

## **REGULAR MEETING – October 21, 2008**

The Common Council of the City of Michigan City, Indiana, met in regular session on Wednesday evening, November 5, 2008, at the hour of 6:30 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 6:30 p.m. by Council President Ron Meer.

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

**PRESENT:** COUNCIL MEMBERS Patricia Boy, Phillip Jankowski, Marc Espar Robert McKee, Ron Meer, Richard Murphy, Joe Doyle, and Angie Nelson, Willie Milsap (9).

**ABSENT:** None (0).

**A QUORUM WAS NOTED PRESENT.**

**ALSO PRESENT:** City Clerk - Tom Fedder, Deputy Clerk – Gale Neulieb and Council Attorney – James Meyer.

### **APPROVAL OF MINUTES**

President Meer inquired whether there were any corrections, deletions, or additions to the minutes of the regular Meeting of October 21, 2008 and hearing none, the Minutes were approved as printed.

Council President Meer asked Attorney Meyer to draft a letter to the Park Board and Park Board Attorney, Patrick Donoghue requesting a copy of the transcript regarding the hearing reinstating two baseball coaches, along with any pertinent minutes that would pertain to their initial suspensions, and also requested a copy of their rules and procedures. President Meer requested each Council Member receive a copy of this information.

### **REPORTS OF STANDING COMMITTEES**

Councilman Espar reported on the Workshop/Finance Committee meetings held on October 22 & 28, 2008.

### **REPORTS OF SPECIAL OR SELECT COMMITTEES**

There were no reports of special or select committees.

**REPORTS of OTHER CITY OFFICERS and DEPARTMENTS**

Bill Bulton, Chairman of the Tree Board presented a letter he received from the Community & Urban Forestry, Pamela C. Loucs, RE: AN IMPORTANT CHANGE FOR INDIANA TREE CITIES USA – regarding Tree City Standard I – TREE BOARDS.

Mr. Bulton reported on the importance of the Tree Board in regards to the Urban Forestry Program and that it is an essential component to the community's environmental health and infrastructure.

Mr. Bulton addressed Councilwoman Nelson's questions regarding the Urban Forest Management Plan Manual. Mr. Bulton advised that there is a copy in the Planning Department.

Councilman Murphy stated that he spoke with Frank Seilheimer, Forester, and advised the importance of being a Tree City, having a Tree Board and the benefits our community receives.

**PETITIONS**

There were no petitions.

**COMMUNICATIONS**

There were no communications.

**RESOLUTIONS**

There were no resolutions

**ORDINANCES**

The Clerk read on first reading by title only, **AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MICHIGAN CITY, INDIANA AMENDING THE MICHIGAN CITY ZONING MAP AND ORDINANCE NO. 2114 BY REZONING A SIXTY-SIX (66) ACRE PARCEL OF PROPERTY COMMONLY KNOWN AS THE FORMER BASEBALL STADIUM COMPLEX ON HIGHWAY 212 FROM AGRICULTURAL TO MANUFACTURING -1**

**Introduced by:** Patricia Boy

Councilwoman Boy stated reasons to rezone this area and support this Ordinance. Ms. Boy stated the Plan Commission was requesting this property to be rezoned.

John Regetz, Executive Director, Economic Development Corporation, advised the Council that he supports this Ordinance to rezone the property to M-1. Mr. Regetz stated several reasons the Council should adopt the Ordinance, as it will bring several employment opportunities to our community.

Council President Meer asked if there were any comments or questions by the general public or Council and hearing none, the Ordinance was held over for second reading.

The Clerk read on first reading by title only, **AN ORDINANCE OF THE MICHIGAN CITY COMMON COUNCIL ESTABLISHING PROCEDURES AND LIMITATIONS ON CAPITAL PROJECT EXPENDITURES IN THE BOYD DEVELOPMENT FUND AND THE RIVERBOAT GAMING FUND**

**Introduced by:** Marc Espar

Councilman Espar stated that this was a recommendation by the Mayor to accomplish one of the objectives that the Finance Committee had designated, which was to provide the funds of a capital project be expended for that project, and any excess amount would revert to the original unappropriated fund. Mr. Espar stated that this ordinance, is in conjunction with amendments to the 2009 budget for the project-by-project capital line items.

Council President Meer asked if there were any comments or questions by the general public or Council and hearing none, the Ordinance was held over for second reading.

The Clerk read on first reading by title only, **AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MICHIGAN CITY, INDIANA AMENDING ORDINANCE NO. 2053, THE BUILDING CODE AND ALL SUBSEQUENT AMENDMENTS**

**Introduced by:** Patricia Boy

Councilwoman Boy advised the Council that this Ordinance will give the Plan Director the authority to stop a building permit if there is an error in the permit or if there is something being done by the developer, builder or owner that is not up to code.

Councilwoman Boy made an author's amendment to Section 22-53 to read as follows:

- (a) The Planning Director and any or all of his designees are authorized and directed to enforce all the provisions of this chapter. The Planning Director and his designees shall have at all times the right to enter any buildings, sites or premises, or upon any work in the process of construction, upon showing proper credentials, for purposes of inspection or determination of proper permits. Any person interfering with the Planning Director or his designees in the performance their duties shall be liable to the penalties established by this chapter.

Council President Meer asked if there were any comments or questions by the general public or Council and hearing none, the Ordinance was held over for second reading.

The Clerk read on second reading by title only, **AN ORDINANCE REORGANIZING AND AMENDING THE MICHIGAN CITY POLICE MERIT COMMISSION ORDINANCE TO INCORPORATE PRIOR AMENDMENTS AND ADD PROVISIONS FOR PART OF A GRADE FOR PROMOTIONS TO BE BASED ON ORAL INTERVIEWS**

**Introduced by:** Angela Nelson

Councilwoman Nelson moved to adopt the Ordinance by substitution, seconded by Councilwoman Boy.

Councilwoman Nelson asked Pam Krause, Police Commission Attorney to explain to the Council the changes made to the proposed Ordinance.

Council President Meer asked if there were any comments or questions by the general public or Council and hearing none, the Ordinance by substitution was adopted by the following vote: **AYES: COUNCIL MEMBERS Doyle, Espar, Jankowski, McKee, Meer, Milsap, Murphy, Nelson, and Boy (9). NAYS; None (0).**

Council President Meer asked if there were any comments or questions by the general public or Council on second reading and hearing none, he directed the Clerk to read on 3<sup>rd</sup> reading by title only,

**MICHIGAN CITY COMMON COUNCIL****ORDINANCE NO. 4033****AN ORDINANCE REORGANIZING AND AMENDING THE MICHIGAN CITY POLICE MERIT COMMISSION ORDINANCE TO INCORPORATE PRIOR AMENDMENTS AND ADD PROVISIONS FOR PART OF A GRADE FOR PROMOTIONS TO BE BASED ON ORAL INTERVIEWS**

**WHEREAS**, the Michigan City Police Merit Commission Ordinance (Ordinance), ordinance No. 2681, since its inception on September 16, 1982, has undergone numerous amendments over the passage of time, all of which are contained in separate documents, having never been physically integrated into the original Ordinance; and

**WHEREAS**, the Commission has requested additional amendments to the Ordinance that it deems to be in the best interests of the Michigan City Police Department (Police Department); and

**WHEREAS**, the Michigan City Police Merit Commission (Commission), after analyzing the data for officers seeking a promotion, believe that it is in the best interest of the Police Department for a change to be made to the promotional system by adding an oral interview examination component; and

**WHEREAS**, the Commission believes that an oral interview examination should be added to the promotional system because a significant portion of a police officer's job performance, especially as same may relate to a supervisory capacity, relates to his or her ability to effectively evaluate and communicate a plan of action. Further, an additional oral interview component may assist in ultimately choosing the best and proper candidates for promotion as some may excel in written test performance but lack communication skills, and some may lack the ability to perform well on written tests but excel in verbal and communication skills; and

**WHEREAS**, the modification set forth herein pertaining to the oral interview examination component of promotional testing, in order to assure the greatest level of objectivity, shall be conducted by a non-partisan board composed of supervising members of law enforcement agencies other than the Michigan City Police Department, selected by the Commission, who will have expertise in the duties of law enforcement officers and the skills necessary for successful performance of those duties as an officer and a supervisor; and

**WHEREAS**, due to the adding of the oral interview examination component to the promotion examination process, the existing terms in the Ordinance for allocation of points for determining an officer's position on a promotion list must be changed; and

**WHEREAS**, the original Ordinance and subsequent amending ordinances did not include both genders and, therefore, "she" and "her" have been added where appropriate through out this ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF MICHIGAN CITY, INDIANA THAT** the original Michigan City Police Merit Commission Ordinance, Ordinance No. 2681, and all amending ordinances thereto, be restated and amended as follows:

**Section 1.** A Police Civil Service Commission is hereby created for the City of Michigan City pursuant to Indiana Code 19-1-29-1 through 19-1-29-10, as amended.

**Section 2. Indiana Code 19-1-29-1 (48-6250). CITIES OF SECOND CLASS IN COUNTIES HAVING A POPULATION BETWEEN 160,000 AND 180,000 AND BETWEEN**

**95,000 AND 120,000 AND CONTAINING ONE THIRD-CLASS CITY – CIVIL SERVICE FOR POLICE DEPARTMENT.**

This act (19-1-29-1- - 19-1-29-10) shall apply to all cities of the second class in all counties having a population of not less than one hundred and eighty thousand (180,000) and to all cities of the second class in all counties having a population of not less than ninety-five thousand (95,000) and not more than one hundred twenty thousand (120,000), and containing one (1) city of the third class, according to the last preceding United States census. (Acts 1957, ch.161, §1, p328; 1961, ch,211, §1, p.509; 1969, ch.290, §1, p.1224.)

**Section 3. . Indiana Code 19-1-29-2 (48-6251). CIVIL SERVICE COMMISSION - MEMBERS - QUALIFICATIONS - TERMS - OATHS - COMPENSATION - VACANCIES - REMOVAL - QUORUM.**

(a) Within thirty (30) days after I.C. 19-1-29-1 - 19-1-29- 10 become effective, January 1, 1958, a Civil Service Commission (Commission) for the Michigan City Police Department shall be appointed, as hereinafter provided. The Commission for the Police Department shall consist of three (3) members. The members shall be resident voters of the City and persons of good moral character, and shall be known and designated as the civilian members of said Commission. The civilian members of the Commission shall serve for a term of three (3) years and until their successors shall have been appointed and qualified: Provided, however, That in the first instance, one (1) of the civilian members of the Commission shall be appointed for a term of one (1) year by the Mayor; one (1) of such civilian members shall be appointed for a term of two (2) years by the Common Council; one (1) such civilian members shall be appointed for a term of three (3) years upon nomination by the active membership of the Police Department and appointment by the Mayor.

