

REGULAR MEETING - DECEMBER 21, 2004

The Common Council of the City of Michigan City, Indiana, met in regular session on Tuesday Evening, December 21, 2004, at the hour of 7:30 p.m., local time, in the Common Council Chambers, located in the lower level of the City Hall Building, 100 East Michigan Boulevard, Michigan City, Indiana.

The meeting was called to order at 7:30 p.m. by Council President Paul Przybylinski, who presided.

The Pledge of Allegiance to the Flag and a short period of silent prayer were observed.

Roll call was authorized and the following were noted present and/or absent:

PRESENT: COUNCIL MEMBERS Evelyn D. Baker; Patricia Boy; Joseph Doyle; Phillip Jankowski; Charles Lungren; Virginia Martin; Ronald Meer; and Paul Przybylinski (8)

ABSENT: COUNCIL MEMBER Willie Milsap (1)

NOTE: Councilman Milsap entered during reports of other city officers and departments and was noted present at that time.

A QUORUM WAS NOTED PRESENT.

APPROVAL of MINUTES

President Przybylinski inquired whether there were any corrections, deletions, or additions to the minutes of the Regular Meeting of December 7, 2004, and, on motion by Councilman Meer, seconded by Councilman Doyle, the minutes were approved as printed.

REPORTS of STANDING, SPECIAL, or SELECT COMMITTEES

Councilman Jankowski reported on Water Department and Sanitary District meetings and responded to questions from President Przybylinski.

REPORTS of OTHER CITY OFFICERS and DEPARTMENTS

Mayor Oberlie reported on the City's response to the recent large snowfall and responded to questioning from Council Members Przybylinski and Lungren.

At this time, Councilman Milsap entered the meeting.

PETITIONS

There were no petitions.

COMMUNICATIONS

At the request of the president, the Clerk read a letter from Don Glossinger (Library Director) and Marilyn Sirugo (Literacy Supervisor), of the Michigan City Public Library, dated December 1, 2004, addressed to Chamber of Commerce Members:

The Literacy Program of the Michigan City Public Library has been serving Michigan City since 1987, helping many residents learn to read or to improve reading, English and math skills. At present, 50 volunteer tutors are working with 60 students, half of whom are adults and half children. Eighty additional students are waiting for tutors.

To try to serve as many as possible, Library Director Don Glossinger and Literacy Supervisor Marilyn Sirugo are in the process of setting up a partnership with Purdue North Central. PNC students would tutor children at the library as "interns," in return for a modest stipend.

Could you help us in our efforts to raise literacy levels in Michigan City? Our Literacy Fund, used to buy tutoring materials, is running low. Also, we need contributions to provide the stipends.

We would very much appreciate any help you can give us. Since the library is a not-for-profit organization, contributions are tax-deductible. Please make out your check to "Michigan City Public Library." Thank you.

Council President Przybylinski brought to the attention of the members an article from The Herald-Argus (December 9, 2004), entitled "Commissioners get financial help in fight against NIPSCO."

RESOLUTIONS

The Clerk read by title only, there being no objections,

RESOLUTION NO. 4265

**RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION
FOR A GRANT UNDER SECTION 5307
OF THE FEDERAL TRANSIT ACT, AS AMENDED**

Resolution authorizing the filing of applications with the Federal Transit Administration, an operating administration of the United States Department of Transportation, for Federal transportation assistance authorized by 49 U.S.C. chapter 53, title 23 United States Code, and other Federal statutes administered by the Federal Transit Administration.

WHEREAS, the Federal Transportation Administrator has been delegated authority to award Federal financial assistance for a transportation project;

WHEREAS, the grant or cooperative agreement for Federal financial assistance will impose certain obligations upon the Applicant, and may require the Applicant to provide the local share of the project cost;

WHEREAS, the Applicant has or will provide all annual certifications and assurances to the Federal Transit Administration required for the project;

NOW, THEREFORE, BE IT RESOLVED by the Michigan City Common Council:

1. That Mayor Charles Oberlie is authorized to execute and file an application for Federal assistance on behalf of the Michigan City Municipal Coach Department with the Federal Transit Administration for Federal Assistance authorized by 49 U.S.C. chapter 53, Title 23, United States Code, or other Federal statutes authorizing a project administered by the Federal Transit Administration. That the City of Michigan City, Indiana, is the Designated Recipient as defined by 49 U.S.C. § 5307(a)(2).
2. That Walter Gipson, Municipal Coach Director, is authorized to execute and file with its applications the annual certifications and assurances and other documents the Federal Transportation Administration requires before awarding a Federal Assistance grant or cooperative agreement.
3. That Mayor Oberlie is authorized to execute grant and cooperative agreements with the Federal Transit Administration on behalf of the Michigan City Municipal Coach Department.

