half of the floor area of every habitable room shall have a ceiling height of at least seventy-eight (78) inches; 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.

(d) Every room occupied for sleeping purposes shall contain at least seventy (70) square feet. A sleeping room must have at least fifty (50) square feet for each person who uses the room for sleeping purposes.

(e) 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.

(f) No basement space shall be used as a habitable room or dwelling unit unless the floor and walls are impervious to leakage of underground and surface run-off water, the space is insulated against dampness, and the space is supplied with a window or some other device affording ventilation.

(g) Every habitable space in a dwelling shall contain at least two (2) receptacle outlets. Every laundry area shall contain at least one (1) grounded-type receptacle or a receptacle with a ground fault circuit interrupter protection. All receptacle outlets shall have an appropriate face plate.

(h) Extension or flexible cords shall not be used for permanent wiring. Extension or flexible cords shall not run through doors, under carpets, or concealed within walls, floors or ceilings.

(Ord. 4860, 9-27-2016)

#### 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 subdivision 6.3.1.6(b)(4), 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 Code section 6.3.1.2(g). 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 Code section 6.3.1.2(g). In

all other cases, it shall be the responsibility of the occupant to furnish such facilities or containers.

(Ord. 4860, 9-27-2016)

#### 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 this Code article, except the provisions of Code sections 6.3.1.2 and 6.3.1.6. In addition to the provisions set forth in this Code article for all rental properties, the following requirements must be met:

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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. 4860, 9-27-2016)

**6.3.1.8 Smoke detectors.**

Sec. 8 (a) All rental units shall be equipped with approved and properly installed smoke detectors.

(b) Smoke detectors shall be located in each room used for sleeping purposes and in the common living area on each floor, including the basement.

(c) Smoke detectors shall be installed 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.

(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 (NFPA) Chapter 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) No person shall, except in the case of fire or for the purpose of repair or maintenance, 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.

(Ord. 4860, 9-27-2016)

**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:

(a) 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.

(b) 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.

(c) 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. 4860, 9-27-2016)

#### 6.3.1.10 Application for registration receipt.

Sec. 10 (a) No owner of real estate within the City 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 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 article.

(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 payment of the required fee and after an inspection shows that rental unit(s) conforms to this Code article, and all other applicable ordinances and statutes, the Building Department shall issue to the owner of every registered rental unit a registration receipt and an inspection certificate. If a rental unit which has been vacant for at least twelve (12) months does not meet all of the requirements of this Code article, the Building Department may issue a rental registration receipt if the violations do not make the unit unsafe and a cash bond is posted with the Building Department in the amount of

Five Hundred Dollars (\$500.00) or the reasonably estimated cost of the required repairs if greater than Five Hundred Dollars (\$500.00).

The cash bond will be forfeited to the City if the repairs are not made within One Hundred Eighty (180) days of posting the cash bond. The forfeiture of the cash bond does not relieve the owner from the obligation to make the required repairs nor does the forfeiture create any obligation on the City to make the required repairs.

If the repairs are made within the One Hundred Eighty (180) days, the Building Department will return the cash bond to the party posting the bond and will issue 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 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 6.3.1.10, 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. 4860, 9-27-2016)

#### 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 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 subject to the inspection warrant provisions of Indiana Code § 36-7-9-16. 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) Upon completion of the initial inspection, City shall leave the occupant a written notice that the inspection was conducted.
  - (4) 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 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 tenancy, 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 Code section 6.3.1.10(g). 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 6.3.1.11(i) of this Code chapter 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.

(k) Inspection Officer's attire shall contain the official City logo and the Inspection Officer shall prominently display and present a City issued photo identification. If an occupant is present, the

Inspection Officer shall identify themselves and the purpose of the inspection. The Inspection Officer shall enter the premises only if permitted to do so.

