

**Amending Ordinance No. 4037 Setting
Salaries and Wages for Appointed
Officials and Employees of the
City of Michigan City for the
Calendar Year 2009**

Subject: **Approving Additional Appropriations
for the Purpose of Creating an
Additional Full Time Position
within the Street Department** Mtg Date: April 30, 2009

**Approving Additional Appropriation for
Purposes of Acquiring Street
Equipment, Park Equipment, and
De-Icing Salt**

The Finance Committee met on two occasions to review four ordinances now on second reading. On April 23rd, the committee addressed an additional appropriations ordinance to provide funding for the repair of two fire trucks and construction of the Oasis Splash Pad, and a second ordinance amending Ordinance No. 4037 regarding the setting of salaries and wages for appointed officials and employees, that had been tabled at our March 17, 2009 council meeting pending additional information from the controller and personnel director. In attendance were the committee members, the City Controller John Schaefer, Personnel Director, Shelly Dunleavy, Fire Chief Dave Lamb, and Park Superintendent Jan Orlich.

On the first ordinance, the committee discussed with those present the additional funds needed for the Oasis Splash Pad. Ms. Orlich explained that the Park Department ran into a number of change orders required to meet health and safety standards and county ordinances. As a result, the project is anticipated to exceed the originally appropriated amount of \$650,000 by an additional \$220,000 to \$300,000. A motion was made and seconded to report to the council "No Recommendation." The motion failed on a vote. Those in favor were Mr. Jankowski. Those opposed were Mr. Murphy and myself. Further discussion ensued regarding the overall cost of the project and belief that we should not abandon the project 2/3'rds into completion. A second motion was made and seconded to recommend to the council "Passage of the Ordinance without amendment." The motion passed on a 2 to 1 vote. Those in favor were Mr. Murphy and myself. Those opposed were Mr. Jankowski. The Chair offered the opportunity for Mr. Jankowski to issue a minority report. The refurbishing of the two fire trucks met no opposition and the committee recommends "Passage of the Ordinance without Amendment," as well. The fire department is expecting to get another 10 years out of these refurbished trucks at a savings to the city of approximately \$650 to \$800,000 over the purchase of two new trucks.

The second ordinance considered related to the previously tabled amendment to the salary ordinance. If the council recalls, this ordinance was introduced to reclassify contract labor to a part time position within the controller's office. This is being proposed to address a finding by the State Board of Accounts of a shortcoming in internal controls within the office. This ordinance will not result in any additional appropriation, but simply a reclassification from Contract Services to wages. Since this is a part time position, no benefits will be offered. The committee reviewed the job description proposed by the Personnel Director and Controller and wage rates for similar positions. The committee believes a more appropriate wage rate is \$22.00 per hour and recommends "Passage of the Ordinance with Amendment" to take that into account.

On April 30th, the Finance Committee met to address the other two ordinances referred to it for recommendations. Again, all members of the committee were present, as well as, yourself, Mayor Oberlie, Mr. Schaefer, Maintenance Supervisor Charlie Cate, and Ms. Orlich, The first ordinance for consideration was the additional appropriation for the purpose of creating an additional full time position within the street department. Discussion centered on whether the City could accomplish this with a transferred employee from another department. Because of various union agreements this did not appear to be an effective alternative. On a motion and

second to recommend "Passage without Amendment," the committee voted unanimously in favor.

The second ordinance under consideration related to the additional appropriation for purposes of acquiring street equipment, park equipment, and de-icing salt. The de-icing salt is to replenish our stores for the upcoming winter and to take advantage of the group buying bid from the State of Indiana. We are hoping to be able to acquire the salt at a savings of \$35 to \$65 per ton over last year's prices. The street equipment is to purchase an additional plow and spreaders for snow removal, and the park equipment is to update vehicles and equipment for the Park Department. These replacements are to maintain maintenance operation efficiencies. The committee discussed the merits and recommends "Passage without Amendment."

Finally Mr. President, the Subcommittees of the Local Advisory Task Force on Governmental Efficiency and Asset Management and Utilization met in joint session on April 28, 2009, to receive a status update from each of the various subcommittees. The various subcommittees have met individually on a number of occasions since the LATF was formed, and are moving along with little difficulty. Each subcommittee gave a brief report on where they are in the process, as well as what still needs to be accomplished. The subcommittees were dismissed to continue their work with the goal to wrap up the task force by the beginning of June. I will be sending out a standard form for each committee to use for the purpose of issuing its final report.

Councilman Espar also reported on the Local Advisory Task Force meeting held on April 28, 2009 regarding status updates from the various sub-committees.

Councilwoman Nelson reported on the Public Health and Safety Committee meeting held on April 29, 2009.

Councilman Jankowski reported on the Sanitary District Meeting held on April 30, 2009

REPORTS OF SPECIAL OR SELECT COMMITTEES

Councilman Murphy reported on the Michigan Boulevard Oversight Committee meeting held April 22, 2009. Councilman Murphy advised the next meeting will be held May 27, 2009, 6:00 p.m. at the 5th Ward Office.

REPORTS of OTHER CITY OFFICERS and DEPARTMENTS

There were no City Officers and Department reports.

PETITIONS

There were no petitions.

COMMUNICATIONS

President McKee reminded everyone that the next Council Meeting will be held on Wednesday, May 20, 2009 at 6:30 p.m. in the Council Chamber, due to the Special Election being held on Tuesday, May 19, 2009.