INTRODUCED BY: /s/ Phillip E. Jankowski

Councilman Jankowski moved to adopt the Resolution, seconded by Councilman Milsap.

There was discussion by Council Members Jankowski and Przybylinski and Municipal Coach Director Walter Gipson.

The motion carried and the Resolution was adopted by the following vote: **AYES: COUNCIL MEMBERS Przybylinski, Baker, Boy, Doyle, Jankowski, Lungren, Martin, Meer, and Milsap (9). NAYS: None (0).**

The Clerk read by title only, there being no objections,

RESOLUTION NO. 4266

**RESOLUTION SUPPORTING THE APPROVAL BY THE STATE BOARD
OF TAX COMMISSIONERS OF A LATE FILING OF FORM 322 ERA/PP BY
ONLINE PACKAGING, INC.**

WHEREAS, on March 6, 2001, the Michigan City Common Council adopted Resolution Number 4090 approving a Statement of Benefits in Support of Application for Property Tax Abatement by OnLine Packaging, Inc., (new manufacturing and equipment), the resolution being approved by the Mayor of Michigan City, March 8, 2001, (the "Resolution");

WHEREAS, subsequent thereto OnLine Packaging, Inc., ("OnLine Packaging") failed to file with the LaPorte County Auditor's Office application for deduction from assessed valuation (new manufacturing equipment), Form 322 ERA/PP, (the "Deduction Application"), in a timely manner;

WHEREAS, the Deduction Application was to be filed with respect to 2002 real and personal property taxes payable in 2003.

WHEREAS, such failure to file the above-referenced Deduction Application was due to inadvertent oversight, in that there was a mis-communication between Bank One Leasing Corporation, which financed the acquisition of the Equipment and OnLine Packaging resulting in the late filing of the Deduction Application.

WHEREAS, OnLine Packaging is otherwise in compliance with all filing requirements, including filing requirement relating to forms CF-1 (Compliance with Statement of Benefits);

WHEREAS, pursuant Rule 4. **Miscellaneous Provisions**, 50 IAC 10-4-2 and based upon *State Board of Tax Commissioners of Indiana vs. New Energy Company of Indiana, 585 NE2nd 38*, the State Board of Tax Commissioners may consider a late filing application in its discretion;

WHEREAS, in exercising such discretion, the State Board of Tax Commissioners may consider the fact that the local governing body supports the approval of a late-filed Deduction Application.

WHEREAS, this Council desires to support the approval by the State Board of Tax Commissioners of the late filing of the Deduction Application.

NOW, THEREFORE, BE IT RESOLVED:

SECTION 1. That the matters and things recited in the preamble hereof are hereby adopted and made a part of this Resolution by incorporation and reference as if repeated in full.

SECTION 2. That the Common Council of the City of Michigan City, Indiana, finds that the late filing of the Deduction Application was due to inadvertent oversight.

SECTION 3. The Common Council of the City of Michigan City, Indiana, hereby supports the approval by the State Board of Tax Commissioners of the late filing of the Deduction Application even though such approval would result in a loss of tax revenues.

SECTION 4. This Resolution shall be in full force and effect after its adoption by the Michigan City Common Council.

INTRODUCED BY: /s/ Phillip E. Jankowski

Councilman Jankowski moved to adopt the Resolution, seconded by Councilman Milsap.

Following explanation by Councilman Jankowski and Attorney O. Jerrold Winski, the motion carried and the Resolution was adopted by the following vote: **AYES: COUNCIL MEMBERS Baker, Boy, Doyle, Jankowski, Lungren, Martin, Meer, Milsap, and Przybylinski (9). NAYS: None (0).**

There being no objections, the Clerk read by title only,

RESOLUTION NO. 4267

**RESOLUTION SUPPORTING THE APPROVAL BY
THE LAPORTE COUNTY AUDITOR
AND THE STATE BOARD OF TAX COMMISSIONERS
OF A LATE FILING OF FORM 322 ERA AND
A PETITION FOR CORRECTION OF ERRORS (FORM 133)
FILED BY GITI INVESTMENTS, INC., successor to GITI Indiana, Inc., ("GITI")**