(b) The nomination to be made by the membership of the Police Department shall be made at a meeting specifically called for that purpose by the Board of Public Works and Safety (Board). The Board shall give at least one week's notice of the meeting to all active members of the Police Department by posting the notice of the meeting in at least three prominent places in the Police Station. The notice shall designate the time, place and purpose of the meeting. No one shall be entitled to be present at the meeting and exercise the right to vote unless he/she is an active member of the Police Department. Active members who are unable to attend any such meeting may vote by written proxy, provided that no active member present at any meeting shall be entitled to hold and to vote the proxy of more than one absent member. An active member of the Police Department shall be selected to act as chairman of the meeting. Voting shall be by secret ballot. The person receiving the highest number of votes, including all proxy votes, shall be named as the nominee of the Police Department.

(c) A person shall be ineligible to serve as a civilian member of the Commission if he/she receives a remuneration for services from any public fund, other than the per diem compensation as provided for in this Section. Every civilian member appointed to the Commission shall take and subscribe to an oath that he/ she will conscientiously and faithfully

discharge the duties of his/her office, which oath shall be filed with the Board of Public Works and Safety. The civilian members of such Commission shall receive a per diem compensation for service in the amount to be fixed by the Common Council.

(d) Civilian membership vacancies, for any cause, shall be filled by appointment in the same manner as the appointment of any member of the Commission. The Board of Public Works and Safety may remove any member of the Commission at any time for malfeasance, nonfeasance, removal from such City, or inability to serve, which removal shall be under the same rules of procedure that apply to removal of members of the Police Department. Two (2) civilian members of the Commission shall constitute a quorum for the transaction of business. (Acts 1957, ch.161, g2, p.328; 1961, ch.211, g2, p.509.)

**Section 4. Indiana Code 19-1-29 -3 (48-6252). DUTIES OF COMMISSION - RULES AND REGULATIONS - PERFORMANCE RATING - APPEAL TO, COMMISSION - PROMOTIONAL SCHOOL - APPOINTMENT AND REMOVAL OF MEMBERS OF DEPARTMENT - QUALIFICATIONS OF CHIEF - RANK AFTER TERM.**

(a) The Commission shall establish rules for the government of the Commission and included in said rules shall be the time and place for the holding of regular monthly meetings and such special meetings throughout the year as may be deemed necessary for it to transact the business of the Commission. A lawful transaction of the business of the Commission requires a majority vote of the civilian members. Each year the Commission shall select, from its civilian members, a president, a vice-president and a secretary. The Commission shall make and keep a permanent record of its proceedings.

(b) The Commission shall be authorized and directed to prepare, adopt, promulgate, supervise and enforce, rules and regulations as follows:

(1) To govern the selection, appointment, reappointment and reinstatement of persons to be employed as members of the Police Department.

(2) To govern promotions and demotions of members of the Police Department. Such rules and regulations shall provide that the following four factors shall be the basic considerations of rating a member of the Police Department for the purpose of promotion: the grade received by a member on a written competitive examination, the grade received by a member on an oral interview examination, the past performance record of a member as a member of the police department, and the rights acquired by the length of service or tenure. The grade received on the written competitive examination shall be considered as thirty-five (35%) percent of the rating. The grade received on the oral interview examination shall be considered as thirty-five (35%) percent of the rating. The past performance record shall be considered as twenty (20%) of the rating. The seniority rights based on the number of years of service as a member of the police department shall be at the rate of one-half point for each year of service up to a maximum of ten points. The name or any means of identification of any member taking the competitive or qualifying examinations under the provisions of this division

shall be withheld and made unavailable to the person who grades such examinations, and all written competitive examinations shall be treated and filed as confidential. The examination papers shall be retained in the Commission's office. In the alternative, if a testing company is used, the company shall be required to keep the examination papers for a period of two years. The Commission shall notify each member, in writing, of the grade which such member received on the written and oral interview examinations. Such rules and regulations shall further provide that, if any member is aggrieved with the grade received on the written competitive examination, he/ she shall have a right to appeal in writing to the Commission for a review of the grade within ten days after the notice of the grade has been sent to him/ her, and the Commission, after reviewing the grade and examination papers, shall have the authority to affirm the grade or to correct the grade according to the findings of the review. In order to be eligible for the oral interview examination portion of the promotional process an officer must receive a score of seventy (70%) or better on the written examination.

(3) To prescribe the manner of determining a rating for past performance: Provided, that such rules and regulations shall contain a provision requiring that the performance rating shall be made every six months for each member of the Police Department by a superior officer as approved by the Commission, and said superior officer shall provide written documentation for any rating. Said ratings shall be delivered directly to the Commission, which shall calculate each member's score and maintain total control over the rating document itself. The Commission shall notify each member, in writing, of the rating which such member received, upon said ratings being provided by the Commission. Such rules and regulations shall further provide that, if any member is aggrieved with the performance rating given to him or her by his or her superior officer, he or she shall have the right to appeal to the Commission for a review of the rating within ten days after the notice of the rating has been sent to him or her; and the Commission, after reviewing the rating, shall have the authority to affirm the rating or correct the same.

(4) All promotions to any rank shall be from the next immediate lower rank, provided that the person to be promoted shall have qualified in time of service required by this division. To be qualified in time of service, a member of the Police Department shall have been employed as a sworn officer by the Police Department for a minimum of three (3) years before he/she shall be eligible for the rank of corporal. A corporal shall have been a member of the Police Department for a period of not less than five years before he/she shall be eligible for the rank of sergeant. A sergeant shall have been a member of the Police Department for a period of not less than seven years before he/she shall be eligible for the rank of lieutenant. A lieutenant shall have been a member of the Police Department for a period of not less than nine years before he/she shall be eligible for the rank of captain.

(5) Such rules and regulations shall be printed, and a copy of the rules and regulations shall be furnished each member of the Police Department and copies shall be maintained in the Commission's office. Any amendments to the rules and regulations shall be in effect thirty (30) days after they are adopted. Any amendment that affects a grading period or promotion must be in effect thirty (30) days prior to the start of the grading period or promotion. All amendments to

these rules and regulations shall be printed and furnished to all members of the Police Department and copies maintained in the Commission's office.

(c) The Commission will conduct a written and oral competitive examination for the purpose of filling any existing vacancies in the ranks that may occur from time to time. The Commission will provide a study guide for the examinations. There may be a promotional school conducted by the Commission. The eligibility list shall be maintained for a period of two years, at which time there shall be another promotional exam conducted by the Commission for the purpose of establishing a new eligibility list and a promotional exam shall be conducted by the Commission every two years thereafter. The eligibility list shall expire upon completion of the next exam and a new eligibility list will be established based on the results thereof.

(d) The commission may employ instructors who are not members of the Police Department, and the Commission is authorized to purchase materials and equipment and allow other necessary expenditures for the purpose of instructing applicants and members of the Police Department.

(e) The Commission shall have the power and authority to appoint or remove any member of the police department, but the Mayor shall have the sole power of appointing and removing any member of the department as Chief of the department, and the Chief of the department shall have the sole power of appointing or removing the Chief of Operations and the Chief of Services. The appointment as Chief shall be made by the Mayor from the members of the department having had at least five years of service and having achieved at least the rank of Patrolman in the department immediately prior to the appointment. This requirement may be waived, as provided by IC 36-8-4-6.5(c), by a majority vote of the Common Council upon the request of the Mayor. The qualifications for Chief of Operations and Chief of Services shall be the same as those for the Chief of Police. The removal of any member of the Police Department as Chief of Police, Chief of Operations, and Chief of Services shall be deemed as removal from the position only, and not from the department. The positions of Chief of Operations and Chief of Services are immediately below the position of Chief of Police. The office of Superintendent of Police and the office of Chief of Police shall be considered as one and the same office. The title of Assistant Chief and Chief of Operations and Chief of Services shall be considered one and the same. Upon expiration of the term of any Chief of Police, Chief of Operations, or Chief of Services, the person shall revert to current merit rank. If the Chief of Police, Chief of Operations or Chief of Services, during their tenure, have qualified in accordance with the promotional procedure as prescribed by the Commission in its rules and regulations for any rank in the Police Department which is higher than the rank which such person held at the time of his appointment as Chief of Police, Chief of Operations or Chief of Services, he/ she shall, upon expiration of his/ her term as Chief of Police, Chief of Operations or Chief of Services, be returned by the Commission to the rank for which he/ she was qualified under the promotion procedure. (Code 1980, § 33.73; Ord. No. 2681, 10-19-1982; Ord. No. 2937, 10-7-1986; Ord. No. 3159, 3-20-1990; Ord. No. 3223, 12-18-1990; Ord. No. 3349, 5-4-1993; Ord. No. 3744, 3-16-99; Ord. No. 3787, 3-21-2000)

**Section .5. Indiana Code 19-1-29-4 (48-6253) POLICE - APPOINTMENTS - ELIGIBILITY - APPLICATIONS - EXAMINATION - POLICE SCHOOL - ELIGIBLE LIST - VACANCIES - PROBATIONARY PERIOD.**

(a) In order to be eligible for appointment to the Police Department an applicant must be 21 years of age and not over the age of 35 years. The age requirement shall not apply to those persons who have been previously employed as a sworn officer in the department. When an applicant has been appointed to the Police Department, the officer shall become a bona fide resident of the County of LaPorte, or any contiguous County within the State of Indiana (Porter, Starke, or St. Joseph Counties); have adequate means of transportation into the City; and maintain in his or her residence telephone service with the City within ninety (90) days after such appointment; and comply with existing laws, ordinances, and or regulations relating to citizenship requirements then in effect.

(b) An applicant for appointment, reappointment or reinstatement to the Police Department shall be ineligible if such person has been found guilty of a felony in any court without the conviction having been reversed by a court of appeal.