RESOLUTIONS

The Clerk read the Resolution by title only, **RESOLUTION OF THE MICHIGAN CITY COMMON COUNCIL OF THE CITY OF MICHIGAN CITY, INDIANA ADOPTING A WRITTEN FISCAL PLAN AND ESTABLISHING A POLICY FOR THE PROVISION OF SERVICES TO THE AREA KNOWN AS 47.3487 ACRES ALONG COUNTY ROAD 600 WEST LAPORTE COUNTY, INDIANA, A PROPOSED ANNEXATION AREA**

INTRODUCED BY: Robert McKee
Joe Doyle

Councilman Doyle made an Author's amendment throughout the proposed resolution to read 47.3487 acres.

Councilman Doyle made a motion to adopt the resolution, second by Councilman Meer.

Attorney Michael Bergerson, 601 Franklin Square, representing Oehmstead Properties, LLC, advising that they are the owners of the 47.3487 acres along County Road 600 West and that they are requesting annexation of their property.

Discussion ensued among Attorney Bergerson, Attorney Meyer, and Council Members Meer, Boy, and McKee.

Councilman Espar made a motion to **TABLE** the resolution until the next Council Meeting (May 20, 2009), second by Councilman Milsap.

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

ORDINANCES

The Clerk read on first reading by title only, **AN ORDINANCE AMENDING THE LICENSE AND RESIGTRATION REQUIREMENTS FOR ELECTRICAL AND/OR MECHANICAL CONTRACTORS AND AMENDING ORDINANCE NO. 2053 AND ALL SUBSEQUENT AMENDING ORDINANCES THERETO ALSO KNOWN AS SECTION 22-691, SECTION 22-692, SECTION 22-695, AND SECTION 22-698 OF THE MUNICIPAL CODE OF THE CITY OF MICHIGAN CITY, INDIANA**

INTRODUCED BY: Pat Boy

Councilwoman Boy stated that this replaces the Ordinance that was withdrawn at the last Council meeting (April 21, 2009) regarding license and registration requirements.

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

The Clerk read on first reading by title only, **AN ORDINANCE AMENDING THE REGISTRATION FEE AND RENEWAL FEE FOR BUILDING CONTRACTORS, PLUMBERS, ELECTRICAL CONTRACTORS AND MECHANICAL CONTRACTORS AND AMENDING ORDINANCE NO. 2053 AND ALL SUBSEQUENT AMENDING ORDINANCES THERETO ALSO KNOWN AS SECTION 50-138, SECTION 50-140, SECTION 50-141, AND SECTION 50-142 OF THE MUNICIPAL CODE OF THE CITY OF MICHIGAN CITY, INDIANA**

**AND
AN ORDINANCE AMENDING THE REGISTRATION FEE AND RENEWAL FEE
FOR MASTER CONTRACTORS AND AMENDING CODE 1980, § 150.035.1 AND
ALL SUBSEQUENT AMENDING ORDINANCES THERETO ALSO KNOWN AS
SECTION 50-139 OF THE MUNICIPAL CODE OF THE CITY OF MICHIGAN CITY,
INDIANA**

INTRODUCED BY: Pat Boy

Councilwoman Boy stated this is another Ordinance replacing the original Ordinance that was withdrawn at the last Council meeting (April 21, 2009). Ms. Boy advised that this is in regards to registration and renewal fees.

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

The Clerk read on first reading by title only, **AN ORDINANCE AMENDING THE REGISTRATION REQUIREMENT FOR BUILDING CONTRACTORS AND/OR PLUMBING CONTRACTORS, AND AMENDING ORDINANCE NO. 2053 AND ALL SUBSEQUENT AMENDING ORDINANCES THERETO ALSO KNOWN AS SECTION 22-661 AND SECTION 22-663 OF THE MUNICIPAL CODE OF THE CITY OF MICHIGAN CITY, INDIANA**

AND

AN ORDINANCE AMENDING THE MASTER CONTRACTOR REGISTRATION FOR PERSONS MAINTAINING AN APARTMENT COMPLEX AND/OR RESIDENTIAL RENTAL PROPERTY AND AMENDING CODE 1980, § 150.035.1 AND ALL SUBSEQUENT AMENDING ORDINANCES THERETO ALSO KNOWN AS SECTION 22-662 OF THE MUNICIPAL CODE OF THE CITY OF MICHIGAN CITY, INDIANA

INTRODUCED BY: Pat Boy

Councilwoman Boy stated that this Ordinance is in regards to registration and proof of insurance for contractors.

Councilwoman Nelson advised in committee it was clarified that all sub contractors are required to pay a license fee.

Councilwoman Boy stated the proposed Ordinance would allow a contractor to work under a building permit for another contractor.

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

The Clerk read on second reading by title only, **APPROVING ADDITIONAL APPROPRIATION FOR THE PURPOSE OF CREATING AN ADDITIONAL FULL TIME POSITION WITHIN THE STREET DEPARTMENT**

INTRODUCED BY: Marc Espar

(**DECREASE** Fund #0708, MVHF Unappropriated -\$14,000.00, **INCREASE** Accounts # 0708 0000 01411.001, Salary \$8,276.00, 411.016 Overtime – \$1,288.00, 413.001FICA - \$712.00, 413.004 Health Insurance - \$2,700.00, 413.002 PERF - \$1,024.00).

Council President McKee stated that there would be a formal public hearing on May 20, 2009.