WHEREAS, on March 6, 2001, the Michigan City Common Council adopted Resolution Number 4090 approving a Statement of Benefits in Support of Application for Property Tax Abatement by GITI, (the "Resolution");

WHEREAS, subsequent thereto GITI failed to file with the LaPorte County Auditor's Office Application for Deduction from Assessed Valuation (Real Estate and Improvements, Form 322 ERA) (the "Deduction Application) in a timely manner;

WHEREAS, the timely filing and approval of Form 322 ERA would have entitled GITI to 100% tax abatement for year 2002 payable for 2003;

WHEREAS, such failure to file the Deduction Application was due to inadvertent oversight in that year 2002 was a general reassessment year and for reasons unknown to GITI, Michigan Township Assessor's Office failed to mail to GITI the necessary notice of assessment of land and structures (Form 11) so as to allow the timely filing by GITI of the Form 322 ERA.

WHEREAS, the Resolution having been adopted by the Michigan City Common Council, GITI believes that it is entitled to the 100% tax abatement for year 2002 and accordingly has filed its Form 133 with the LaPorte County Auditor;

WHEREAS, the filing of a Form 133 is recognized and allowed in the State of Indiana with respect to the erroneous failure by the LaPorte County Auditor to recognize lawfully granted real estate tax abatement (see *Rott Development Company vs. State Board of Tax Commissioners, 647 N.E. 2d, p. 1157*);

WHEREAS, this Council desires to support the approval by the LaPorte County Auditor and the State Board of Tax Commissioners of the late filing of Form 322 ERA and the Petition for Correction of Errors;

NOW, THEREFORE, BE IT RESOLVED:

SECTION 1. That the matters and things recited in the preamble hereof are hereby adopted and made a part of this Resolution by incorporation and reference as if repeated in full.

SECTION 2. That the Common Council of the City of Michigan City, Indiana, finds that there is a reasonable basis to believe that the Notice of Assessment (Form 11) was not received by GITI in a timely fashion which otherwise would have resulted in the filing of Form 322 ERA.

SECTION 3. The Common Council of the City of Michigan City, Indiana, hereby supports the approval by the LaPorte County Auditor and the State Board of Tax Commissioners of the late filing of Form 322 ERA and the Petition for Correction of Errors (Form 133) filed by GITI even though such approval would result in a loss of tax revenues.

SECTION 4. This Resolution shall be in full force and effect after its adoption by the Michigan City Common Council.

INTRODUCED BY: /s/ Phillip E. Jankowski

Councilman Jankowski moved to adopt the Resolution, seconded by Councilman Milsap.

Councilman Jankowski and Attorney Winski explained the Resolution.

The motion carried and the Resolution was adopted as follows: **AYES: COUNCIL MEMBERS Boy, Doyle, Jankowski, Lungren, Martin, Meer, Milsap, Przybylinski, and Baker (9). NAYS: None (0).**

The Clerk read by title only, there being no objections,

RESOLUTION NO. 4268

**RESOLUTION SUPPORTING THE APPROVAL BY
THE LAPORTE COUNTY AUDITOR
AND THE STATE BOARD OF TAX COMMISSIONERS
OF A PETITION FOR CORRECTION OF ERRORS (FORM 133)
FILED BY MC DISTRIBUTION CENTER, LLC.,
SUCCESSOR TO TRI-QUAD ENTERPRISES**

WHEREAS, on June 15, 1999, the Michigan City Common Council adopted Resolution Number 3994 approving a Statement of Benefits in Support of Application for Property Tax Exemption by Tri-Quad Enterprises, predecessor to MC Distribution Center, LLC, (the "Resolution");

WHEREAS, the Form 322 ERA is to be filed with the Auditor of LaPorte County not later than thirty (30) days after the mailing date of the Notice of Assessment (Form 11);

WHEREAS, even though the records of the Michigan Township Assessor's Office indicate that the Form 11 was prepared, MC Distribution Center, LLC., after diligent search, has been unable to locate the Form 11 and has no record that the Form 11 was ever received;

WHEREAS, the Form 11 having not been received by MC Distribution Center, LLC., the Form 322 ERA which would have entitled MC Distribution Center, LLC., to 100% tax abatement for year 2001 payable in 2002, 95% real estate tax abatement for year 2002 payable in 2003, 80% for year 2003 payable in 2004, and 65% for year 2004 payable in 2005 was not filed;

WHEREAS, the Resolution having been adopted by the Michigan City Common Council, MC Distribution Center, LLC., believes that it is entitled to abatement above described as well as abatement for future years and accordingly shall file its Form 133 with the LaPorte County Auditor.