(Ord. 4860, 9-27-2016)

#### 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, or a public health hazard 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) Demolition and removal of part of an unsafe building.
  - (7) Demolition and removal of an unsafe building if:
    - (A) the general condition of the building warrants removal; or
    - (B) the building continues to require reinspection and additional abatement action after an initial abatement action was taken pursuant to notice and an order.
  - (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 supercedes 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 subsections 6.3.1.12(a)(2), (a)(3), (a)(4) or (a)(5) of this Code chapter 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. If the order allows more than thirty (30) days to accomplish the action, the order may require that a substantial beginning be made in accomplishing the action within thirty (30) days.
- (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 subsections 6.3.1.12(a)(2), (a)(3), (a)(4) or (a)(5) of this Code chapter. 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 6.3.1.2(g) of this Code chapter.

(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 subsection 6.3.1.12(c) of this Code chapter. 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. 4860, 9-27-2016)

#### 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 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. 4860, 9-27-2016)

#### 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. 4860, 9-27-2016)

#### 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:

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) INSPECTION OFFICERS. Shall mean the following persons, working separately or together, who shall enforce the provisions of this Code article:

(1) Building Commissioner, Code Compliance Officer or other designated officer.

(2) Fire Inspector, Fire Chief or other designated officer.

(3) County Health Officer.

(g) 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.

(h) OWNER. Any person who, alone or jointly or severally with others:

- (1) shall have legal title to any dwelling, dwelling unit, or any other building or structure, whether or not they occupy the same; or
- (2) 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
- (3) 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.
- (i) PERSON. Any entity, including any individual, firm, corporation, association or partnership.
- (j) 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.
- (k) REGISTRATION FEE. The amount paid to the Building Department when registering a rental unit with the City.
- (l) REGISTRATION RECEIPT. The receipt issued by the Building Department which documents that a rental unit has been registered and the owner has paid the appropriate registration fee.
- (m) RENTAL UNIT. A unit of a hotel, rooming house, apartment, duplex, or single family house which is leased or rented for a residential use.
- (n) 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.
- (o) 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.
- (p) SOLID WASTE. All solid and semisolid wastes, including garbage, litter, trash, refuse and rubbish.
- (q) SUBSTANTIAL PROPERTY INTEREST. Any right in real estate that may be affected in a substantial way by actions authorized by this Code article, including a fee interest, life estate interest,



future interest, present possessory interest, mortgaged interest, or equitable interest of a contract purchaser.

(r) SUPPLIED. Shall mean paid for, furnished, or provided by or under the control of the owner or the owner's representative.

(s) UNSAFE BUILDING. A building or structure, or any part of a building or structure, that is:

(1) in an impaired structural condition that makes it unsafe to a person or property;

(2) a fire hazard;

(3) a hazard to the public health;

(4) a public nuisance;

(5) 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

(6) 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.

(t) UNSAFE PREMISES. An unsafe building and the tract of real estate on which an unsafe building is located.

(Ord. 4860, 9-27-2016)

## **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, 6-4-2002)

#### 6.4.1.3 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, 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. 251, 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. 251, 8-1-1910; Ord. 928, 6-2-1941; Ord. 3714, 4-9-1996; Ord. 4211, 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. 251, 8-1-1910; Ord. 928, 6-2-1941; Ord. 2845, 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. 4327, 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. 4327, 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. 4327, 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. 4327, 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. 4327, 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. 4327, 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. 4328, 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. 4328, 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. 4328, 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. 4328, 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. 4328, 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. 4328, 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 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.
- (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. 4328, 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. 4329, 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. 4329, 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. 4329, 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. 4329, 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. 4329, 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. 4329, 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 housekeeping 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-STROM 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. 4327, 12-20-2005; Ord. 4328, 02-07-2006; Ord. 4329, 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. 54, 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 (2.5) 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. 54, 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, 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 Dollars (\$25.00).

(Ord. 54, 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. 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. 4008, 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. 4008, 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. 4008, 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 has developed 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 has developed 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. 4008, 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 has developed 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. 4008, 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. 4008, 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. 4008, 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. 4008, 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. 4008, 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. 4066, 2-5-2002)

#### 6.9.1.2 Exclusions.

Sec. 2 (a) This Code chapter shall not apply to:

- (1) Wooded areas;
- (2) Wetlands; or
- (3) Wildlife project areas in which the project is conducted and funded by an educational institution or a local, state or federal government entity.