Councilman Espar stated that the proposed ordinance is being introduced to authorize the hiring of an additional employee within the Street Department prior to the up-coming winter season. Mr. Espar advised the Finance Committee's recommendation was passage without amendment.

Attorney Meyer responded to Councilwoman Boy that the advertisement regarding the date change of the next Council meeting has to be advertised again with the correct date of the formal public hearing (April 20, 2009).

Council President McKee asked if there were any questions or comments from 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, **APPROVING ADDITIONAL APPROPRIATION FOR PURPOSES OF ACQUIRING STREET EQUIPMENT, PARK EQUIPMENT, AND DE-ICING SALT**

INTRODUCED BY: Marc Espar

(**DECREASE** Fund #9000, Riverboat , Unappropriated - \$455,700.00 , **INCREASE** Account #9000 0000 04 444.004 - \$165,000.00 Street Equipment (Street truck with plows, spreader and GPS \$135,000, and Two spreaders \$30,000), **INCREASE** Account # 9000 0000 04 444.011- \$112,700.00 (Park truck, two (2) quad cab trucks, two (2) 72" mowers, gator, and bunker rake), **INCREASE** Account # 9000 0000 02 423.002 - \$14,000.00 Repair Parts (to convert sanitary truck for forestry use), **INCREASE** Account # 9000 0000 06 460.100 - \$14,000.00, Transfer of Funds to MVHF **INCREASE** Account # 9000 0000 03 436.005 - \$150,000.00 Other Repair & Maintenance – Salt)

Council President McKee stated there would be a Formal Public Hearing on May 20, 2009 regarding the proposed ordinance.

Councilman Espar advised the proposed ordinance is to purchase equipment needed in the Park and Street Departments, and to purchase de-icing salt for the upcoming winter. Mr. Espar stated the Finance Committee recommends the passage without amendment.

Jan Orlich, Park Superintendent addressed Councilman Meer's questions regarding the request of two (2) quad cab trucks for the Parks and Recreation Department.

Council President McKee 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, **APPROVING ADDITIONAL APPROPRIATIONS TO PROVIDE FUNDING FOR THE REPAIR OF TWO FIRE TRUCKS AND CONSTRUCTION OF THE OASIS SPLASH PAD**

INTRODUCED BY: Marc Espar

(**DECREASE** Fund #9000, Riverboat Unappropriated - \$525,000.00 **INCREASE** Account #9000 0000 04 444.012 - \$225,000.00, Fire truck repairs **INCREASE:** Account #9000 0000 04 443.007 - \$300,000.00, Oasis splash pad construction)

Mr. Espar stated the proposed ordinance is to authorize the funding of substantial repairs to two (2) fire trucks being rebuilt along with additional construction costs to the Oasis Splash Pad to finish their project. Mr. Espar advised the Finance Committee recommends passage without amendment.

President McKee asked if there were any questions or comments by the general public or Council and hearing none, President McKee opened the formal public hearing, repeating three times "Any questions or comments by the general public at this time?"

Council President McKee repeated three times, "Any questions or comments by the general public at this time? There was no response and the public hearing was closed.

Jan Orlich, Superintendent of Parks and Recreation addressed Council Members Meer, Nelson and Milsap questions and concerns regarding the Splash Pad project.

Councilman Espar requested without objection the Council Members hold third reading due to the urgency of these appropriations to get the fire trucks back on line and complete the construction to the splash pad project.

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

President McKee requested the Clerk to read the proposed ordinance on third reading by title only, there being no objections,

MICHIGAN CITY COMMON COUNCIL

ORDINANCE 4052

**APPROVING ADDITIONAL APPROPRIATIONS
TO PROVIDE FUNDING FOR THE REPAIR OF TWO FIRE TRUCKS AND CONSTRUCTION OF THE
OASIS SPLASH PAD**

WHEREAS, it has been determined that it is now necessary to appropriate more money than was appropriated in the annual budget for the repair of the Fire Department's Ladder Truck and Quint and the construction of the Oasis Splash Pad;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Michigan City, LaPorte County, Indiana, that for the expenses of the taxing unit, the following additional sums of money are hereby appropriated out of the funds named and for the purpose specified, subject to the laws governing the same:

	<u>AMOUNT REQUESTED</u>	<u>AMOUNT APPROPRIATED</u>
DECREASE Fund #9000, Riverboat Unappropriated	\$525,000.00	
INCREASE Account #9000 0000 04 444.012 Fire truck repairs		\$225,000.00
INCREASE Account #9000 0000 04 443.007 Oasis splash pad construction		\$300,000.00
TOTAL FOR RIVERBOAT FUND	\$525,000.00	

This Ordinance is to be effective upon passage by the Council, approval by the Mayor, and any necessary publication and any necessary approval by the Indiana Department of Local Government Finance.

INTRODUCED BY: /s/Marc Espar, Member
Michigan City Common Council

Councilman Espar moved to adopt the Ordinance, second by Councilman Milsap.

Councilman Meer requested with no objections from the Council a separate vote on the two(2) appropriations.

Councilman Espar called a point-of-order questioning the public hearing on this matter and requesting a separate vote, that it wouldn't be in order.

Discussion ensued among Attorney Meyer, Mayor Oberlie and Council Members Meer, McKee, and Espar.

President McKee stated if there were no objections the vote would be separate on the two (2) appropriations.