WHEREAS, the filing of a Form 133 is recognized and allowed in the State of Indiana with respect to the erroneous failure by the LaPorte County Auditor to recognize lawfully granted real estate tax abatement (See *Rott Development Company vs. State Board of Tax Commissioners*, 647 NE2nd, page 1157).

WHEREAS, this Council desires to support the approval by the LaPorte County Auditor and the LaPorte County Board of Tax Review of the Petition for Correction of Errors;

NOW, THEREFORE, BE IT RESOLVED:

SECTION 1. That the matters and things recited in the preamble hereof are hereby adopted and made a part of this Resolution by incorporation and reference as if repeated in full.

SECTION 2. That the Common Council of the City of Michigan City, Indiana, finds that there is a reasonable basis to believe that the Notice of Assessment (Form 11) was not received by MC Distribution Center, LLC., which otherwise would have resulted in the filing of Form 322 ERA.

SECTION 3. The Common Council of the City of Michigan City, Indiana, hereby supports the approval by the LaPorte County Auditor and the State Board of Tax Commissioners of the Petition for Correction of Errors (Form 133) filed by MC Distribution Center, LLC., even though such approval would result in a loss of tax revenues.

SECTION 4. This Resolution shall be in full force and effect after its adoption by the Michigan City Common Council.

INTRODUCED BY: /s/ Phillip E. Jankowski

Councilman Jankowski moved to adopt the Resolution, seconded by Councilman Milsap.

Following explanation by Councilman Jankowski, the motion carried and the Resolution was adopted as follows: **AYES: COUNCIL MEMBERS Doyle, Jankowski, Lungren, Martin, Meer, Milsap, Przybylinski, Baker, and Boy (9). NAYS: None (0).**

There being no objections, the Clerk read by title only,

RESOLUTION NO. 4269

**RESOLUTION OF THE MICHIGAN CITY COMMON COUNCIL
SUPPORTING THE RESTORATION AND DISPLAY OF
SOUTH SHORE LINE CAR #1100 IN MICHIGAN CITY AND
SUPPORTING THE GRANT APPLICATION TO THE
NORTHWEST INDIANA REGIONAL PLANNING COMMISSION FOR
TRANSPORTATION ENHANCEMENT ACT FUNDING (TEA-21)**

WHEREAS, this project will directly link existing and proposed tourism developments in Michigan City's North End and encourage visitors to stay in the Michigan City Community longer, thereby enhancing the economic impact of our tourism developments; and

WHEREAS, the restoration and display of line car 1100 in Michigan City would be a great way to develop support for the larger project of the Trolley to the Dunes shuttle, as well as providing a way to showcase the rail car restoration skills available in Michigan City; and

WHEREAS, the grant application is for \$275,000 with the South Shore Line Heritage Foundation providing the 25% match from funds on hand; and

WHEREAS, this project is a partnership program including the South Shore Line Heritage Foundation Program and the National Park Service; and

WHEREAS, this Common Council wishes to express its support for said project.

NOW, THEREFORE, BE IT RESOLVED, by the Michigan City Common Council, as follows:

Section 1. That it does on this date hereby support this project and support the grant application for this project.

Section 2. That this Resolution shall be in full force and effect after passage and approval by the Mayor.

INTRODUCED BY: */s/ Charles Lungren*

Councilman Lungren moved to adopt the Resolution, seconded by Councilwoman Baker.

There was discussion among Council Members Lungren, Martin, Meer, Milsap, and Przybylinski, City Planner John Pugh, and John Hanke (South Shore Line Heritage Foundation).

The motion carried and the Resolution was adopted by the following vote: **AYES: COUNCIL MEMBERS Jankowski, Lungren, Martin, Meer, Milsap, Przybylinski, Baker, Boy, and Doyle (9). NAYS: None (0).**

Councilman Lungren withdrew **RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF MICHIGAN CITY, INDIANA SUPPORTING THE RESTORATION OF SOUTH SHORE LINE CAR #1100**, which he introduced, because it was a duplication of the previous Resolution.

The Clerk read by title only, there being no objections,

RESOLUTION NO. 4270

**A RESOLUTION FOR INCREASING AND DECREASING CERTAIN APPROPRIATIONS
WITHIN THE BUDGET OF THE POLICE COMMISSION,
IN GENERAL FUND #0101,
FOR THE YEAR 2004, IN MICHIGAN CITY, INDIANA**

WHEREAS, there exist certain circumstances within the budget of the Police Commission of Michigan City which require the increasing and decreasing of appropriations for the year 2004.