(b) Section 1(a) does not apply to golf courses provided the golf course does the following:

- (1) Eliminates all noxious weeds that are not located in a wooded area or wetland;
- (2) Burns with proper permission or mows all rank vegetation in areas of the golf course that are within one hundred fifty feet (150') of an adjacent real estate owner or public right-of-way once a year; and
- (3) Cuts or removes all rank vegetation located within ten feet (10') of an adjacent real estate owner or public right-of-way.

(Ord. 4066, 2-5-2002; Ord. 4591, 6-7-2010)

### 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. 4066, 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. 4066, 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. 4066, 2-5-2002)

#### 6.9.1.6 Notice of violation.

Sec. 6 (a) Upon observing real estate that is not being maintained in accordance with 6.9.1.1 of this Code, the Ordinance Compliance Officer shall issue a notice of violation to the owner of the real estate requiring the owner to abate the violation. The owner shall have five (5) business days to abate the violation.

(b) Service of this notice is adequate if given to at least one (1) owner of record at the last address for the owner as indicated in the records of the Elkhart County Auditor's Office. Notice of violation may be given to the owner:

- (1) in person;
- (2) by first-class mail; or
- (3) by certified mail, return receipt requested.

(Ord. 4688, 5-29-2012)

#### 6.9.1.6-1 Notice of continuous abatement.

Sec. 6-1 (a) If the notice of violation includes a continuous abatement notice, the notice must be served by certified mail, return receipt requested, and by first-class mail to at least one (1) owner of record at the last address of the owner as indicated in the records of the Elkhart County Auditor's Office and the known address of the owner if different than the address listed with the Elkhart County Auditor's Office.

(b) If a continuous abatement notice has been served upon one (1) of the record owners in accordance with the above provisions, notice of a subsequent violation within the same calendar year may be provided by posting notice of the subsequent violation in a conspicuous location upon the real estate. The owner shall have three (3) days from the date the notice of subsequent violation is posted on the real estate to abate the violation. No additional notice, written or otherwise, is required to enforce a subsequent violation within the same calendar year.

(Ord. 4688, 5-29-2012)

#### 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. 4066, 2-5-2002)

**6.9.1.8 Notice of billing issued to owner.**

Sec. 8 (a) In the event the City of Goshen is forced to cut or remove rank vegetation or noxious weeds from a parcel of real estate, the Clerk-Treasurer shall issue a notice of billing to the owner of the real estate for the costs incurred by the City to abate the violation. The cost of removal shall be One Hundred Fifty Dollars (\$150.00) or the City's actual cost, if greater.

(b) If a continuous abatement notice has not been issued, service of this billing notice must be given by certified mail, return receipt requested, or an equivalent service permitted under Indiana Code § 1-1-7-1 to at least one (1) of the record owners of the real estate at the address for the owner as indicated in the records of the Elkhart County Auditor's Office. If a continuous abatement notice has been issued, the Clerk-Treasurer may issue the billing notice by first-class mail.

(c) 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 notice of billing is mailed to the owner of the real estate.

(Ord. 4688, 5-29-2012)

**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. 4066, 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. 4066, 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. 4066, 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.

(e) Owner of real estate shall mean any person, including individuals, sole proprietors, partnerships, corporations, firms or associations who alone or jointly or severally with others have legal or equitable title to any dwelling, dwelling unit, building, structure or parcel of real estate. The definition shall include any person who has care or control of any dwelling, dwelling unit, building, structure or parcel of real estate in the legal or equitable owner's stead, including, but not limited to an executor, administrator, trustee, guardian or any party prosecuting a foreclosure of the real estate who has obtained a judgment that affords the person the right to request that a sheriff's sale be held to satisfy a portion of the person's judgment. Care or control shall be construed to include the right to schedule a sheriff's sale in those instances where no one resides in the real estate or operates a business on the real estate and no one has properly maintained the real estate or the buildings or structures on the real estate.