Council President McKee asked if there were any other questions or comments by the Council and hearing none, the Clerk was directed to call the vote on the Fire Truck appropriation. **AYES: COUNCIL MEMBER McKee, Meer, Milsap, Murphy, Nelson, Boy, Doyle, Espar and Jankowski (9). Nays: None (0).** President McKee stated the appropriation for the fire truck repairs was approved.

President McKee directed the Clerk to call the roll on the vote for the additional appropriation on the splash pad construction. **AYES: COUNCIL MEMBERS Milsap, Murphy, Nelson, Boy, Doyle, Espar, Jankowski, and McKee (8). NAYS: COUNCIL MEMBER Meer (1).** President McKee advised the appropriation for the splash pad construction was approved.

The Clerk read on second reading by title only, **AN ORDINANCE PROHIBITING THE FEEDING OF WILDLIFE IN PUBLIC PARKS AND ADDING SEC. 14-13 TO ARTICLE 1 OF CHAPTER 14 OF THE MUNICIPAL CODE OF THE CITY OF MICHIGAN CITY, INDIANA**

INTRODUCED BY: Joe Doyle
Marc Espar

Councilman Espar made a motion to amend the following, second by Councilwoman Nelson,

MICHIGAN CITY COMMON COUNCIL
ORDINANCE NO. _____

AN ORDINANCE PROHIBITING THE FEEDING OF WILDLIFE IN PUBLIC PARKS AND ADDING SEC. 14-13 TO ARTICLE 1 OF CHAPTER 14 OF THE MUNICIPAL CODE OF THE CITY OF MICHIGAN CITY, INDIANA

WHEREAS, the Michigan City Parks and Recreation Board, in Resolution No. 669, and the Michigan City Port Authority Board, in Resolution No. 2009-1, (hereinafter referred to collectively as "Boards") copies of which were submitted to the Michigan City Common Council for review, have petitioned the Michigan City Common Council to adopt an ordinance prohibiting the feeding of wildlife in public parks or on property and waterways under the jurisdiction of the Michigan City Port Authority and the Michigan City Department of Parks and Recreation; and

WHEREAS, the Michigan City Common Council agrees with the Boards' findings that feeding wildlife in those areas increases the amount of fecal matter in water which causes harmful bacteria in numbers exceeding the Indiana Water Quality Criteria for Human Health to get into the water; and

WHEREAS, the Michigan City Common Council agrees with the Boards' findings that feeding wildlife causes the wildlife to defecate and trample on personal and real property causing a nuisance and damage thereto; and

WHEREAS, the Michigan City Common Council, having considered said Resolution No. 669 and Resolution No. 2009-1 now finds that the feeding of wildlife within the City's parks and Port Authority properties, constitutes a nuisance and safety hazard and is detrimental to the health and general welfare of the public; ~~and;~~

WHEREAS, the Michigan City Common Council also finds that artificial feeding is actually harmful to water fowl by causing poor nutrition, increased hybridization, water pollution, delayed migration, concentrations at unnatural sites, overcrowding, spread of disease, costly management efforts, unnatural behavior, and a devaluation of the species.

The motion was adopted by the following vote: **AYES: COUNCIL MEMBERS Milsap, Murphy, Nelson, Boy, Doyle, Espar, Jankowski, McKee, and Meer (9). NAYS: None (0).**

Councilwoman Nelson presented a report addressing frequently asked questions and information regarding E. coli.

Councilwoman Nelson addressed Councilwoman Boy's questions regarding Streibel Pond being a part of the ordinance.

Councilman Meer asked Councilwoman Nelson how Streibel Pond would be a part of the ordinance if it wasn't addressed in the ordinance and is not a part of the park or port authority property.

Shannon Eason addressed Councilman Meer's question.

Councilwoman Nelson stated that she would contact Al Walus, General Manager, Sanitary District regarding this matter.

Council President McKee addressed Councilwoman Boy's questions in regards to being able to make amendments on third reading.

Council President McKee asked if there were any other comments 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 ESTABLISHING THE TIME TO SET OUT AND REMOVE RECYCLABLE CONTAINERS PRIOR TO AND AFTER COLLECTION OF RECYCLABLE MATERIAL BY THE LAPORTE COUNTY SOLID WASTE DISTRICT AND ADDING SEC. 98-146 TO DIVISION 2, ARTICLE IV, OF CHAPTER 98 OF THE MUNICIPAL CODE OF THE CITY OF MICHIGAN CITY, INDIANA**

INTRODUCED BY: Phil Jankowski

Council President McKee 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 OF THE COMMON COUNCIL OF THE CITY OF MICHIGAN CITY, INDIANA ANNEXING 47.3487 ACRES OF REAL ESTATE OWNED BY OEHMSTEAD COMPANY, LLC, SITUATED ON 600 WEST, MICHIGAN CITY, INDIANA AND DECLARING THE SAME TO BE A PART OF THE CITY OF MICHIGAN CITY, INDIANA AND PROVIDING ZONING CLASSIFICATION THEREFORE**

INTRODUCED BY: Robert McKee
Joseph Doyle
Marc Espar

President McKee asked if there were any questions or comments by the general public or Council and hearing none, President McKee opened the formal public hearing, repeating three times "Any questions or comments by the general public at this time?"