(c) All applications for appointment, reappointment or reinstatement to the Police Department are required to be filed with the Commission, and accompanying the application shall be a duly authenticated birth certificate of the applicant, or the applicant shall produce satisfactory evidence of the date and place of his/her birth, a copy of a high school diploma or certified copy of a G.E.D. certificate, a copy of their valid driver's license, and a copy of their social security card. All applications shall be filed with the Commission.

(d) All applicants for appointment, reappointment or reinstatement after a leave of absence of one (1) year or longer, to the Police Department shall be required to pass a physical and psychological examination for the purpose of determining their physical and psychological condition for service as a police officer. This physical and psychological examination shall be conducted in the manner and form as may be provided by PERF and in the rules and regulations adopted by the local pension board. Upon the conclusion of such physical and psychological examination, the results thereof shall be reduced to writing and filed with the local pension board. If the local pension board shall find from such physical and psychological examination that the applicant does not possess the qualifications which in the opinion of the local pension board fit the applicant for appointment, reappointment or reinstatement, the applicant shall be rejected by the local pension board and shall notify the Commission in writing of their decision. The Commission may request another physical and psychological examination be performed if circumstances warrant such request. The Commission shall notify the applicant of the status of their examination.

(e) The Commission shall arrange for an employment exam whenever, in its discretion, it is necessary to fill vacancies in the Police Department, and such exam shall include not less than ten and not more than 100 applicants. The Commission may provide a study guide for the applicants taking the exam. The Commission, without regard to political affiliation and without regard to the members of the department being equally divided politically, shall select from among the applicants for appointment, reappointment or reinstatement such persons as have

passed their employment examination. The employment exam used shall be a general aptitude test.

(f) At the completion of the employment exam as provided above, such candidate for appointment, reappointment or reinstatement shall be examined by the Commission. The candidates for appointment, reappointment or reinstatement shall be rated not only in regard to the score received, but also in regard to physical condition, mental alertness, character, habits, reputation, aptitude and general fitness. The Commission shall establish and enforce rules and regulations with regard to the manner of conducting the exam and the grading of candidates for appointment, reappointment or reinstatement, and the Commission shall set up a passing grade which if made by an applicant for appointment, reappointment or reinstatement will entitle the applicant's name to be placed upon an eligibility list, which list shall be certified by the Commission. The eligibility list shall be made up in the order of the grades received by the applicants. If another exam shall be held while there are still names on the eligibility list, the names of those persons to be found eligible by reason of attending the exam shall be added to the eligibility list in the order of their grades and all other grades on the list. Any applicant for appointment, reappointment or reinstatement whose name appears on the eligibility list at the time a succeeding exam is held shall have the privilege of attending the exam, and may retake an examination, and shall be re-graded and classified according to his/her last grading.

(g) When any person for original appointment reaches his/her thirty-sixth (36<sup>th</sup>) birthday, his/her name shall be automatically removed from the eligibility list for the Police Department. All persons on the eligibility list shall continue on the eligibility list for one year, after which they may reapply as an applicant; provided that those not having served on the Police Department before must be within the eligible age limit.

(h) Whenever a vacancy occurs in the Police Department, the Commission, upon request of the Chief of Police, shall appoint the person having the highest grade on the eligibility list to fill such vacancy.

(i) Every appointment to the Police Department shall be for a probationary period of 12 months of actual service. If at any time during the probationary period the conduct or capacity of the probationer is found not to be satisfactory, which fact shall be determined by the Commission without hearing and without right of appeal, the probationer shall be notified in writing by the Commission that he/she will not receive a permanent appointment, whereupon his/her employment shall cease; otherwise, his /her retention in the service after the expiration of the probationary period shall be equivalent to and shall constitute his/her final and permanent appointment.

(j) Any applicant who personally or through any other person solicits any member of the Commission to favor his/her appointment or reinstatement to such force shall be thereby rendered ineligible for all time for any such appointment to the Police Department.

#### **Section 6. Indiana Code 19-1-29-5 (48-6254) DISMISSALS, SUSPENSIONS AND PUNISHMENTS - RETIREMENT.**

(a) Dismissals, suspensions and punishments of members of the Police Department shall be by the Commission and shall be for the causes, except as herein otherwise provided, and

under the same rules of procedure including the right of appeal as are now or may hereafter be provided by laws pertaining thereto for the cities included in the classification under the Act (19-1-29-1 - 19-1-29-10); except that wherever in such laws, reference is made to commissioners of public safety, board of public works and safety, board of metropolitan police commissioners, board of metropolitan police and fire department, or board, it shall be construed, for the purposes of the Act, to refer to the Commission in lieu thereof.

(b) It shall be cause for dismissal or other disciplinary action by the Commission for any member of the Police Department to solicit any person to vote at any general, special or primary election for any candidate, nominee, or political party, or in any manner attempt to influence any elector pertaining to any such election, or in any manner attempt to influence any delegate to a political convention.

(c) Upon arriving at the age of sixty-five (65), it shall be mandatory for a member of the Police Department, to retire from said department, Providing, however, That any member of the Police Department that is of the age of sixty- five (65) or over at the time of the taking effect of this act (January 1, 1958) shall be permitted to serve to the end of the calendar year. (Acts 1957, ch.161, g5, p.328.)

**Section. 7. Indiana Code 19-1-29-6 (48-6255) REDUCTION IN NUMBER OF POLICE OFFICERS - REINSTATEMENT.**

(a) If, after the taking effect of this act (January 1, 1958) and for reasons of economy, it shall be deemed necessary by the Common Council or the Board of Public Works and Safety of Michigan City to reduce the number of police officers of the Police Department, then such reduction shall be made by granting temporary leave of absence without pay or financial obligation to City, to the last person or persons, including probationers, that have been appointed to the Police Department in numerical order, commencing with the last person appointed and continuing in such order until the desired reduction is affected. In the event that the Police Department shall again be increased in number, the members of the Police Department, who have been granted such leave of absence without pay, under the terms of this section, shall be reinstated before any person on the eligibility list is appointed to the Police Department. Said reinstatements shall commence with the last person granted a leave without pay: Provided, however, that such former member, who shall have been granted a leave of absence as provided in this Section, shall be reinstated upon passing only a physical and psychological examination, satisfactory to the Commission and the trustees of the Police Pension Fund, anything in the Act to the contrary, notwithstanding.

(b) All persons who are members of the Police Department at the time of the effective date (January 1, 1958) of the Act shall hold their respective ranks temporarily. The Commission members shall, within a reasonable time not to exceed six (6) months after their appointment, hold open competitive examinations for all members of the Police Department for the purpose of determining whether or not the person so examined shall either retain his/her rank, be reduced in rank or advanced in rank. (Acts 1957, ch.161, §6, p.328; 1961, ch.211, g3, p.509.)

**Section 8. Indiana Code 19-1-29-7 (48-6256) OPERATION OF ACT - EXPENSES OF COMMISSION.**

From the time Michigan City commences operating under the provisions of the Act (19-1-29-1 - 19-1-29-10) to the end of the then current fiscal year, there shall be paid out of the General Fund of Michigan City, without appropriation therefore, on claims properly filed, all the necessary expenses of said Commission, including salaries and operating costs. Thereafter, there shall be included annually in the budget of Michigan City an amount sufficient to provide funds for the necessary expenses of the Commission, including salaries and operating costs. (Acts 1957, ch.161, R7, p.328.)

INTRODUCED BY: /s/ Angela Nelson

Councilwoman Nelson moved to adopt the Ordinance, seconded by Councilwoman Boy.

Council President Meer asked if there were any other questions or comments from the Council or general public and hearing none, the Ordinance was adopted by the following Vote: **AYES: COUNCIL MEMBERS Espar, Jankowski, McKee, Meer, Milsap, Murphy, Nelson, Boy, and Doyle. NAYS: None (0).**

The Clerk read on second reading by title only, **AN ORDINANCE TO REDUCE APPROPRIATION FOR INSURANCE**

**Introduced by:** Marc Espar

Councilman Espar moved to amend the Ordinance to decrease the de-obligation by \$289,380.00, seconded by Councilman McKee.

Council President Meer asked if there were any comments or questions by the general public or Council and hearing none, the amendment to the Ordinance was adopted by the following vote: **AYES: COUNCIL MEMBERS Jankowski, McKee, Meer, Milsap, Murphy, Nelson, Boy, Doyle, and Espar (9). NAYS: None (0).**

Council President Meer asked if there were any comments or questions by the general public or Council and hearing none, the Ordinance was laid over for third reading.

The Clerk read on second reading by title only, **AN ORDINANCE SETTING THE ANNUAL SALARIES FOR THE CITY CLERK, MAYOR, AND ALL COMMON COUNCIL MEMBERS FOR THE YEARS 2009, 2010, AND 2011**

**Introduced by:** Marc Espar

Councilman Espar made an Author's Amendment to the Mayor's salary to read \$68,571.30 (replacing \$68,671.36).

The formal public hearing was opened, with President Meer asking, "Is there anyone from the general public that wishes to speak on this Ordinance on second reading?" There was no response and the public hearing was closed.

The Ordinance was laid over to third reading.

The Clerk read on second reading by title only, **AN ORDINANCE SETTING SALARIES AND WAGES FOR APPOINTED OFFICIALS AND EMPLOYEES OF THE CITY OF MICHIGAN CITY, INDIANA, FOR THE CALENDAR YEAR 2009**

**Introduced by:** Marc Espar

Councilman Espar made an Author's Amendment to the Crossing Guard Salary to read \$5,240.36 (replacing \$5,000.00).

Council President Meer asked if there were any comments by the general public or Council on the amended Ordinance and hearing none, the Ordinance was then laid over for third reading.

The Clerk read on second reading by title only, **AN ORDINANCE ESTABLISHING SALARIES FOR THE FIRE DEPARTMENT OF THE CITY OF MICHIGAN CITY FOR THE CALENDAR YEAR 2009**

**Introduced by:** Marc Espar

Council President Meer asked if there were any comments by the general public or Council and hearing none, the Ordinance was then laid over for third reading.

The Clerk read on second reading by title only, **AN ORDINANCE ESTABLISHING SALARIES FOR THE POLICE DEPARTMENT OF THE CITY OF MICHIGAN CITY FOR THE CALENDAR YEAR 2009**

**Introduced by:** Marc Espar

Council President Meer asked if there were any comments by the general public or Council and hearing none, the Ordinance was then laid over for third reading.