(Ord. 4066, 2-5-2002; Ord. 4587, 5-24-2010)

## **Article 10. Accumulation of Materials**

### **Chapter 1. Accumulation of Materials Creating a Fire, Health, or Safety Hazard**

6.10.1.1 Administration and enforcement.

Sec. 1 The provisions of this Code chapter shall be enforced through the Goshen City Legal Department. Members of the Legal Department, Building Department, Police Department, or an



Ordinance Compliance Officer may make inspections, determine violations, and take action to enforce the provisions of this Code Chapter.

(Ord. 4769, 10-9-2014)

**6.10.1.2 Solid waste violations enforced without opportunity to correct the violation.**

Sec. 2 Any violation of this Code section may be enforced without providing the violator any prior opportunity to correct the violation. It shall be a violation of this Code section for any person to violate any of the following:

(a) No person shall leave, place, throw or deposit solid waste of any kind in or upon any street, alley, sidewalk, public place, public property, or private property of another person.

(b) No person shall cause or permit any other person to leave, place, throw or deposit solid waste of any kind in or upon any street, alley, sidewalk, public place, public property, or private property of another person.

(c) No person shall leave, place, throw or deposit 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.

(d) No person shall cause or permit any other person to leave, place, throw or deposit 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.

(e) No person shall leave, place, throw or deposit any yard waste at the Goshen Environmental Center except in accordance with rules and regulations as established by the entity managing the Goshen Environmental Center.

(f) No person shall bury solid waste.

(g) No person shall set out tires, electronic equipment, or hazardous waste for solid waste collection and disposal by the City or its authorized representative. No person shall set out leaves for collection by the City except in the manner designated by the Goshen Street Department for the Street Department's periodic collection.

(h) No person shall locate the storage area for solid waste and/or solid waste containers in the yard adjacent to a City street unless the Board of Public Works and Safety otherwise approves the street side storage area location. The Board of Public Works and Safety shall approve a street side storage area location only if the Board determines that there is no other feasible alternative location.

(i) The occupant of any residence shall cover and/or secure all solid waste containers that are kept outside of a building.

(j) The occupant of any premises shall keep the storage area and any area surrounding any solid waste containers in a clean, orderly and sanitary manner. If waste is scattered by animals, wind or other means, the occupant shall promptly clean up such scattered waste.

(k) The occupant of a residence shall place all residential solid waste at the designated collection site for collection no sooner than the day before collection and 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.

(Ord. 4769, 10-9-2014)

#### 6.10.1.3 Enforcement process.

Sec. 3 The owner or occupant of any residential premises who violates any provision of 6.10.1.2 of this Code may be cited into any court in Elkhart County, Indiana for such violation and shall be subject to the penalties set forth in this Code chapter.

(Ord. 4769, 10-9-2014)

#### 6.10.1.4 Violations requiring prior notice of violation.

Sec. 4 (a) Upon discovery of a violation of this Code section, the person or persons in violation shall be given written notice of the violation and shall be given three (3) days from the service of the notice to abate the violation.

(b) It shall be a violation of this Code section for any person to violate any of the following:

- (1) Allow an accumulation of materials on real estate or on a residential porch or patio if the accumulation creates a fire, health, or safety hazard. Such materials include, but are not limited to brush, metals, rubber, concrete, plastics, wood products, cardboard boxes, garbage, litter, trash, refuse and rubbish.
- (2) Allow an accumulation of materials on real estate or on a residential porch or patio if the accumulation creates a harborage for rodents or insects. Such materials include, but are not limited to brush, metals, rubber, concrete, plastics, wood products, cardboard boxes, garbage, litter, trash, refuse and rubbish.
- (3) The occupant of any commercial or industrial building shall provide timely collection and disposal of solid waste generated at the location.
- (4) The owner of a building containing five (5) or more residential dwelling units shall collect and dispose of all solid waste generated from the location on at least a weekly basis and shall provide sufficient number of containers to contain all solid waste generated between collections.