Attorney Michael Bergerson, 601 Franklin Street, representing Oehmstead Company, LLC,

stated there was a clerical error correcting the acreage to read 47.3487 not 44.347 throughout the proposed ordinance. Mr. Bergerson thanked Attorney Lapaich and Attorney Meyer for their assistance and input regarding the annexation. Attorney Bergerson addressed the council with reasons to adopt the ordinance.

Attorney Bergerson submitted the following letter he received April 29, 2009,

Attorney Michael Bergerson
601 Franklin Suite 200
Drawer K
Michigan City, IN. 46360

Re: ANNEXATION OF 47.348 ACRES
BY OEHMSTEAD CO., LLC

Dear Mr. Bergerson:

This is to provide a written positive recommendation regarding the above-referenced proposed annexation.

This department supports this as a step towards organized growth and expansion of this City.

Sincerely,

John W. Pugh
Plan Director

Discussion ensued among Attorney Bergerson, Attorney Meyer, Council Members Espar, Meer, and Boy.

Councilman Espar made a motion to **TABLE** this Ordinance until the next Council meeting (May 20, 2009), second by Councilman Milsap.

The motion was passed by the following vote: **AYES: COUNCIL MEMBERS Murphy, Nelson, Boy, Doyle, Espar, Jankowski, McKee, Meer, and Milsap (0).**

John Regetz, Executive Director, Michigan City Economic Development Corp., addressed the Council regarding the annexation and asked the council to adopt the annexation on third reading.

John Pugh, City Planner, stated that they support the adoption of the annexation and believe it is a positive step forward toward development.

Attorney Meyer addressed Councilwoman Nelson regarding the amount of days required by state statute to advertise before passing the resolution/ordinance.

Council President McKee repeated three times, "Any questions or comments by the general public at this time? There was no response and the public hearing was closed.

The Clerk read on second reading by title only, **AMENDING ORDINANCE NO. 4037 SETTING SALARIES AND WAGES FOR APPOINTED OFFICIALS AND EMPLOYEES OF THE CITY OF MICHIGAN CITY FOR THE CALENDAR YEAR 2009**

INTRODUCED BY: Marc Espar

(NOTE: Ordinance was TABLED at the March 17, 2009 Council Meeting).

Councilman Espar advised that the ordinance establishes a part-time position within the Controller's Office, and reclassifying an amount from the contract to wage lines, from the period of July 1, 2009 through the end of the year. Mr. Espar stated that this

was being introduced regarding a finding by the State Board of Accounts relative to internal control.

Councilman Espar presented the following amendment , second by Councilman Jankowski,

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Michigan City, La Porte County, Indiana, that the part-time position of Accountant/Internal Auditor is established in the Controller's office with compensation to be at the rate of \$22.00 per hour.

NOW, THEREFORE, BE IT FURTHER ORDAINED that funds in the amount of \$12,790.00 previously appropriated in the Controller's General Fund budget to compensate the consultant in line #0101 0040 03 439.011 by \$12,790.00 (Contractual Services), be transferred to increase the appropriate payroll items in the Controller's General Fund budget in lines #0101 0040 01 411.014 by \$11,880.00 (Part Time Wages), and #0101 0040 01 413.001 by \$980.00 (FICA Taxes).

Councilman Espar advised Councilwoman Nelson that this would bring the salary wage to \$22.00 an hour and adjusting it for the period starting July 1, 2009 until the end of the year.

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

The Clerk read on third reading by title only,

MICHIGAN CITY COMMON COUNCIL

ORDINANCE NO. 4053

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 PARCEL OF PROPERTY KNOWN AS 200 BLOCK (LOTS 1, 2, 3, 4, 5, 6, 7, 8 AND 9) IN ORR AND DEWOLF'S ADDITION TO MICHIGAN CITY FROM BUSINESS B2 TO RESIDENTIAL R2; and, BLAIR'S 2ND ADDITION TO MICHIGAN CITY BLOCK 5 SW CORNER LOT 11 AND PIECE IN NW CORNER LOT 10 FROM BUSINESS B2 TO RESIDENTIAL R2

WHEREAS, a Petition For Rezoning was filed before the Plan Commission of Michigan City, Indiana: and,

WHEREAS, upon notice having been duly published and a public hearing duly held, the Plan Commission of the City of Michigan City, Indiana determined it to be advisable to amend the Zoning Map incorporated into the Comprehensive Zoning Ordinance of Michigan City, known as Ordinance No, 2114, and to rezone certain real estate from Business B2 to Residential R2, as evidenced by the findings, report and recommendation of said Plan Commission filed with the Common council of the City of Michigan City, Indiana; and,

WHEREAS, upon notice having been duly published, a public hearing was held before the Plan Commission of the City of Michigan City, Indiana on March 24, 2009; and,

WHEREAS, the Common Council has reviewed the Resolution of the Plan Commission, its Findings of Fact, and related information; and has received and considered comments from the public regarding the proposed change in zoning for said parcel; and,

WHEREAS, in arriving at a determination as to whether it should approve the proposed change in zoning, the Common Council, as required by IC 36-7-4-603, has given due consideration to how the proposed zoning change will affect or conform to: 1) the City's Comprehensive Plan, 2) the current conditions and the character of current structures and uses in the district in which the parcel is located, 3) the most desirable use for which this parcel and the other land in the district is adapted, 4) the need to conserve property values throughout the City, and 5) whether the proposed zoning change is consistent with responsible development and growth in the City.

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

Section 1. That the foregoing recitals are incorporated herein by reference.