Council President Meer advised that a Formal Public Hearing will be held this evening on this Ordinance. Mr. Meer directed the Clerk to read the Ordinance.

The Clerk read on first reading by title only, **AN ORDINANCE FOR APPROPRIATIONS AND TAX RATES**

**Introduced by:** Marc Espar

Councilman Espar moved to amend the following to the Ordinance:

Decrease Department No. 0075, Line Item 439.011 (Contractual Services) by \$41,600.

**Note: Reducing JK Enterprises services.**

The motion was seconded by Councilman McKee.

Council President Meer asked if there were any comments by the general public or Council and hearing none, the amendment was adopted by the following vote: **AYES: COUNCIL MEMBERS McKee, Meer, Milsap, Murphy, Nelson, Boy, Doyle, Espar, and Jankowski (9), NAYS: None (0).**

Councilman Espar moved to amend the following to the Ordinance:

Decrease Department No. 0119, Line Item 422.021 (Gasoline) by \$19,693.

The motion was seconded by Councilman McKee.

Council President Meer asked if there were any comments by the general public or Council and hearing none, the amendments was adopted by the following vote:

**AYES: COUNCIL MEMBERS Meer, Milsap, Murphy, Nelson, Boy, Doyle, Espar, Jankowski, and McKee (9). NAYS: None (0).**

Councilman McKee called a point of order and asked the Council if there were no objections, to package the next two amendment together since they both have to do with gas/diesel decreases.

Councilman Espar moved to amend the Ordinance to:

Decrease Department No. 0119, Line Item 422.025 (Diesel Fuel) by \$184,837.

Decrease Department No. 0304, Line Item 422.025 (Diesel Fuel) by \$43,250.

The motion was seconded by Councilman McKee.

Council President Meer asked if there were any comments by the general public or Council and hearing none, the two amendments were adopted by the following vote;

**AYES: COUNCIL MEMBERS Milsap, Murphy, Nelson, Boy, Doyle, Espar, Jankowski, McKee, and Meer (9). NAYS: None (0).**

Councilman Espar moved to amend the Ordinance to:

Decrease Riverboat Fund, Series 4, Capital outlays, by \$599,300.00.

Decrease Boyd Development Fund, Series 4, Capital Outlays, by \$2,100,000.00.

Mr. Espar stated that this will leave in place monies for a list of projects that Mayor Oberlie requested for the 2009 budget.

Projects to be funded in the 2009 Budget include:

Fund 0417 - Boyd Development Fund:

443.002 Sewer construction (Southgate) \$850,000

443.002 Park Projects

Splash pad: \$150,000

Golf course culverts: \$100,000 (lengthy permit process, complete before season)

Fund 9000 - Riverboat Fund:

443.001 Streets and alleys (Lake Ave) \$1,000,000

444.012 Fire equipment; \$650,000

444.009: central maintenance equipment:

GPS: \$20,000

The motion was seconded by Councilman McKee.

Mayor Oberlie asked Councilman Espar to explain to the public what cuts were being made.

Councilman Espar addressed Mayor Oberlie's request explaining the projects remaining in the 2009 budget as outlined above.

Mayor Oberlie advised Council President Meer the monies for the Michigan Boulevard Project come from the Major Moves budget.

Councilman McKee stated that the remaining projects that will remain in the budget, were either on the docket and approved last year or they are of such urgent nature do to the lengthy permit process or safety reasons.

Mr. McKee advised that many of the projects Mayor Oberlie wants that are being removed are not a traditional cuts from the budget, but a change in the approval process. Mr. McKee stated that these projects will be approved or voted on at a later date.

Councilman Espar advised Councilman Murphy of the process that would take place regarding the projects currently not funded, and could be adopted by the Council before the end of the year.

Attorney Meyer advised that there was a pending Ordinance that was read on first reading this evening, if adopted, would result in funds for all projects including the ones that are being left in the budget for 2009, and will be separately itemized line items. Attorney Meyer stated that those projects removed would come back as separate Ordinances. Mr. Meyer advised that the council wouldn't have to go through an appropriation process for emergency projects that need to be addressed immediately.

Mayor Oberlie stated that it doesn't mean that each item is going to come back as an Ordinance of its own, that there may be ten or twelve line items brought to the Council as an Ordinance.

Council President Meer asked if there were any comments or questions by the general public or Council regarding this amendment and hearing none, the amendment was adopted by the following vote: **AYES: COUNCIL MEMBERS Murphy, Nelson, Boy, Doyle, Espar, Jankowski, McKee, Meer, and Milsap (9). NAYS: None (0).**

Councilman Espar stated he had no further amendments

Councilman Jankowski moved to amend the following to the Board of Works and Safety Budget, 439.011 Contractual Services:

This amendment is to prohibit all payments by the City of Michigan City to  
Access

Laporte County (ALCO) during 2009, if ALCO fails to provide reasonable opportunities for public access television. Reasonable opportunities include the use of recording facilities and scheduled public viewing. Reasonable opportunities for public viewing times shall be defined as Monday through Friday, 6:00 PM through 9:00 PM and other times as available. Reasonable opportunities for studio recording shall be determined by mutual agreement between the producers and management of ALCO. If an agreement on studio recording times cannot be reached, they will continue as currently scheduled for existing shows. Recording times for new and existing shows shall be available for a total of not less than twenty hours per week. For Monday through Friday, recording hours shall be available between the hours of 10 AM and 7 PM. On Saturdays, recording times shall be available between 9:00 AM and 1:00 PM. The City Controller shall verify compliance with these requirements before issuing any payments to ALCO during 2009.

Motion was seconded by Councilwoman Nelson.

Councilman McKee asked Councilman Jankowski to read the following part of the proposed amendment:

If ALCO fails to provide reasonable opportunities for public access television. Reasonable opportunities include the use of recording facilities and scheduled public viewing. Reasonable opportunities for public viewing times shall be defined as Monday through Friday, 6:00 PM through 9:00 PM and other times as available. Reasonable opportunities for studio recording shall be determined by mutual agreement between the producers and management of ALCO. If an

agreement on studio recording times cannot be reached, they will continue as currently scheduled for existing shows. Recording times for new and existing shows shall be available for a total of not less than twenty hours per week. For Monday through Friday, recording hours shall be available between the hours of 10 AM and 7 PM on Saturdays, recording times shall be available between 9:00 AM and 1:00 PM. The City Controller shall verify compliance with these requirements before issuing any payments to ALCO during 2009.

There was a discussion among Attorney Meyer, Council President Meer and Councilman Jankowski regarding the amendment.

Councilman McKee spoke with ALCO and they are getting the information together for the council and advised that before taking any action, should wait before making decision. Mr. McKee agreed with Councilman Jankowski that there should be representation on the ALCO Board.

Discussion ensued among Council Members Nelson, Jankowski and Meer.

Council President Meer asked if there were any comments or questions by the general Public or Council regarding this amendment and hearing none, the amendment was adopted by the following vote: **AYES: COUNCIL MEMBERS Nelson, Boy, Doyle, Espar, Jankowski, Meer, Milsap, and Murphy (8). NAYS: McKee (1).**

Councilwoman Boy advised Councilman Espar that No. 3 on the list of Proposed Amendments to the Proposed 2009 Salary and Budget Ordinances was not addressed.

Councilman Espar made the following Authors Amendment to the Salary Ordinance for appointed officials:

Change date to Mayoral approval language to 2008.

The formal public hearing was opened, with President Meer asking, "Is there anyone from the public that wishes to speak on this Ordinance on second reading?" There was no response and the public hearing was closed.

The Ordinance was laid over to third reading.

The Clerk read on third reading by title only,

### **ORDINANCE NO. 4034**

#### **AN ORDINANCE TO ADOPT A CODE OF ETHICS AND TO CREATE AN ETHICS ADVISORY BOARD FOR THE CITY OF MICHIGAN CITY, INDIANA**

**WHEREAS**, the City of Michigan City, Indiana strives to promote a higher quality of life for all of its citizens; and

**WHEREAS**, the City of Michigan City, Indiana recognizes the role municipal government plays in developing and maintaining a high quality of life that is sustainable over the long term; and

**WHEREAS**, confidence in the integrity of governmental officials, both elected and appointed, as well as of city employees, is critical to citizen engagement in the full life of the community, to attracting business, and to promoting commerce, and is shaken by reported and suspected incidences of waste, fraud, and mismanagement; and

**WHEREAS**, ethics ordinances provide guidelines for elected and appointed officials in the exercise of their public duties, benchmarks against which to assess their behavior, and tools to restore and increase public confidence in the integrity of local government; and

**WHEREAS**, the citizens and businesses of the City of Michigan City, Indiana are entitled to representation by municipal government that has earned their trust and confidence through fairness, accountability, and ethical standards;

**NOW THEREFORE BE IT ORDAINED** by the Common Council of the City of Michigan City, Indiana that:

**Section 1. Purpose and Intent.**

The Common Council of the City of Michigan City finds that the proper operation of representative government requires that public officials and employees be independent, impartial and responsible to the people; that government decisions and policies be made in the proper channels of governmental structure; and that public office not be used for personal gain. Accordingly, it is the purpose and requirement of this ordinance to maintain a high level of professionalism; to establish legal and ethical standards of conduct for all officials and employees of the city, whether elected or appointed, paid or unpaid; to set forth those acts that are incompatible with such standards; to require disclosure by such officials and employees of private, financial, or other interests in matters that may affect the city; and to provide effective means for enforcement thereof.