Section 1. It is deemed advisable and necessary, in order to meet the circumstances facing said Police Commission of the City, that the Common Council make the following transfer of appropriations, as listed, to-wit:

GENERAL FUND #0101

Police Commission

DECREASE: A/C #0101 0071 03 439.011
Contractual Services \$1,500.04

INCREASE: A/C #0101 0071 02 423.003
Small Tools & Minor Equip. \$1,500.04

Section 2. This Resolution shall be in full force and effect after passage and approval by the Mayor.

INTRODUCED BY: /s/ Patricia Boy

Councilwoman Boy moved to adopt the Resolution, seconded by Councilman Meer. The motion carried and the Resolution was adopted by the following vote: **AYES: COUNCIL MEMBERS Lungren, Martin, Meer, Milsap, Przybylinski, Baker, Boy, Doyle, and Jankowski (9). NAYS: None (0).**

There being no objections, the Clerk read by title only,

RESOLUTION NO. 4271

**A RESOLUTION FOR INCREASING AND DECREASING CERTAIN APPROPRIATIONS
WITHIN THE BUDGET OF THE MOTOR VEHICLE HIGHWAY FUND,
IN MVH FUND #0708,
FOR THE YEAR 2004, IN MICHIGAN CITY, INDIANA**

WHEREAS, there exist certain circumstances within the budget of the Motor Vehicle Highway Fund of Michigan City which require the increasing and decreasing of appropriations for the year 2004.

Section 1. It is deemed advisable and necessary, in order to meet the circumstances facing said Motor Vehicle Highway Fund of the City, that the Common Council make the following transfer of appropriations, as listed, to-wit:

MOTOR VEHICLE HIGHWAY FUND #0708

Motor Vehicle Highway Fund

DECREASE:	A/C #0708 0000 01 411.016	
	Overtime	\$5,000.00
	A/C #0708 0000 01 413.006	
	Clothing Allowance	850.00
	A/C #0708 0000 02 423.001	
	Building Materials	287.13
	A/C #0708 0000 02 423.002	
	Repair Parts	26.16
	A/C #0708 0000 02 423.003	
	Small Tools & Minor Equipment	72.85
	A/C #0708 0000 03 431.005	
	Other Professional Services	120.00
	A/C #0708 0000 03 432.004	
	Telephone	1,368.76
	A/C #0708 0000 03 435.005	
	Sewage	51.57
	A/C #0708 0000 03 439.011	
	Contractual Services	<u>18.50</u>
	TOTAL	\$7,794.97
INCREASE:	A/C #0708 0000 01 413.001	
	FICA/Medicare	\$3,794.97
	A/C #0708 0000 01 413.002	
	PERF	<u>4,000.00</u>
TOTAL		\$7,794.97

Section 2. This Resolution shall be in full force and effect after passage and approval by the Mayor.

INTRODUCED BY: /s/ Willie Milsap

Councilman Milsap moved to adopt the Resolution, seconded by Councilman Jankowski. The motion carried and the Resolution was adopted as follows: **AYES: COUNCIL MEMBERS Martin, Meer, Milsap, Przybylinski, Baker, Boy, Doyle, Jankowski, and Lungren (9). NAYS: None (0).**

The Clerk read by title only, there being no objections,

RESOLUTION NO. 4272

**A RESOLUTION FOR INCREASING AND DECREASING CERTAIN APPROPRIATIONS
WITHIN THE BUDGET OF THE MUNICIPAL COACH DEPARTMENT,
IN GENERAL FUND #0101,
FOR THE YEAR 2004, IN MICHIGAN CITY, INDIANA**

WHEREAS, there exist certain circumstances within the budget of the Municipal Coach Department of Michigan City which require the increasing and decreasing of appropriations for the year 2004.