Section 2. That after reviewing the Plan Commission Resolution No. P-100-09 and related Findings of Fact and other information provided to the Common council during the public hearing, and the Common Council during the public hearing, and the Common Council, as required by IC 36-7-4-603, having given due consideration to how the proposed zoning change will affect or conform to: 1) the City's Comprehensive Plan, 2) the current conditions and the character of current structures and uses in the district in which the parcel is locate, 3) the most desirable use for which this parcel and the other land in the district is adapted, 4) the need to conserve property values throughout the City, and 5) whether the proposed zoning change is consistent with responsible development and growth in the City, in view of all of the evidence in the record before it and using the appropriate standards to guide its determination, the Common Council finds that it has been demonstrated to be in the best interest of the City that the change in zoning as recommended by the Plan Commission in its Resolution No. P-100-09 for the real estate described herein be approved by the Common Council.

Section 3. That portion of real estate in the City of Michigan City, Indiana, subject to administration under an ordinance known as Zoning Ordinance No. 2114 of Michigan City, Indiana, together with all amendments and supplements thereto, be, and said portion of real estate is hereby, reclassified and rezoned to a R2 Zoning District, which real estate, all located in Michigan City, LaPorte County, Indiana is more particularly described as follows, to-wit:

Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9 in the 200 Block of Orr and DeWolf's Addition to the City of Michigan City, Indiana, as recorded in deed record PB 2 PG 51, in the Office of the Recorder of LaPorte County, Indiana; and, the SW Corner Lot 11 and piece in NW Corner Lot 10 of Block 5 of Blair's 2nd Addition to the City of Michigan City, Indiana, as recorded in deed records PB 6 PG 72 and Blair's 2nd Addition Resub Lt 11 BLK 5 PB 17 PG 67 in the Office of the Recorder of LaPorte County, Indiana.

Section 4. **BE IT FURTHER ORDAINED**, that from and after the passage and publication of this Ordinance, the real estate hereinabove described shall be considered and determined as rezoned to a R2 (Residential) zoning classification and that the Zoning Ordinance No. 2114 and all amendments, supplements, charts, maps and plats relating thereto be, and they are hereby, amended and revised accordingly.

Section 5. **BE IT FURTHER ORDAINED**, that this Ordinance, after its passage and approval by the Mayor of Michigan City, Indiana, shall be published once each week for two consecutive weeks in the Michigan City News-Dispatch, a daily newspaper of general circulation.

Introduced by: /s/ Ronald Meer, Member
Common Council
City of Michigan City, Indiana

President McKee asked if there were any questions or comments by the Council or general public and hearing none, President McKee opened the formal public hearing, repeating three times "Any questions or comments by the general public at this time?"

Jeff Wilver, President, of LaPorte County Habitat for Humanity thanked the Council for their support.

Council President McKee repeated three times, "Any questions or comments by the general public at this time? There was no response and the public hearing was closed.

Councilman Meer made a motion to adopt the ordinance, second by Councilwoman Boy.

Councilman Meer made the following author's amendment to the third WHEREAS paragraph,

WHEREAS, upon notice having been duly published, a public hearing was held before the Plan Commission of the City of Michigan City, Indiana on March 24, 2009; and,

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

The Clerk read on third reading by title only,

MICHIGAN CITY COMMON COUNCIL

ORDINANCE NO. 4054

**APPROVING ADDITIONAL APPROPRIATION
FOR THE BUDGET OF THE GOLF FUND**

WHEREAS, the Board of Directors of the Michigan City Department of Parks and Recreation has adopted its Resolution No. 670 expressing its desire to sell alcoholic beverages (beer and wine) at its two golf courses, and

WHEREAS, this new concession was not anticipated at the time the 2009 budget of the Department of Parks and Recreation was originally approved by the Common Council so there is currently no appropriation for the acquisition of inventory, labor, and other expenses of the new concession which will eventually be funded by the revenue from the new concession, and

WHEREAS, the Department of Parks and Recreation has determined that revenues from the sale of alcoholic beverages will exceed the costs.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Michigan City, LaPorte County, Indiana, that for the expenses of the Michigan City Park Department the following additional sums of money are hereby appropriated out of the funds named and for the purpose specified, subject to the laws governing the same:

DECREASE:

Fund # 1314 Golf	Unappropriated	\$ 21,800.00
------------------	----------------	--------------

INCREASE:

Fund # 1314 0000 02 423.005	Miscellaneous Merchandise Supplies (to purchase inventory for resale and related supplies)	\$ 16,500.00
Fund # 1314 0000 03 439.011	Contractual Services (to provide bartender training for employees, purchase alcohol permits, and purchase alcohol liability insurance)	\$ 3,600.00
Fund # 1314 0000 02 423.003	Small Tools & Minor Equipment (to purchase refrigerators)	\$ 1,700.00

This Ordinance to be effective upon passage by the Council, approval by the Mayor, any necessary publication, and any necessary approval by the Indiana Department of Local Government Finance.

INTRODUCED BY: /s/ Councilman Joseph Doyle

Councilman Doyle stated that the additional appropriation is the cost to begin the procedures at the golf course to have the opportunity to sell beer and wine.

President McKee asked if there were any questions or comments by the general public or Council and hearing none, President McKee opened the formal public hearing, repeating three times "Any questions or comments by the general public at this time?"

Council President McKee repeated three times, “Any questions or comments by the general public at this time? There was no response and the public hearing was closed.