**Section 2. General Provisions.**

- a. All officials and employees shall receive a copy of this ordinance from the Office of the City Clerk within 45 days after its adoption. Any candidate for public office or any individual being considered for appointment as a public official shall be provided with a copy of this article prior to their appointment and all such individuals shall be advised that their appointment will be subject to the terms and conditions of this ordinance and that they shall be bound by this article if appointed or elected. In addition, all vendors and contractors doing business with the City shall be given notice, as provided in Appendix C, of this Ordinance and direction as to where they may obtain a copy hereof.
- b. Any official or employee shall address any inquiries concerning the provisions or references made herein to the Ethics Advisory Commission in writing. The Commission shall respond in writing to any request from any official or employee for an interpretation of a rule, regulation, or any section of this ordinance.
- c. In the event that any section of this ordinance is or comes into conflict with any federal or state law or ruling of a federal or state agency, such law, rule, and/or ruling of the federal or state agency shall supersede the terms of that section of this ordinance. All remaining sections found not to be in conflict with any federal or state law or ruling of a federal or state agency shall remain in effect.
- d. This ordinance shall not prohibit an official or employee from being reimbursed for expenses, receiving money as a campaign contribution, participating in collective bargaining, or being paid for service as a public official except as may be prohibited by applicable state law or state rules and regulations, or any ruling of a state agency of the State of Indiana.
- e. Any official or employee may appear before any public body on their own behalf regarding any matter in which they have a personal financial interest provided that full disclosure is made in advance and such activity is not otherwise prohibited by law.
- f. Any employment, appointed position, or contractual relationship that exists prior to adoption of this ordinance shall not be a violation of this ordinance.
- g. No official shall represent a person, entity, or petitioner in any matter before the City for a period of one hundred eighty (180) days following termination of duties or responsibilities to the City.
- h. In addition to review and recommendations by the Ethics Advisory Commission, the Common Council shall review this article and act on any recommended changes at least once every four years, and may do so more frequently as needed.
- i. This ordinance shall not be construed so as to impair the ability of these officials and employees to participate in ceremonial, representational, or informational functions in the pursuit of their official duties.

- j. This ordinance is enacted to ensure public confidence in the integrity of city government, and shall be liberally construed in favor of protecting the public interests by fully disclosing conflicts of interest and promoting ethical standards of conduct for all city officials and employees.
- k. Violations of this ordinance may result in disciplinary actions up to and including termination.

### Section 3. Definitions.

For purposes of this ordinance, the words and phrases defined in this section shall have the following meanings:

- a. *Agency* means any authority, board, commission, committee, council, department, division, office, or other instrumentality of the executive and administrative departments of city government of the City of Michigan City, Indiana, or any subdivision thereof.
- b. *Business Entity* means a proprietorship, partnership, limited partnership, unincorporated association, trust, firm, corporation, or limited liability corporation.
- c. *(the) City* means the City of Michigan City, Indiana.
- d. *Commission* means the Ethics Advisory Commission created by this ordinance.
- e. *Compensation* means any money, thing of value, service or financial benefit conferred upon or received by any person in return for services rendered or to be rendered, whether by that person or another.
- f. *Conflict of Interest* means any situation in which an individual exploits a position for personal or financial gain. Such conflict of interest shall apply to pecuniary interests, and also to votes cast in actions by councils, boards, and commissions.
- g. *Doing Business* means engaging in an activity: (1) for profit or gain or (2) that requires a license or permit by an agency.
- h. *Employee* means any individual, other than an elected or appointed official, whether on a full-time or part-time basis or pursuant to a contract, whose duties are subject to the direction and control of an employer with regard to the material details of how the work is to be performed, and who receives compensation for services performed for the City of Michigan City, Indiana, but does not include an independent contractor.
- i. *Employer* means any agency of the City of Michigan City, Indiana.
- j. *Ethics Advisory Commission* means the Commission established by **Error! Reference source not found.** of this ordinance, and is also an agency under the jurisdiction of this ordinance.
- k. *Fair Market Value* means the price that would be paid by a willing buyer to a willing seller in a good faith transaction into which neither party is compelled to enter.
- l. *Financial Interest* means an interest:
  - 1) In a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or
  - 2) Involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of an official or employee in the common stock of a corporation unless the combined holdings in the corporation of the official or employee, or that individual's relative, are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any city official or employee.
- m. *Gifts or Honoraria* means money or other property having economic value which is transferred to an official or employee without consideration in money or money's worth, but does not include:
  - 1) Food or drink consumed by an official or employee or a relative, during the conduct of official public business or attendance at public ceremonies as a public official or employee;

- 2) Mementos or souvenirs of nominal value received at public ceremonies or commemorating official business;
  - 3) Invitations or tickets to political fund raising dinners or public charitable benefits when used by an official or employee or a relative;
  - 4) Food or drink consumed by an elected official, deputy mayor or department director during attendance in connection with official duties at a convention of public officials, if consumed at a reception or gathering with other public officials, or in connection with local meetings for official business.
- n. *Handbook* means an employee handbook, personnel manual, or similar document of any agency, or a Board Handbook for all boards, commissions, committees, or councils of the City of Michigan City.
- o. *Information of a Confidential Nature* means information:
- 1) Obtained by reason of the position or office held; and
  - 2) Which:
    - (a) A public agency is prohibited from disclosing under IC 5-14-3-4(a);
    - (b) A public agency has the discretion not to disclose under IC 5-13-3-4(b); and that the agency has not disclosed; or
    - (c) The information is not in a public record, but if it were, would be confidential.
- p. *Interest* means any direct or indirect monetary or material benefit accruing to a city official or employee as a result of a contract or transaction which is or may be the subject of an official act or action by or with the city (except for such transactions which would confer similar benefits to all other persons and/or property similarly situated).
- q. *Material Interest in a Business* means ownership of five (5) percent or more of a business entity.
- r. *Mayor* means the mayor of the City of Michigan City, Indiana.
- s. *Nepotism* means the appointment or hiring of a relative by an official or employee.
- t. *Official* means any individual elected or appointed to an office or position in any agency of the city, whether such individual is paid or unpaid. This definition includes all elected officials of the city; members of all commissions, committees, and boards established by state statute or local ordinance, resolution, or motion; and all individuals appointed by the Mayor or the Common Council.
- u. *Open Door Law* means IC 5-14-1.5, Public Meetings.
- v. *Pecuniary Interest* means an interest that will result or is intended to result in an ascertainable increase in the income or net worth of the official or employee or a relative.
- w. *Person* means any individual, association, corporation, or other legal entity.
- x. *Probable Cause* means such cause as is found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that a person has committed an act or acts constituting an ethical violation under this chapter.
- y. *Relative* means spouse, child, parent, sibling, or grandchild. Relatives also include persons related by marriage (including in-laws and common-law marriage); those related by law (including adoption, guardianship, and foster parent relationships); and other persons who reside in the official or employee's residence or who are financially dependent upon the official or employee.
- z. *Resident* means a person who makes their home within the corporate limits of the City of Michigan City. To be considered a resident, a person who has another home or other residence outside of the city must spend more than 60% of their time in the home within the city.

#### **Section 4. Application of policy.**

- a. This Ordinance shall apply to all officials and employees of the city, as defined in Section 3 of this ordinance. The written acceptance of this policy shall be condition for initial and continuing service with the city by an appointed official. All individuals excluded hereby from the application of this Ordinance are invited to voluntarily comply with the financial disclosure requirements of this ordinance.

- b. The singular of any noun, when used in this ordinance, includes the plural whenever appropriate and the masculine includes the feminine and vice versa.

### **Section 5. Non-partiality and non-discrimination.**

While performing official duties, no official or employee shall grant or make available to any person any consideration, treatment, advantage, or favor beyond that which is the City policy to grant or make available to the public at large, without prior Common Council approval. No official or employee shall discriminate against any person in violation of federal law, state law, or the ordinances of this City.

### **Section 6. Adoption of State Law.**

The state laws governing Ethics and Conflicts of Interest (IC 4-2-6), Campaign Contributions (IC 3-9-2), Public Meetings (Open Door Law, IC 5-14-1.5), Access to Public Documents (IC 5-14-3), Disclosure of Economic Interests by Consultants in Public Projects (IC 5-16-11), and Statutory Conflict of Interest (IC 35-44-1-3) as amended and supplemented, are hereby incorporated herein by reference so as to make it clear that such acts and all amendments thereto are effective and operative as to the City.

### **Section 7. Standards of Ethical Conduct.**

Any potential or existing conflicts of interest shall be fully disclosed in the Uniform Conflict of Interest Disclosure Statement. A copy of the form shall be made available in the Personnel Office of the City of Michigan City, and is included in Appendix A of this Ordinance. The Personnel Director shall keep completed forms on file in the Personnel Office.

- a. **Disqualification from acting on city business.** Any official or employee shall disqualify himself and refuse to act on any matter in which such official or employee or a relative, or the private employer of the official or employee, has a pecuniary interest or might derive a profit and upon which the official or employee would be required to act in the discharge of official duties.
- b. **Improperly using official position.** No official or employee shall use or permit the use of any individual, funds or property under the control, direction, or custody of that official or employee, or of any funds or property of an agency, for a purpose which is, or to a reasonable person would appear to be, for the private benefit of the official or employee or any other person; provided that nothing shall prevent the private use of property of an agency which is available on equal terms to the public generally (such as the use of library books or tennis courts), or use of property of an agency in accordance with municipal policy in the conduct of official business (such as the use of automobiles of an agency), or the use of off-duty equipment by law enforcement officials assigned to those law enforcement officials, if allowed by the rules of the respective department, if, in fact, the property is used appropriately.
- c. **Improper influence.** No official or employee, except in the course of official duties, shall assist any person in any transaction with an agency when such official or employee's assistance is, or to a reasonable person would appear to be, enhanced by that official or employee's position with an agency; provided that this subsection shall not apply either to officials or employees appearing on their own behalf or representing themselves as to any matter in which they have a proprietary interest, if not otherwise prohibited by law.
- d. **Prohibition of certain financial interest.** No official or employee, regardless of prior disclosure thereof, who has a material interest, personally or through a relative, in any business entity doing or seeking to do business with an agency shall influence or attempt to influence the selection of or the conduct of business with such business entity by an agency.
- e. **Gifts or loans prohibited.** No official or employee shall solicit or receive any thing of monetary value from any person when it has been solicited, received or given or, to a reasonable person, would appear to have been solicited, received or given with the intent to give or obtain special consideration or influence as to any action by such official or employee in official capacity; provided that nothing shall prohibit contributions, including political contributions, which are reported in accordance with applicable law or which are accepted on behalf of an agency, or an honorarium, travel or other expenses reimbursed to any official or employee as a result of a speaking engagement or personal appearance made as a result of that individual's official position.
- f. **Gifts or honoraria in excess of \$100.00 prohibited.** No official or employee shall accept personal gifts or honoraria (including such received by a relative) that exceed an aggregate value of one hundred dollars (\$100.00) in any twelve (12) consecutive months from an

individual business entity that is doing business or attempting to do business with the agency in which the official or employee holds an office or position of employment.