Section 1. It is deemed advisable and necessary, in order to meet the circumstances facing said Municipal Coach Department of the City, that the Common Council make the following transfer of appropriations, as listed, to-wit:

GENERAL FUND #0101

Municipal Coach Department

DECREASE:	A/C#0101 0304 01 412.020	
	Vacation Bonus	\$3,217.88
	A/C #1010 0304 01 412.021	
	Sick Pay	505.47
	A/C #0101 0304 02 421.005	
	Other Office Supplies	51.41
	A/C #0101 0304 02 422.021	
	Gasoline	910.49
	A/C #0101 0304 02 422.031	
	Household Supplies	53.85
	A/C #0101 0304 02 422.032	
	Medical Supplies	32.10
	A/C #0101 0304 02 423.003	
	Small Tools & Minor Equipment	330.85
	A/C #0101 0304 03 431.005	
	Other Professional Services	140.00
	A/C #0101 0304 03 432.004	
	Telephone	1,021.74
	A/C #0101 0304 03 433.003	
	Advertising	390.00
	A/C #0101 0304 03 435.005	
	Sewage	120.05
	A/C #0101 0304 03 439.011	
	Contractual Services	<u>15,000.00</u>
	TOTAL	21,773.84
INCREASE:	A/C #0101 0304 01 411.001	
	Salaries & Wages	\$6,773.84
	A/C #0101 0304 01 411.016	
	Overtime	3,000.00
	A/C #0101 0304 01 413.001	
	FICA/Medicare	3,000.00
	A/C #0101 0304 01 413.002	
	PERF	5,000.00
	A/C #0101 0304 02 422.025	
	Diesel Fuel	<u>4,000.00</u>
	TOTAL	\$21,773.84

Section 2. This Resolution shall be in full force and effect after passage and approval by the Mayor.

INTRODUCED BY: /s/ Phillip Jankowski

Councilman Jankowski moved to adopt the Resolution, seconded by Councilman Milsap. The motion carried and the Resolution was adopted by the following vote: **AYES: COUNCIL MEMBERS Meer, Milsap, Przybylinski, Baker, Boy, Doyle, Jankowski, Lungren, and Martin (9). NAYS: None (0).**

ORDINANCES

The Clerk read on second reading by title only, **AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MICHIGAN CITY, INDIANA AMENDING ORDINANCE NO. 2261, ENTITLED: CONTAINERS**, introduced by Ron Meer.

There was discussion by Council Members Przybylinski, Meer, and Jankowski and Thursten Jorgenson (310 Colfax). The Ordinance was then laid over for third reading.

The Clerk read on second reading by title only, **AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MICHIGAN CITY, INDIANA ENTITLED: RIVERBOAT FUND REVENUE**, introduced by Phil Jankowski.

There was discussion by Council Members Jankowski, Meer, Lungren, and Boy and Mayor Oberlie.

The Ordinance was then laid over for third reading.

Councilman Milsap moved to suspend the rules to go to **NEW BUSINESS** so that the concerned individuals would not have to sit through the remainder of the meeting. Councilman Lungren seconded the motion, which carried as follows: **AYES: COUNCIL MEMBERS Milsap, Przybylinski, Baker, Boy, Doyle, Jankowski, Lungren, Martin, and Meer (9).** **NAYS: None (0).**

NEW BUSINESS

Terms will expire on December 31, 2004 for Redevelopment Commission Members. Incumbents are: JoEileen Winski and Richard Richey.

Councilman Lungren moved to continue the terms for both Mrs. Winski and Mr. Richey. Councilman Doyle seconded the motion, which carried as follows: **AYES: COUNCIL MEMBERS Przybylinski, Baker, Boy, Doyle, Jankowski, Lungren, Martin, Meer, and Milsap (9).** **NAYS: None (0).**

ORDINANCES

Returning to Ordinances, the Clerk read on third reading by title only,

ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MICHIGAN CITY, INDIANA

ORDINANCE NO. 3941

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MICHIGAN CITY, INDIANA, AMENDING THE FEES AND CHARGES TO BE COLLECTED BY THE SANITARY DISTRICT OF THE CITY OF MICHIGAN CITY, INDIANA, FROM ALL USERS OF THE SEWAGE WORKS AND OWNERS OF PROPERTY SERVED BY THE SEWAGE WORKS OF SAID DISTRICT, AND OTHER MATTERS CONNECTED THEREWITH

WHEREAS, the Sanitary District (the "Sanitary District") of the City of Michigan City, Indiana (the "City"), a special taxing district, owns and operates its sewage works by and through the Board of Sanitary Commissioners (the "Board") for the collection and treatment of sewage and other wastes (the "Sewage Works") pursuant to the provisions of Indiana Code § 369-25, as amended (the "Act"); and

WHEREAS, the fees and charges of the Sewage Works, together with any taxes levied by the Sanitary District pursuant to the Act, shall at all times be sufficient to produce revenues sufficient to pay operation, maintenance and administrative expenses of the Sewage Works and to pay the principal and interest on any outstanding revenue obligations of the Sanitary District as they become due and payable; and