- (5) The occupant of any real estate used for commercial or industrial purposes shall provide sufficient number of containers to contain all solid waste generated from the location between collections.
- (6) The occupant of any premises shall maintain all solid waste containers in good repair and shall maintain the container and area around the container in a clean and sanitary manner.
- (7) Solid waste shall not be stored outside of a commercial or industrial building unless stored in a watertight, insect and rodent-proof container.
- (8) No residential solid waste container shall have a capacity in excess of forty-five (45) gallons and shall not exceed fifty (50) pounds when full unless such container is provided by the City or its authorized representative.
- (9) Use of wooden containers, screen or wire containers, or fifty-five (55) gallon drums for the storage and/or collection of solid waste are prohibited.

(Ord. 4769, 10-9-2014)

#### 6.10.1.5 Notice.

Sec. 5 (a) The notice of violation 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 or by a date certain;
- (5) Statement indicating the opportunity for a hearing and the manner by which a hearing may be requested;
- (6) Statement indicating what action can be taken by the City if the notice is not complied with;  
and
- (7) Name, address and telephone number of the Goshen City Department enforcing the violation.

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

- (1) Delivering a copy personally to the person(s) to be notified; or

- (2) Sending a copy by first-class mail to the person(s) to be notified; and by
- (3) Leaving a copy at the location of the violation.

(c) 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 of the abatement may be assessed pursuant to 6.10.1.7 of this Code.

(d) If the original notice was issued to the occupant of the real estate and the occupant fails to take corrective action, 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 or both.

(e) This Code chapter 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. 4769, 10-9-2014)

#### 6.10.1.6 Hearing.

Sec. 6 (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 chapter, 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 chapter. Each person appearing will also be given the opportunity to cross-examine any opposing witnesses and present evidence and arguments.

(Ord. 4769, 10-9-2014)

#### 6.10.1.7 Abatement of violation by City; collection of costs.

Sec. 7 (a) If the owner of the real estate has not abated the violation or requested a hearing within three (3) days of receiving the notice required above, the City may initiate legal action

requesting that the Court impose a fine upon the owner of the real estate as provided in this Code chapter and/or the City may elect to give all persons holding a substantial interest in the real estate notice of the violation. If the violation is not abated within ten (10) days of all persons holding a substantial interest in the real estate receiving notice of the violation, the City may enter onto the real estate and take appropriate action to bring the real estate into compliance. The expenses incurred by the City to bring the real estate into compliance constitute a lien against the property if the lien is perfected in the manner required by Indiana Code § 36-1-6-2.

Notwithstanding the above paragraph, the City may initiate legal action to have a fine imposed on the occupants of the real estate at any time at least three (3) days after the occupants received notice of the violation.

(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 section. The costs for abatement shall be One Hundred Fifty Dollars (\$150.00) 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 chapter 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. 4769, 10-9-2014)

#### 6.10.1.8 Penalty.

Sec. 8 (a) Any person who violates a provision of this Code chapter may be subject to a fine in an amount not more than Five Hundred Dollars (\$500.00) for each offense.

(b) If the violation is of a continuing nature, each day of failure to comply with the provisions of this Code chapter shall constitute a separate offense.

(c) A complaint for violation seeking the imposition of a fine may be filed with any court of competent jurisdiction in Elkhart County.

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

(Ord. 4769, 10-9-2014)

### 6.10.1.9 Definitions.

Sec. 9 For the purposes of this Code Chapter, the following words, terms and phrases shall have the meanings set forth:

- (a) 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.
- (b) OCCUPANT. The person in actual possession of the property, premises, building or dwelling unit, whether or not the owner. It does not include anyone under eighteen (18) years old.
- (c) 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.
- (d) PERSON. Any individual, firm, association, partnership or corporation.
- (e) 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 chapter, residential solid waste includes, but is not limited to brush, metals, rubber, materials, concrete, plastics, wood products, cardboard boxes, garbage, litter, trash, refuse and rubbish that is permitted to accumulate in the yard or on the porch or patio of any residential real estate. Residential solid waste shall exclude solid waste generated from a building containing five (5) or more rental dwelling units.
- (f) 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. 4769, 10-9-2014)

## **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, 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. Every day that the graffiti is not removed after notice shall constitute a separate violation of this Code article.