Councilwoman Nelson moved to adopt the ordinance, second by Councilman Doyle.

Council President McKee 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 Doyle, Espar, Jankowski, McKee, Boy, Meer, Milsap, Murphy, and Nelson (9). NAYS; None (0).**

The Clerk read on third reading by title only,

MICHIGAN CITY COMMON COUNCIL

ORDINANCE No: 4055

AN ORDINANCE REQUIRING THE REMOVAL OF GRAFFITI IN ORDER TO PROTECT THE PUBLIC HEALTH, SAFETY AND WELFARE, DECLARING THAT PROPERTY MAY BECOME A NUISANCE OWING TO THE FAILURE OF RESPONSIBLE PARTIES TO REMOVE GRAFFITI AFTER HAVING BEEN REQUESTED TO DO SO BY CITY, ESTABLISHING A PROCESS FOR THE REMOVAL OF GRAFFITI AND THE RECOVERY OF PUBLIC CLEAN-UP EXPENSES, CREATING CIVIL REMEDIES, AND ADDING ARTICLE VII TO CHAPTER 46 OF THE MUNICIPAL CODE OF THE CITY OF MICHIGAN CITY, LA PORTE COUNTY, INDIANA

WHEREAS, graffiti is criminal vandalism defacing public and private property without permission of the owner, creating a financial burden on citizens, businesses, and the City to repair;

WHEREAS, graffiti can be a powerful visual symbol of disorder which erodes public safety, encourages vandalism and other criminal activity, reduces the attractive physical qualities of neighborhoods, and can contribute to a downward spiral of blight and decay, lessening property values, business viability and ultimately tax revenues;

WHEREAS, reducing graffiti requires a comprehensive strategy that includes the prompt removal of graffiti and the encouragement of artistic expression only on appropriate spaces obtained with the permission of public and private property owners;

WHEREAS, the City and many property owners commit resources and energy to diligently removing graffiti, and the City supports the efforts of the community who work to remove graffiti in their neighborhoods and business districts;

WHEREAS, with the consent of private property owners, the City intends to provide Graffiti Removal Assistance Programs to private property owners victimized by graffiti;

WHEREAS, these combined public and private efforts to reduce graffiti are undermined by those few property owners who fail to cooperate in cleaning graffiti from their property;

WHEREAS, the failure to maintain one’s property by removing graffiti within a reasonable period of time constitutes a public nuisance, and because graffiti is a public nuisance, the City Council finds that requiring property owners to remove graffiti and providing enforcement actions for failure to remove graffiti from private property is in the best interest of the public’s health and safety.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Michigan City that Article VII, which shall be entitled “Graffiti Nuisance Code” is added to Chapter 46 of the Michigan City Municipal Code and shall read as follows:

Sec. 46-192. Definitions.

Graffiti means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted, or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or despite advance authorization, is otherwise deemed a public nuisance.

Sec. 46-193. Prohibited Acts; Minors; and Fines.

(a) *Defacement of property.* No person shall willfully or wantonly damage, mutilate or deface any surface on public or private buildings, structures, or other facilities by placing thereon any marking, carving, or

graffiti. It shall be the responsibility of the property owner to restore said surface to an approved state of maintenance and repair.

(b) *Minors.* No parent or legal guardian of a child under seventeen (18) years of age shall knowingly and intentionally allow the child to violate any provisions herein.

(c) *Fines; Person(s) causing graffiti.* A person who has willfully or wantonly damaged, mutilated or defaced any surface on public or private buildings, structures, or other facilities by placing thereon any marking, carving, or graffiti shall be punished by a fine of Two Hundred Fifty dollars (\$250.00) for the first offense; Five Hundred Dollars (\$500.00) for the second offense; and One Thousand Dollars (\$1,000.00) for each subsequent offense. In the case of a minor, the parents or legal guardian shall be liable for the payment of all fines.

(d) *Fines: Property Owner.* In addition to payment of the costs incurred by the city to remove the graffiti, a property owner failing to remove graffiti shall be fined not more than fifty dollars (\$50.00) per diem. A separate offense shall be deemed committed on each day that a violation occurs or continues.

Sec. 46-194. Graffiti Declared Nuisance; Duty of Owner.

The existence of graffiti on public or private property in violation of this Article is expressly declared to be a public nuisance, and therefore is subject to the removal and abatement provisions herein. It is the duty of the owner of the property to which the graffiti has been applied to keep the property at all times clear of graffiti.

Sec. 46-195. Removal of Graffiti; Notice.

(a) *Removal required.* It shall be the duty of the owner of the building, structure, wall, dumpster, or other personal property upon which any graffiti has been placed to remove, cover, or eradicate the graffiti. When the central service department or any other appropriate city department has probable cause to believe graffiti has been placed upon any private property, that city department shall notify the owner of the presence of the nuisance and shall provide a ten (10) day time period for the owner to abate the nuisance. For good cause shown, the owner may be given additional time to meet the removal requirements without being charged with a violation of this section.

(b) *Notice.* It is violation of this section for any property owner in the City to permit property that is defaced with graffiti to remain defaced for a period of ten (10) days after notice.

(c) *Manner to provide Notice.* Notice under this Article shall be given:

- (1) personally in writing; or
- (2) by letter addressed to the owner's post office address or last known residential address; or
- (3) By posting the notice on or near the front door of the main building on the property to which the violation relates; or
- (4) By posting the notice on a placard attached to a stake driven into the ground on the property to which the graffiti relates, if the property contains no buildings.