WHEREAS, the current fees and charges approved by the Common Council of the City (the "Common Council") on January 18, 1994, and codified at Sections 51.02.13 and 50.05(9)(k) of the Code of the City, do not generate revenue sufficient to pay operation, maintenance and administrative expenses of the Sewage Works and to pay the principal and interest on any outstanding revenue obligations of the Sanitary District as they become due and payable; and

WHEREAS, there is an urgent need to increase the fees and charges for this service; and

WHEREAS, the Board introduced at a meeting on November 9, 2004, a Resolution entitled "A Resolution Amending the Fees and Charges to be Collected by the Sanitary District of the City of Michigan City, Indiana From the Owners of Property Served by the Sewage Works of Said District and Other Matters Connected Therewith", a copy of which is attached hereto as Exhibit A and incorporated herein, for the purpose of amending the current fees and charges with the fees and charges as set forth in the Fee Resolution (the "Amendments") to provide sufficient revenues to pay operation, maintenance, and administrative expenses of the Sewage Works and to pay the principal and interest on any outstanding revenue obligations of the Sanitary District as they become due and payable; and

WHEREAS, the Board authorized the publication of a notice of public hearing for a hearing to be conducted on the Fee Resolution and the Amendments contained therein (the "Hearing") pursuant to Indiana Code § 36-9-25-11(c); and

WHEREAS, notice of the Hearing was published consistent with Indiana Code § 5-3-1 and the Board conducted the Hearing at which all interested parties were provided the opportunity to be heard; and

WHEREAS, following the Hearing, the Board adopted the Fee Resolution (1) finding the Amendments to be just and equitable to pay for operation, maintenance, and administrative expenses of the Sewage Works and to pay the principal and interest on the outstanding revenue obligations of the Sanitary District as they become due and payable and (ii) adopting and approving the Amendments pursuant to Indiana Code § 36-9-25-11(c); and

WHEREAS, said Fee Resolution further approved and authorized the Secretary of the Board to file with the Common Council an approving ordinance for the purposes of said Common Council approving the Amendments and finding that the Amendments are just and equitable; and

WHEREAS, the Common Council desires to approve said Amendments, pursuant to Indiana Code § 36-9-25-11(c), which provides that amendments to the fees and charges of the Sanitary District approved by a resolution of the Board must be approved by an ordinance of the municipal legislative body for the fees and charges related to property that is subject to full taxation to take effect;

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

1. The Common Council hereby finds that the existing sewer fees and charges for services rendered by the Sewage Works do not provide sufficient monies to pay for the operation, maintenance, administration and financing of said Sewage Works and to pay the principal and interest on the outstanding revenue obligations of the Sanitary District as they become due and payable, and that a general revision of the fees and charges is necessary to accomplish these purposes.
2. The Common Council hereby finds that the Amendments, as approved by the Board, are just and equitable, and the Common Council hereby approves said Amendments, as approved by the Sanitary District, pursuant to Indiana Code § 36-9-25-11(c).
3. Sections 51.02.13 and 50.05(9)(k) of the Code of the City of Michigan City, Indiana, are hereby amended and restated in their entirety as set forth in the Fee Resolution attached hereto as Exhibit A.
4. This Ordinance shall not be construed as effecting any tax levied by the Sanitary District pursuant to the Act or by the City for the purpose of procuring funds for the Sewage Works.
5. This Ordinance shall be in full force and effect from and after passage by the Common Council and approval by the Mayor.

Adopted at a meeting of the Common Council held on this 21st day of December, 2004.

Introduced by: */s/ Phillip Jankowski*
**(at the request of the
Sanitary District)**

Councilman Martin moved to adopt the Ordinance, seconded by Councilwoman Baker.

There was discussion among Council Members Martin, Jankowski, Przybylinski, Lungren, Boy, and Baker, Sanitary District General Manager Al Walus, Karl Cender (Sanitary District Financial Advisor), Sean Peterson (Baker & Daniels), Tom Labadie (412 Ogden Avenue), and Agnes Meer (205 Colombia).