(Ord. 3779, 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, 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, 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, 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, 7-29-1997)



## **Article 12. Miscellaneous**

### **Chapter 1. Garage Sales, Yard Sales or Other Occasional Sales**

#### 6.12.1.1 Duration and frequency.

Sec. 1 (a) It shall be unlawful for any person to conduct a garage sale, yard sale or other occasional sale in a residential area for more than four (4) consecutive days at the same location after which the personal property offered for sale must be removed from view of the public by the end of the fourth day.

(b) It shall be unlawful for any person to conduct a garage sale, yard sale or other occasional sale in a residential area more than four (4) times at the same location in a calendar year. A minimum of three (3) days shall lapse between consecutive sales at the same location.

(Ord. 4553, 9-9-2009)

#### 6.12.1.2 Violation.

Sec. 2 (a) Any person found violating this Code chapter shall be subject to enforcement in accordance with 1.1.3 of this Code, and as the City Code may be amended from time to time. Each day or portion of a day of violation shall constitute a separate offense.

(b) For the purposes of this Code chapter, the person conducting the sale and the owner or tenant of the premises upon which the sale is located shall be jointly and severally responsible for the violation.

(Ord. 4553, 9-9-2009)

### **Chapter 2. Advertisements**

#### 6.12.2.1 Advertising.

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. 149, 9-14-1903; Ord. 789, 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. 149, 9-14-1903)

### Chapter 3. Signs in Right-of-Way

#### 6.12.3.1 Prohibition.

Sec. 1 It shall be unlawful for any person to erect or locate, or cause or authorize any other person to erect or locate on his or her behalf or on the behalf of a business in which such person has an interest or is employed, any sign in the City of Goshen upon any of the following:

- (a) In any City, County or State right-of-way without permission of the governmental entity owning the right-of-way.
- (b) On any publicly-owned real estate without the permission of the public entity which owns the real estate.
- (c) On any privately-owned real estate without the permission of the owner of the real estate.
- (d) On any tree within the public right-of-way, utility pole, or street sign.

(Ord. 4457, 12-27-2007)

#### 6.12.3.2 Defenses.

Sec. 2 It is a defense to a violation of this Code chapter that the person erecting or locating a sign is an owner of real estate within one hundred feet (100') of where the sign is erected or located, or that the person is acting with permission of the owner of such real estate and reasonably believed that sign was erected or located on the permitting owner's real estate.

(Ord. 4457, 12-27-2007)

6.12.3.3 Applicability of zoning ordinance.

Sec. 3 (a) This Code chapter does not limit the force and effect of Article V of the City of Goshen's Zoning Ordinance.

(b) All signs in the City of Goshen must be located in accordance with the City of Goshen's Zoning Ordinance.

(c) A failure to locate a sign in accordance with the City of Goshen's Zoning Ordinance may be enforced under the City of Goshen's Zoning Ordinance.

(Ord. 4457, 12-27-2007)

6.12.3.4 Enforcement.

Sec. 4 (a) The City of Goshen's ordinance compliance officer, any police officer, or any member of the Legal Department may commence the enforcement of this Code chapter by filing a complaint in a court of competent jurisdiction, specifying the nature of the violation, the section of this Code chapter violated, and whether an injunction against the violation is sought and/or a fine is requested.

(b) A person named in any complaint to enforce this Code chapter shall be entitled to a hearing before the court which hearing is conducted in accordance with the Indiana Rules of Civil Procedure.

(Ord. 4457, 12-27-2007)

6.12.3.5 Penalties.

Sec. 5 (a) After a hearing at which the court finds that this Code chapter has been violated, the court may enjoin the violator from doing any act inconsistent with this Code chapter or order the violator to take any affirmative action needed to eliminate a violation of this Code chapter.

(b) The court may order the violator to reimburse the City of Goshen for the City's reasonable expenses in enforcing this Code chapter including reasonable attorney fees. Such award shall not exceed One Thousand Dollars (\$1,000.00).