- g. **Disclosure of privileged information.** No official or employee shall disclose or use any information gained through official position for the immediate or anticipated personal gain or benefit of the official or employee or any other person; provided that nothing shall prohibit the disclosure or use of the information which is a matter of public knowledge or which is available to the public on request.
- h. **Nepotism.**
- 1) No official or employee shall hire, promote, or transfer a relative to any position that:
    - (a) Places the official or employee in the same agency or department, nor shall any such relative be entitled to receive any compensation for services out of any appropriation of the Common Council; or
    - (b) Places the official or employee in direct or indirect supervisory or managerial capacity over a relative; or
    - (c) Allows the official or employee to directly or indirectly influence salary adjustments, career progress, or other managerial activities involving a relative; or
    - (d) Requires the official or employee to audit or review the work of another relative.
  - 2) This section shall not be construed to prevent relatives of an official or employee from being elected to public office, nor shall it prevent such an occurrence due to change in marital status.
- i. No person shall apply for a job or contract with an agency for which the person has served as a member of the governing board or commission of that agency until at least one hundred eighty (180) days after her membership has ended.

#### **Section 8. Statement of Economic Interests.**

The Commission shall require:

- a. All administrative or executive officials of the City of Michigan City; and
- b. All elected officials of the City of Michigan City; and
- c. All members of boards and commissions for the City of Michigan City; and
- d. Any employee who has the power to hire or discharge other employees, or make financial decisions or purchases for the City or a department or agency thereof; and
- e. Any employee who received from an individual business entity which was or is doing business with an agency in which the official or employee holds an office or position of employment, gifts or honoraria (including those received by a relative) during the previous calendar year, having an aggregate value (excluding the value of any events occurring in LaPorte County to which all members of the city council were invited) of more than one hundred dollars (\$100.00);

to file a Financial Disclosure Statement on or before the first day of May of each year. Copies of this form shall be made available in the Personnel Office of the City of Michigan City, and is included as Appendix B of this Ordinance. The Personnel Director shall keep completed forms on file in the Personnel Office.

- f. Any applicant for employment with an agency for a position that would qualify under subsections a through e (above) shall be required to file a statement of economic interest prior to an offer of employment being extended by the agency.

Such statement of economic interests shall be affirmed as to its truth and accuracy under penalties of perjury and include the following information:

- 1) The name of the official or employee;
- 2) The business address of the official or employee;
- 3) The position in which the official or employee serves an agency;
- 4) The employer of the official or employee;

- 5) A list stating the amount and source of all gifts or honoraria the official or employee and any relatives received during the past calendar year having an aggregate fair market value in excess of one hundred dollars (\$100.00) from any individual business entity doing business with an agency;
- 6) A statement of whether or not the official or employee or any relative had a direct or indirect pecuniary interest in any contract with the City of Michigan City, Indiana during the past calendar year, other than a contract of employment and, if so, an explanation of the extent of the interest;
- 7) The name of any business entity from which the official or employee received any compensation which, to the best of the individual's knowledge, does or contemplates doing business with an agency during the individual's term of office or employment with an agency; and
- 8) The name of any business entity in which the official or employee or a relative owns stocks, bonds or other investments which represent ownership of five (5) percent or more of that business or has a value in excess of five thousand dollars (\$5,000.00) and which business entity, to the best knowledge of the official or employee, is doing or contemplates doing business with an agency. This section shall exclude administered funds and money market funds in which the account administrator makes the investment decisions.

#### **Section 9. Appointment of the Ethics Officer.**

- a. The Mayor shall appoint an Ethics Officer with the advice and consent of the Common Council. The appointee shall be: a current legal resident of the City; must have been a legal resident for the two consecutive years immediately preceding appointment; must remain a legal resident for the remainder of the term; and must be at least twenty-one (21) years of age at appointment. The Ethics Officer is not a voting member of the Commission.
- b. The Ethics Officer shall not be a paid position, but shall be a responsibility of a member of the Personnel Department.
- c. The Ethics Officer shall be the first contact to city employees. The mission of the Ethics Officer is to encourage compliance with this ordinance, but also to encourage each employee and department head to adhere to the highest standards of ethical behavior.
- d. The duties of the Ethics Officer include, but are not limited to the following:
  - 1) Develop policies, programs, and strategies to deal with all ethics-related matters;
  - 2) Develop training and implementation of educational programs concerning ethics;
  - 3) Attend all meetings of the Ethics Advisory Commission;
  - 4) Encourage compliance with both the spirit and the letter of this ordinance and the ethics laws of the State of Indiana;
  - 5) Periodically review this ordinance and other applicable laws and regulations and recommend to the Commission any appropriate amendments;
  - 6) Serve as liaison between Ethics Advisory Commission and the department heads and employees of the city;
  - 7) Seek formal opinions from the Commission on interpretation of duties of the Ethics Officer or of this ordinance; and
  - 8) Handle complaints submitted to the Ethics Officer.

#### **Section 10. Creation and Composition of the Ethics Advisory Commission.**

- a. **Creation.** There is hereby created and established an Ethics Advisory Commission, consisting of the following members who shall be: current legal residents of the City; must have been legal residents for two consecutive years immediately preceding appointment; must remain legal residents for the remainder of a term; and must be at least twenty-one (21) years of age at appointment.
  - 1) Four (4) Appointed board members: two (2) appointed by the Mayor and two (2) appointed by majority vote of the Common Council, who do not hold a position of employment in any agency, and are not declared candidates for elected, non-party public office:

- (a) One (1) Mayoral appointment and one (1) Council appointment shall be for an initial period of one year; and
    - (b) One (1) Mayoral appointment and one (1) Council appointment shall be for an initial period of two years.
  - 2) The two Mayoral appointments shall not be members of the same political party and the two Council appointments shall not be members of the same political party.
- b. **Counsel.** The Corporation Counsel of the City or another attorney appointed by the Mayor shall serve ex officio as secretary of the Commission, and shall advise and counsel the Commission, but shall not be a member.
- c. **Compensation.** A per diem, as established in the city's annual budget, shall be paid to each member in attendance at a duly called meeting (regular or special).
- d. **Qualifications.** The Appointed Members shall not receive any other remuneration as salary, wages, or stipend from the city or any of its other boards or subdivisions. Each member shall take an oath of office to conscientiously discharge the Commission's duties before participating on the Board. A signed copy of each oath shall be filed with the Board of Works and with the City Clerk. Additionally, no Appointed Member of the commission may be:
- 1) A city official or relative of a city official; or
  - 2) A city employee or relative of a city employee; or
  - 3) An elected public official; or
  - 4) A candidate for elected public office; or
  - 5) Any person having any economic interests with any council member or mayor; or
  - 6) Anyone who has been a paid campaign worker or political consultant for any city council or mayoral candidate.
- e. **Appointment Terms.** Other than the initial appointments, all appointments to the Commission shall be for two years, beginning January 1 of the first year and ending December 31 of the second year. Members appointed after September 30 of a calendar year shall fill their position through December 31 of that same year, and their full term of appointment shall commence on January 1 of the following year. Each appointee shall serve at the pleasure of the appointing authority until a successor is duly appointed and qualified. Appointees may be removed at any time for just cause by their appointing authority. If for any reason a vacancy occurs, the appropriate appointing authority as set forth in this section shall name a replacement to fill out the unexpired term within 30 days of actual or official notice that the vacancy exists. All replacements shall comply with the requirements of this section. A member appointed to fill a vacancy shall serve for the duration of the unexpired term. No individual shall serve for a period of more than three consecutive two-year terms.
- f. **General authority of the Ethics Advisory Commission.** The Commission shall have the powers and responsibilities:
- 1) To review and make findings concerning any alleged violation of this Ordinance by any person subject to those provisions, including but not limited to current city officials and employees, former city officials and employees, and persons doing business with the city, if a complaint is filed within one year after the date of the alleged violation. The Commission may not consider any alleged violation that occurred more than two years before the date of the filing of a complaint.
  - 2) The termination of a city official's or employee's duties does not affect the jurisdiction of the Commission with respect to alleged violations occurring prior to the termination of the official's or employee's official duties.
  - 3) The following is a list of current state statutes that affect the conduct and business of officials and employees. In the event that any such statutes are amended by the General Assembly or additional statutes are adopted by the General Assembly, such amendments or additional statutes shall be considered to be a part of this chapter:
    - (a) IC 35-44-1-1, pertaining to bribery;

- (b) IC 35-44-1-2, pertaining to official misconduct;
  - (c) IC 35-44-1-3, pertaining to conflicts of interest;
  - (d) IC 35-44-1-7, pertaining to profiteering from public services;
  - (e) IC 35-44-2-4, pertaining to ghost employment;
  - (f) IC 36-4-8-3, pertaining to approval of order for issues of warrants;
  - (g) IC 36-4-8-13, pertaining to obligations in excess of appropriation;
  - (h) IC 36-7-4-207, pertaining to membership of city Plan Commission;
  - (i) IC 36-7-4-216, pertaining to qualifications of the Plan Commission;
  - (j) IC 36-7-4-223, pertaining to zoning matters, conflict of interest;
  - (k) IC 36-7-4-905, pertaining to BZA, restrictions on holding office;
  - (l) IC 36-7-4-909, pertaining to BZA, conflict of interest;
  - (m) IC 36-7-12-14, pertaining to EDC, removal of Commissioner;
  - (n) IC 36-7-12-16, pertaining to EDC, conflict of interest;
  - (o) IC 36-7-14-9, pertaining to removal of Redevelopment Commissioners;
  - (p) IC 36-7-14-10, pertaining to Redevelopment Commission, conflict of interest;
  - (q) IC 36-7-18-9, pertaining to removal of Commissioner;
  - (r) IC 36-7-18-11, pertaining to conflict of interest, commissioner of a housing authority;
  - (s) IC 5-16-11-6, pertaining to conflict of interest disclosure; and
  - (t) IC 5-16-11-5.5, pertaining to consultant conflicts.
- 4) Copies of the above statutes shall be available in each agency and will be available to individuals upon request at the office of the City Clerk.
- 5) The Commission has the following powers only:
- (a) To adopt, amend and rescind rules and procedures governing its internal organization and operations.
  - (b) To review all city handbooks and make recommendations for any changes, and to adopt a handbook specifically for members of boards, commissions, and committees. Such handbooks shall form the basis of decisions on complaints regarding possible violations of this ordinance. Complaints covered by handbooks shall be subject to action by the City, department, or agency involved; complaints not covered by handbooks shall be subject to the hearing, appeal, and enforcement sections of this Ordinance.
  - (c) To ensure that all employees and officials are informed and aware of the provisions of this Ordinance as well as those in their respective city handbooks, and to gather, maintain, and annually review the current signed "Statement of Economic Interest" for each official or employee.
  - (d) To meet as often as necessary to fulfill its responsibilities.
  - (e) To make recommendations to the City Council for amendments to this ordinance and for such other legislation affecting the subject matter of this Ordinance as the Commission may deem necessary or desirable.
  - (f) To receive from the city administration such staff support as they reasonably request to carry out the duties of the Commission.
  - (g) To make findings of fact as necessary for the disposition of a complaint.
  - (h) To make notifications, extend deadlines, and conduct investigations.
  - (i) To subpoena such witnesses and documents as the Commission deems relevant.
  - (j) To render advisory opinions concerning matters of governmental ethics, ethical conduct, conflicts of interest and the application of ethical standards set forth in this Ordinance, and issue an advisory opinion in writing as to any such question. The Commission shall publish its opinions with any deletions or modifications necessary to prevent disclosure of the identity of the person who is the subject of the opinion and they shall be filed in the City Clerk's office.