The motion carried and the Ordinance was adopted by the following vote: **AYES: COUNCIL MEMBERS Baker, Boy, Doyle, Lungren, Martin, and Meer (6). NAYS: COUNCIL MEMBERS Jankowski, Milsap, and Przybylinski (3).**

Councilman Lungren moved to take the next Ordinance off of the table. Council Members Martin and Milsap seconded the motion, which carried as follows: **AYES: COUNCIL MEMBERS Boy, Doyle, Jankowski, Lungren, Martin, Meer, Milsap, Przybylinski, and Baker (9). NAYS: None (0).**

The Clerk read on third reading by title only, there being no objections, **AN ORDINANCE TO AMEND MICHIGAN CITY ZONING ORDINANCE SECTIONS 160.013(E)(10)(B) AND (C), PART OF THE MICHIGAN CITY COMPREHENSIVE ZONING ORDINANCE**, introduced by Charles Lungren (**Agreement was reached to allow amendments on third reading**).

Councilman Lungren moved to adopt the Ordinance, seconded by Councilman Milsap.

There was discussion among Council Members Lungren, Boy, Przybylinski, Meer, Martin, and Baker, City Planner John Pugh, and Mayor Charles Oberlie.

The motion failed and the Ordinance was defeated by the following vote: **AYES; COUNCIL MEMBERS Lungren, Martin, and Baker (3). NAYS: COUNCIL MEMBERS Doyle, Jankowski, Meer, Milsap, Przybylinski, and Boy (6).**

Councilman Lungren moved to take the next Ordinance off of the table. Councilman Milsap seconded the motion, which carried as follows: **AYES: COUNCIL MEMBERS Jankowski, Lungren, Martin, Meer, Milsap, Przybylinski, Baker, Boy, and Doyle (9). NAYS: None (0).**

The Clerk read on third reading by title only, there being no objections, **AN ORDINANCE TO AMEND MICHIGAN CITY ZONING ORDINANCE SECTION 160.032(A)(2), PART OF THE MICHIGAN CITY COMPREHENSIVE ZONING ORDINANCE**, introduced by Charles Lungren (**Agreement was reached to allow amendments on third reading**).

Councilman Lungren moved to adopt the Ordinance, seconded by Councilman Milsap.

There was discussion among Council Members Lungren, Przybylinski, Boy, and Meer and Mayor Oberlie.

The motion failed and the Ordinance was defeated as follows: **AYES: COUNCIL MEMBERS Lungren, Meer, Milsap, and Baker (4). NAYS: COUNCIL MEMBERS Martin, Przybylinski, Boy, Doyle, and Jankowski (5).**

Councilman Lungren moved to take the next Ordinance off of the table. Councilman Milsap seconded the motion, which carried as follows: **AYES: COUNCIL MEMBERS Martin, Meer, Milsap, Przybylinski, Baker, Boy, Doyle, Jankowski, and Lungren, (9). NAYS: None (0).**

The Clerk read on third reading by title only, there being no objections, **AN ORDINANCE TO AMEND MICHIGAN CITY ZONING ORDINANCE SECTIONS 160.042(A)(1), PART OF THE MICHIGAN CITY COMPREHENSIVE ZONING ORDINANCE**, introduced by Charles Lungren (**Agreement was reached to allow amendments on third reading**).

Councilman Lungren moved to adopt the Ordinance, seconded by Councilman Milsap.

There was discussion by Council Members Lungren and Boy.

The motion failed and the Ordinance was defeated by the following vote: **AYES: COUNCIL MEMBERS Baker, Lungren, and Martin (3). NAYS: COUNCIL MEMBERS Meer, Milsap, Przybylinski, Boy, Doyle, and Jankowski (6)**

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MICHIGAN CITY, INDIANA, AMENDING TREE ORDINANCE NO. 3893, introduced by Patricia Boy and Charles Lungren, was again left on the table. (Tree Ordinance. **Agreement was reached to allow amendments on third reading.**)

UNFINISHED BUSINESS

There was no unfinished business.

COMMENTS FROM THE COUNCIL

Council Members Martin, Przybylinski, and Lungren wished everyone Merry Christmas.

President Przybylinski spoke on the new code, the snow ordinance, and the cable franchise and said he would be setting up an executive session before the end of the year to talk about labor negotiations.

COMMENTS FROM THE PUBLIC

Agnes Meer (205 Colombia) expressed her objection to the library's plan to pay a stipend to PNC students for tutoring services; she felt it should continue to be a volunteer effort.

ADJOURNMENT

On motion by Councilman Lungren, supported by Councilman Milsap, and there being no further business to transact, President Przybylinski declared the meeting ADJOURNED (approximately 11:00 p.m.).

Thomas F. Fedder, City Clerk