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

(Ord. 4457, 12-27-2007)

– End of Title 6 –



## **TITLE 7. RECREATION/CONTESTS**

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### **Article 1. Parks and Recreation**

#### **Chapter 1. Park Rules and Regulations**

##### 7.1.1.1 Parks and other recreational areas defined.

Sec. 1 The words "park and other recreational areas" shall include, but not be limited to, any lands, buildings, structures, waters, paths, trails, drives and roadways in the City of Goshen, Indiana that are within jurisdiction and control of the City of Goshen through the Goshen Parks and Recreation Department.

(Ord. 4294, 6-7-2005)

##### 7.1.1.2 Park hours.

Sec. 2 No person shall enter or remain in any park or other recreational area after the location is closed to the public. Parks and other recreational areas are open to the public from dawn until 11:00 p.m. or until the conclusion of a park approved activity, if later.

(Ord. 4294, 6-7-2005)

##### 7.1.1.3 Vehicles left in parks after closing prohibited.

Sec. 3 No person shall leave a vehicle within any park or other recreational area after the location has closed to the public, except in cases of an emergency or with the consent of the Goshen Parks and Recreation Department. The City of Goshen will consider the registered owner of a vehicle to be the person who left the vehicle within any park or other recreational area after the location has closed to the public unless such presumption is properly rebutted by the owner.

(Ord. 4294, 6-7-2005)

##### 7.1.1.4 Altering or removing signs, structures, fixtures and other improvements prohibited.

Sec. 4 No person shall damage, deface, remove or otherwise alter any sign, structure, fixture or other improvement in any park or other recreational area. The signs, structures, fixtures or other improvements shall include, but not be limited to, any drive, roadway, walk, path, trail, bridge, wall, monument, statue, fountain, grill, table, bench, fence, gate, building, pool and recreational equipment.

(Ord. 4294, 6-7-2005)

**7.1.1.5 Disturbing, injuring or removing wildlife and vegetation prohibited.**

Sec. 5 (a) No person shall harass, hunt, trap, injure, remove or otherwise disturb any wildlife located in any park or other recreational area without the express written permission of the Parks Superintendent or the Superintendent's designee. The term "wildlife" shall mean any wild mammal, bird, reptile, amphibian, mollusk, crustacean, or other wild animal; or any part, product, egg, offspring, or the dead body or parts of the wild animal.

(b) No person shall harvest, cut, break, set afire, injure, remove or otherwise disturb any plant, flower, bush, tree or other vegetation growing in any park or other recreational area. No person shall attach any rope, cable or other component to any such vegetation.

(Ord. 4294, 6-7-2005)

**7.1.1.6 Swimming prohibited.**

Sec. 6 No person shall swim, wade, or bathe in any waters that are within any park or other recreational area unless a lifeguard is on duty at the particular site or unless otherwise posted. Wading in such waters as part of entering or exiting from a boat or canoe is not prohibited.

(Ord. 4294, 6-7-2005; Ord. 4735, 5-23-2013)

**7.1.1.7 Pet supervision required.**

Sec. 7 No person shall bring any pet into a park or other recreational area unless the person continuously supervises such pet, including preventing or promptly repairing any damages caused by the pet, and properly disposing of any excrement left by the pet upon any park property.

(Ord. 4294, 6-7-2005)

**7.1.1.8 Camping prohibited.**

Sec. 8 No person shall erect or maintain a tent or other shelter, or otherwise camp within any park or other recreational area without the express written permission of the Parks Superintendent or the Superintendent's designee. The person must conspicuously post such permission at the campsite.

(Ord. 4294, 6-7-2005)

**7.1.1.9 Fires prohibited.**

Sec. 9 No person shall build, kindle, maintain or use a fire within any park or other recreational area in the City of Goshen unless the person properly contains such fire in facilities designed for that

purpose. Any fire shall be continuously monitored and under the care and direction of a person who is at least eighteen (18) years of age from the time the fire is kindled until the fire is extinguished.

(Ord. 4294, 6-7-2005)

**7.1.1.10 Possession, consumption and sale of alcoholic beverages prohibited.**

Sec. 10 No person shall possess, consume, sell, offer for sale, barter or exchange any alcoholic beverage in any park or other recreational area. The term "alcoholic beverage" means a liquid or solid that is or contains one-half percent (0.5%) or more alcohol by volume; is fit for human consumption; and is reasonably likely, or intended, to be used as a beverage.