- (k) To provide a continuing program of educational assistance and information regarding ethical conduct of all officials and employees.

**Section 11. Meetings and Rules of Procedure.**

**The Commission shall follow Robert's Rules of Order except where rules otherwise established by the Commission will supersede, such rules to include the following:**

- a. **Officers.** At the initial meeting of the Commission and at the first meeting of every year, the members of the Commission shall elect from among themselves a chair and a vice-chair to officiate at meetings.
- b. **Quorum.** Three (3) of the four (4) Commission members shall constitute a quorum to conduct a hearing, or a regular or special meeting, and a majority of the members is required for a majority vote. All official actions of the Commission, other than approval of a motion to adjourn if less than three (3) members are present, shall require a majority vote. A member not voting with the majority may issue a minority opinion. If the Commission is determined to be unlawfully comprised as to qualifications set out in Section 10 of this Ordinance, the Commission shall hold void any votes on any order of business of any member who caused such violation.
- c. **Meetings.** The Commission shall hold an annual meeting in the first week of January, and any special meetings throughout the year as may be deemed necessary for the transaction of Commission business. All such meetings, except executive sessions to hear complaints or charges brought against a person by another official or employee or a private citizen, shall be open to the public, and the Commission shall designate the time and place within the City for the holding of the meetings. Any member of the Commission may call for a special session, and all meetings shall conform to State Statute as adopted by **Error! Reference source not found.** of this ordinance.

The Commission shall set its own rules and procedures for meetings provided they are not in conflict with those set forth in this Ordinance.

The chair shall generally supervise the affairs of the Commission, presiding at all meetings or any hearings before the Commission. The secretary shall see that all notices are duly given; make and keep a permanent record of the minutes of all Commission proceedings, its acts and actions; and be custodian of the books provided for these records, which shall be open for inspection at all reasonable times. The secretary shall be custodian of all documents or other evidence received by the Commission. To assist the secretary, the Commission may employ the services of a stenographer to take notes of meetings and hearings, and the Commission shall be empowered to retain the services of additional legal counsel when needed.

**Section 12. Questions, Complaints, and Investigations.**

- a. **Questions.** Officials and employees, when in doubt about the applicability and interpretation of this Ordinance to themselves in a particular context, may submit in writing the facts of the situation to the Commission with a request for an advisory opinion to establish the standard of public duty. Any official or employee who has the power to hire, promote, discipline, transfer, or terminate employees may likewise seek an advisory opinion from the Commission regarding the application of the provisions of this Ordinance to any employee or applicant for employment. The Commission shall render an advisory opinion, and each such opinion shall be numbered, dated, and published. Such opinion, until amended or revoked, shall be binding on the conduct of the official or employee who sought the opinion or with reference to whom the opinion was sought, unless material facts were omitted or misstated in the request for an advisory opinion.
- b. **Filing a Complaint.** Any person or the Commission on its own initiative, believing there has been a violation of this chapter, may file a notarized, sworn complaint, under penalty of perjury, with the Personnel Department. If a member of the Commission files such complaint, such member is then disqualified from participating in any proceedings that may arise from the complaint. The complaint shall be in writing and signed by the complainant. The written complaint shall:
  - 1) Identify the person or persons who allegedly committed the violation;
  - 2) Provide a detailed statement of the facts on which the complaint is based;
  - 3) To the extent possible, identify the ethics provision or provisions allegedly violated; and
  - 4) Identify sources of evidence and witnesses, if any, that the complainant recommends should be considered by the Commission.
- c. **Directing Complaints to the Proper Authority.** Complaints filed with the Personnel Department regarding possible violations of this Ordinance shall be forwarded to the appropriate entity:
  - 1) Complaints concerning members of the Fire Department and Police Department shall be forwarded to the Commission of the respective Department for appropriate action

- under the laws, ordinances, and rules pertaining to those departments and no further action shall be taken under this Ordinance concerning said complaints.
- 2) Complaints concerning members of the Common Council shall be forwarded to the Council's Committee on Ethics for appropriate action under the laws, ordinances, and rules pertaining to Council members and no further action shall be taken under this Ordinance concerning said complaints.
  - 3) All other complaints concerning employees or officials that are department heads shall be submitted to the Ethics Officer, who shall:
    - (a) Notify the official or employee that a complaint has been filed and allow the official or employee to respond, in writing, to the complaint;
    - (b) Meet individually with all parties and make recommendations to the Mayor and department head, if applicable;
    - (c) Forward the complaint to the Commission if:
      - (i) The complaint alleges a severe violation of this Ordinance;
      - (ii) No resolution or agreement is reached between the parties with the assistance of the Ethics Officer.
  - 4) All other complaints concerning officials who are not city employees shall be submitted to the Chair of the Commission, who shall provide unredacted copies of the complaint to all members of the Commission, the attorney for the Commission, and the person who is the subject of the complaint.
  - 5) Upon receipt of a complaint, the Commission may:
    - (a) Upon a majority vote, reject, without further proceedings, a complaint that the Commission considers frivolous, inconsequential, or outside the purview of this Ordinance;
    - (b) Upon a majority vote, reject, without further proceedings, a complaint that the Commission is satisfied has been dealt with appropriately by a federal, state, or local agency; or
    - (c) Upon a majority vote, determine that the complaint does not allege facts sufficient to constitute a violation of this Ordinance and dismiss the complaint.
    - (d) A determination that a complaint be dismissed can only be made upon the affirmative vote of a majority of the members. Written notice of the dismissal must be sent to both the person who made the complaint and the person charged with the complaint, identifying the reason or reasons for dismissal of the complaint. If the complaint is dismissed, the record shall remain confidential unless the person charged with the complaint requests disclosure.
    - (e) If the complaint is not disposed of under the preceding provisions in this section, the Commission may undertake any additional investigation deemed appropriate to determine if probable cause exists to support the allegations in the complaint. If the Commission finds by a majority vote that probable cause exists to support an alleged violation of this Ordinance, it shall set a public hearing on the matter within sixty (60) days after making that determination. The person who is the subject of the complaint shall be notified in writing within fifteen (15) days of the Commission's determination of probable cause. A copy of such determination shall be delivered to the complainant, to the person charged with the complaint, and, where appropriate, to the person's superior. Notice of such public hearing shall be published at least forty-eight (48) hours before the meeting as specified in IC 5-14-1.5-5.
    - (f) Either the subject of the complaint or the person filing the complaint may request a continuation of the hearing, and the Commission may grant such continuation, but it shall be scheduled no later than thirty (30) days after the original hearing date. However, if the Commission determines that the preliminary investigation must be completed in less than thirty (30) days in order to avoid prejudice or irreparable harm to the person charged with the complaint, the Commission shall complete the preliminary investigation in a shorter period of time.

- d. **Confidentiality.** No official or employee shall reveal information relating to the filing or processing of a complaint, except as required for the performance of official duties. This ordinance prohibits *ex parte* communications by or to members of the Commission. All attorney work product and attorney-client papers and related communications as to a complaint are confidential to the extent allowed by law, except that all evidence is public information. The complaint remains confidential until there has been a finding that probable cause exists, unless the subject of the complaint or investigation elects to have said information disclosed, or the Commission elects to respond to public statements by the person who filed the complaint. The Commission may acknowledge:
- 1) The existence of an investigation before the finding of probable cause; or
  - 2) That the Commission did not find probable cause to support an alleged violation.
- A complaint filed with the Commission shall be open for public inspection after the Commission finds that probable cause exists. The Commission may compel the attendance and testimony of witnesses and the production of relevant records and documents by subpoena enforceable by the Circuit Court or Superior Court of LaPorte County.
- e. **False accusations and responses.** The Personnel Department shall, in writing, advise the person filing the complaint that falsely accusing someone of a violation of this Ordinance may result in criminal prosecution of anyone who knowingly makes a false accusation. Response to the complaint shall be in writing signed under oath by the person charged in the complaint and filed with the Personnel Department not later than twenty (20) days after he receives a copy of the complaint. The Personnel Department shall, in writing, advise the person charged in the complaint that falsely responding to a complaint may result in criminal prosecution of anyone who knowingly makes a false report under oath.
- f. **Recommendations.** If the Commission determines after a public hearing that a city official or employee has violated the provisions of this Ordinance, the Commission may recommend to the proper authority that the official or employee be subject to disciplinary action.