(Ord. 4294, 6-7-2005)

**7.1.1.11 Use of weapons prohibited.**

Sec. 11 No person shall use a weapon in any park or other recreational area. The term "weapon" means any device, firearm, equipment, or other material that in the manner it is used or is ordinarily used, is readily capable of causing serious bodily injury. The term "firearm" means any weapon that is capable of, designed to or that may readily be converted to expel a projectile by means of an explosion.

(Ord. 4294, 6-7-2005; Ord. 4644, 7-8-2011)

**7.1.1.12 Solicitations, commercial sales and commercial photography prohibited.**

Sec. 12 No person shall solicit, advertise, sell, photograph or promote for sale any commercial product or commercial event within any park or other recreational area without the express written permission of the Goshen Board of Parks and Recreation Department. The person must conspicuously post such permission at the site of such activity.

(Ord. 4294, 6-7-2005)

**7.1.1.13 Speed limits.**

Sec. 13 No person shall operate any vehicle or bicycle upon roadways within a park or other recreational area in excess of the speed limit as posted, which in any event, shall not exceed 15 miles per hour.

(Ord. 4294, 6-7-2005)

#### 7.1.1.14 Bicycle / pedestrian trail restrictions.

Sec. 14 (a) No person shall operate any motorized vehicle, motorized bicycle or other similar device upon any trail designed for bicycle / pedestrian use in the City of Goshen, except if a person with a disability, as defined by the Americans with Disabilities Act, operates the device.

(b) No person shall ride or allow any horse upon any trail designed for bicycle / pedestrian use in the City of Goshen.

(c) No person shall ride a bicycle at an excessive speed or engage in any racing activity upon any trail designed for bicycle / pedestrian use in the City of Goshen.

(Ord. 4294, 6-7-2005)

#### 7.1.1.15 Skate park equipment.

Sec. 15 The skate park shall be used only by persons operating skateboards, roller skates and inline skates. No person shall operate any other equipment or wheeled devices inside the skate park.

(Ord. 4294, 6-7-2005)

#### 7.1.1.16 Enforcement.

Sec. 16 (a) Any person who violates any provision of this Code article shall be fined an amount not to exceed Two Hundred Fifty Dollars (\$250.00), in addition to any court costs, including reasonable attorneys' fees. A separate offense shall be deemed committed each day that a violation occurs or continues to occur.

(b) 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.

(Ord. 4294, 6-7-2005)

## **Article 2. Boxing, Sparring and Unarmed Combat Matches**

### **Chapter 1. Regulation of Boxing, Sparring and Unarmed Combat Matches**

#### 7.2.1.1 License and permit required.

Sec. 1 (a) No person or other entity shall publicize or promote a boxing, sparring or unarmed combat match to be conducted in the City of Goshen, Indiana if the match is not sanctioned by the Indiana State Athletic Commission or the Indiana State Athletic Commission has not issued a license or permit for the match or contest to be conducted within the City of Goshen, Indiana.



(b) No person or other entity shall conduct or engage in a boxing, sparring or unarmed combat match or contest within the corporate boundaries of the City of Goshen, Indiana, unless such match has been licensed and permitted by the Indiana State Athletic Commission.

(Ord. 4350, 3-21-2006; Ord. 4544, 7-24-2009)

**7.2.1.2 Penalty.**

Sec. 2 Any person or other entity that violates this Code article may be fined up to Two Thousand Five Hundred Dollars (\$2,500.00) for each violation. Each match or contest conducted in violation of this Code article constitutes a separate offense.

(Ord. 4350, 3-21-2006; Ord. 4544, 7-24-2009)

**7.2.1.3 Enforcement.**

Sec. 3 Violations of this Code article will be enforced in accordance with 1.1.3 of this Code, as such section of the City Code may be amended from time to time.

(Ord. 4350, 3-21-2006; Ord. 4544, 7-24-2009)

**– End of Title 7 –**