### Section 13. Hearings.

**If it is determined by the Commission that an investigational hearing is needed, the following guidelines shall apply:**

- a. **Record.** In any and all hearings before the Commission, a competent and complete record of the entire proceedings and of oral and physical evidence shall be kept.
- b. **Conduct of hearings.** The procedures which shall be followed at such hearings shall be in conformance with applicable state laws, the regulations set forth in this section, and other objective rules and standards adopted by the Commission to ensure the appropriate preservation of decorum and due process.
- c. **Notice and appearance.** The person charged with the complaint shall be sufficiently informed of the nature and specific grounds for bringing an action against him, and is entitled to a hearing. The person charged may examine and make copies of all evidence in the Commission's possession relating to the complaint. If the person timely files a response and, thereafter, writes the Commission to request a hearing, the Commission shall proceed to set the matter for hearing and shall cause written notice of the date, time and place of the hearing to be served either in person or by copy left at the last and usual place of residence of the person charged with the complaint, at least 14 days before the date set for the hearing. Both the person filing the complaint and the person charged with the complaint shall be required to attend the hearings, unless excused for good cause by the Commission. Unexcused absence from such a hearing may, at the discretion of the Commission, be deemed admission of guilt or grounds for dismissal.
- d. Evidence and testimony. **Hearings shall be formal, and shall be conducted promptly and in such a manner as to obtain all facts material to the hearing, to protect the proper interests of all parties and to render findings in accord with the evidence presented. To comply with concepts of fairness and justice, the person charged with the complaint shall have an adequate opportunity to prepare and present a defense at the hearing; the right to be represented by counsel; the right to call and examine witnesses; the right to introduce exhibits; and the right to present such evidence to the Commission as deemed pertinent to the inquiry. Any other person, whom the Commission finds to have a direct interest in the matter, including the person who filed the complaint, shall be entitled to the same rights. All oral evidence to be considered shall be given under oath administered by the Commission. The Commission shall have the power to require the production of documentary and other evidence by subpoena. The burden of proof shall be on the complainant. The Commission may grant a request for a continuance of the hearing if, in its discretion, good and proper cause is shown.**

- e. Decision; review of decision. **When the Commission has reached a decision, it shall provide a report, in writing, of its findings of fact. A finding, by a majority vote of the members, of a violation of this Ordinance, or any other statute or rule establishing standards of ethical conduct for City officials or employees, shall be signed by a majority of the Commission members and shall be made public. The report shall be presented to:**
  - 1) **The subject of the complaint and the complainant;**
  - 2) **The Mayor; and**
  - 3) **The members of the Common Council.**
- f. **The Commission may also forward its report to any of the following:**
  - 1) **The prosecuting attorney and law enforcement agency of each county in which the violation occurred;**
  - 2) **The State Board of Accounts;**
  - 3) **The attorney general; or**
  - 4) **Any other appropriate person or agency.**

#### **Section 14. Appeals.**

**A person charged with a complaint who is adversely affected by a decision of the Commission may appeal through the judicial process, so informing the Commission in writing of the court appeal within ten (10) days after the appeal is initiated. In the event of an appeal from its finding or order, the Commission shall provide for a written or taped transcript of hearings and any evidence that was introduced, together with findings of fact, Commission orders, and the basis thereof. A copy of this transcript, certified as the official hearing record by the Commission secretary and either the chairman or vice-chairman, shall be delivered and filed in the court having jurisdiction over such appeal within ten days after issue and service of summons on the Commission which shall be made by delivery thereof to the Personnel Department and the attorney for the Commission. All copies shall be at the appellant's expense.**

#### **Section 15. Enforcement.**

Any official or employee who fails to file a Financial Disclosure Statement when required by **Error! Reference source not found.** of this Ordinance shall be subject to a fine of twenty-five dollars (\$25.00) for each thirty (30) days such statement is delinquent, which shall be in addition to the other provisions of this section. Following a hearing, the Commission shall have the discretion to waive any fine imposed by this section. The maximum penalty under this subsection in any one (1) year time period is one thousand dollars (\$1,000).

Failure of any official or employee to file a Financial Disclosure Statement when required by **Error! Reference source not found.** of this Ordinance may result in the Commission reporting such failure to the appropriate supervisory or appointing authority and may be cause for suspension, discharge, removal from office, or such other disciplinary action as may, by the appropriate authority, be deemed necessary and proper.

A violation of this ordinance may be cause for fine, suspension, discharge, or removal from office, or such other disciplinary action as may be deemed necessary and proper by the appropriate authority, and consistent with personnel ordinances and rules. The appropriate authority shall make a written response to the Commission, outlining any action taken as a result of either a violation or a written recommendation from the Commission within fourteen (14) calendar days after receipt of the written recommendation. This section shall not derogate from employee rights under any collective bargaining agreement or personnel ordinance, or rules promulgated thereunder. If the appropriate authority determines that the written response required in this section cannot be made within fourteen (14) calendar days after receipt of the recommendation, because of procedures prescribed under any collective bargaining agreement, personnel ordinance, or rule promulgated thereunder, the appropriate authority shall so report to the Commission within fourteen (14) days after receipt of the recommendation, stating the date on which the written response will be submitted to the Commission. Upon receipt of the written response, or in the event no response is received, the Commission shall review such matter and make such further recommendation as may be appropriate.

#### **Section 16. Retaliation.**

A city official or employee shall not retaliate or threaten to retaliate against an employee or a former employee because the employee or former employee did any of the following:

- a. Filed a complaint with the Commission.
- b. Provided information or other evidence to the Commission.
- c. Testified at a Commission proceeding.

A city official or employee may take appropriate action against an employee or former employee who took any of the actions listed above if the employee or former employee:

- d. Did not act in good faith; or
- e. Knowingly or recklessly provided false information or testimony to the Commission.

**Section 17. Prohibitions.**

A person may not do any of the following:

- a. Knowingly or intentionally induce or attempt to induce, by threat, coercion, suggestion, or false statement, a witness or informant in a Commission proceeding or investigation to do any of the following:
  - 1) Withhold or unreasonably delay the production of any testimony, information, document, or other evidence;
  - 2) Avoid legal process summoning the person to testify or supply evidence;
  - 3) Fail to appear at a proceeding or investigation to which the person has been summoned;
  - 4) Make, present, or use a false record, document, or other evidence with the intent that the record, document, or other evidence appear in a Commission proceeding or investigation to mislead a Commission member, the Ethics Officer, or Commission employee.
- b. Alter, damage, or remove a record, document, or other evidence except as permitted or required by law, with the intent to prevent the record, document, or other evidence from being produced or used in a Commission proceeding or investigation.
- c. Make, present, or use a false record, document, or other evidence with the intent that the record, document, or other evidence appear in a Commission proceeding or investigation to mislead a Commission member, the Ethics Officer, or Commission employee.

Any such action by a person shall be considered a violation of this Ordinance and subject that person to the procedures and penalties stated herein.

This Ordinance shall be in full force and effect after passage and signature of the Mayor.

**INTRODUCED BY:** /s/ Patricia Boy, member  
 /s/ Joseph Doyle, member  
 /s/ Bob McKee, member

Councilwoman Boy moved to adopt the Ordinance, seconded by Councilmen McKee and Doyle.

Attorney Meyer addressed Councilwoman Boy's questions regarding the language in Sec. 10 (d).

Councilwoman Boy made an Authors Amendment to Section 10 (d) to read as follows:

- d. **Qualifications.** The Appointed Members shall not receive any other remuneration as salary, wages, or stipend from the city or any of its other boards or subdivisions. Each member shall take an oath of office to conscientiously discharge the Commission's duties before participating on the Board. A signed copy of each oath shall be filed with the Board of Works and with the City Clerk. Additionally, no Appointed Member of the commission may be:

There was discussion among Council Members Boy, Meer, Espar and Attorney Meyer

Regarding the authors amendment on third reading.

Council President Meer asked if there were any comments or questions by the general public or Council and hearing none, the Ordinance was adopted by the following vote: **AYES: COUNCIL MEMBERS Boy, Doyle, Espar, Jankowski, McKee, Murphy, and Nelson (9). NAYS: Meer, Milsap (2).**

### **UNFINISHED BUSINESS**

Councilman Murphy reported on the Cost Benefit Analysis regarding the South Shore Rails. Mr. encouraged everyone to attend a public forum scheduled for Thursday, December 4, 2008 at 6:30 p.m. in the City Council Chambers at City Hall.

### **NEW BUSINESS**

Councilman Jankowski moved to appoint Keith Devereaux to fill the unexpired term of Mr. Frank Harris to the commission of the Michigan City Urban Enterprise Association, plus another four (4) year term.

Motion was seconded by Council Members Nelson and Doyle.

Keith Devereaux, 221 Columbia Street, thanked the Council the opportunity to help the community by serving on the Urban Enterprise Board.

Council President Meer asked if there were any comments or questions by the general public or Council and hearing none, directed the Clerk to call for the vote: **AYES: COUNCIL MEMBERS Doyle, Espar, Jankowski, McKee, Meer, Milsap, Murphy, Nelson, and Boy (9). NAYS: None (0).**

### **COMMENTS FROM THE PUBLIC**

Mayor Oberlie requested copies of exhibits A & B that should have been attached to the Ethics Ordinance that he didn't receive.

President Meer asked Ms. Neulieb to address this matter.

Attorney Christopher Willoughby, 126 E. 5<sup>th</sup> Street stated his concerns regarding the Park Board's decision regarding the hearing of the suspension of two baseball coaches.

Attorney Willoughby addressed Council President Meer's questions regarding this matter.

### **COMMENTS FROM THE COUNCIL**

Councilman McKee commented on the compromise/ process of the 2009 Budget, that he would like in the first quarter of 2009 to attain and analyze efficiencies of buildings, operations and line items throughout each City Department .

Councilman McKee extended his appreciation to Attorney Willoughby for his professionalism regarding his comments this evening. Mr. McKee stated his concerns regarding the hearing and the Park Board's decision.

Councilman Doyle thanked everyone for supporting the Resolution that was passed regarding sportsmanship and conduct and that the Resolution needs to be enforced.

Councilwoman Boy reminded everyone of Veteran's Day and not to forget about the people that fight for our freedom.

Council President Meer stated that he would like to see a pre-apprentice program

organized with any contractors that are hired by the City for major projects giving the young people in our community an opportunity to learn a trade while making money.

Council President Meer congratulated David Hunter for a job well done helping the campaign for Barac Obama in LaPorte County.

**ADJOURNMENT**

On motion by Councilman Doyle, supported by Councilman McKee, and there being no further business to transact, President Meer declared the meeting ADJOURNED (approximately 8:10 p.m.).

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Thomas F. Fedder, City Clerk