(d) *Content of Notice.* The notice shall contain the following information:

- (1) The address of the property sufficient for identification of the property, which is not required to be a legal description;
- (2) A description of the location of the graffiti on the property;
- (3) A statement that the graffiti must be removed within ten (10) days after receipt of the notice and that if the graffiti is not abated within that time the City will declare the property to be a public nuisance subject to the abatement procedures in this Article and any other legal remedy available; and
- (4) A statement that should the owner fail to abate the situation within the stated time period, the City may enter upon the property and remove such graffiti by any means necessary, and the cost of removal shall be collected from the owner of the property, and if said owner fails to timely pay said cost of removal of graffiti, the cost remaining unpaid shall become a lien on said real estate.
- (5) Any information, if available, identifying any graffiti removal assistance programs available through the City and private graffiti removal contractors.

(e) *Receipt of Notice.* Notice under this Article shall be deemed to have been received:

- (1) For personal service, as of the date the notice was given personally to the owner; or
- (2) For mailed notice, the date the notice is mailed; or
- (3) For notice by posting, ten (10) days after notice was posted on the property or structure.

Sec. 46-196. Graffiti Removal Assistance Programs Available Through City

(a) *Removal from private property.* **The City will offer removal of graffiti, for which Notice will be sent explaining the waiver process which is needed before entering the property and removing the graffiti.** After securing the written consent of the property owner and a "Release of the City from liability for property damage or personal injury," the City may enter the property to remove the graffiti. The City shall be authorized to use public funds and equipment for the removal of the graffiti, or for the painting or repair of the graffiti, but shall not authorize or undertake to provide for the painting or repair of any more extensive an area than that where the graffiti is located.

- (b) *Graffiti removal kits.* After securing the written release of the City from liability for property damage or personal injury, a property owner may be provided with a graffiti removal kit from the City. A fee of \$25.00 shall be payable to the Controller's Office for each graffiti removal kit provided to the property owner, unless the property owner demonstrates the lack of financial ability to pay for the graffiti removal kit

Sec. 46-197. Removal by City authorized.

In addition to any fine which may be imposed, if the owner fails to remove, cover, or otherwise eradicate the graffiti within ten (10) days from the issuance of the notice, or such later date as the owner may be allowed, the city or its authorized agent may enter upon the property and remove such graffiti by any means necessary, and the cost of removal shall be collected from the owner of the property.

Sec. 46-198. Request for Hearing; Decision and Order.

(a) Within ten (10) days following the date the city serves the required notice, the property owner may request a hearing on the matter before the Board of Works and Public Safety of the City of Michigan City. The property owner shall file in the office of the city clerk a written petition requesting the hearing and setting forth a brief statement of the grounds therefore. Upon receipt of the petition, the board shall set a time and place for the hearing. Unless written notice is waived by the property owner, the property owner shall be provided written notice of the time and place of the hearing. The hearing shall be commenced not later than ten days after the day on which the petition was filed. Upon application of the petitioner, the board may postpone the date of the hearing for a reasonable time beyond the ten-day period, if in its judgment the petitioner has submitted a good and sufficient reason for the postponement. All the hearings shall be open to the public.

(b) The hearing shall be conducted for the purpose of determining whether the property owner's conditions constitute a public nuisance. At the hearing, the property owner shall be given an opportunity to be heard and to show why the notice should not be modified or withdrawn. At the hearing, the property owner and the city may present any evidence relevant to the proceedings.

(c) After the hearing, the board shall sustain, modify, or withdraw the notice, depending upon its findings as to whether the provisions of this article have been complied with. The board shall make findings of fact relative to a decision hereunder, which shall be reduced to writing. If the board sustains or modifies the notice, it shall be deemed to be an order. Any notice serviced shall automatically become an order if a written petition for hearing is not filed within ten days after the notice is served. The decision and all orders of the board shall be reduced to writing.

(d) If the order of the board sustains or modifies the notice, the board shall issue an order containing the following information:

1. The decision and order regarding the alleged graffiti nuisance property, including findings of fact and conclusions in support of the decision and order;
2. Any required abatement action and the date by which the abatement must be completed;
3. A description of the civil fines assessed based on Sec. 46-193(c) prior to the issuance of the order;
4. A description of the additional civil penalties which will automatically accrue pursuant to subsection (g) of this section if the responsible party fails to abate the graffiti nuisance property by the date established in the decision and order;
5. The date after which the City may abate the graffiti nuisance property pursuant to Sec. 46-196 if the required abatement is not completed

(e) The board shall mail a copy of the decision and order to the property owner within ten (10) working days of the close of the hearing. If an address for mailing cannot after due diligence be ascertained, a copy of the decision and order shall be posted conspicuously at the property.

(f) If the person to whom the notice and hearing was issued fails to appear at the scheduled hearing, the board shall upon submittal of sufficient evidence enter a decision and order finding that the property is a graffiti property creating a nuisance, the person to whom the notice was issued is the responsible party, the required abatement is reasonable, and the required abatement action had not been completed prior to the date established in the notice; and assessing the appropriate fines and penalties.

(g) If the property owner fails to abate the nuisance as ordered by the board, monetary penalties, in addition to any the fines assessed under Sec. 46-193(c), shall automatically accrue in the amount of One Hundred Dollars (\$100.00) per day until the abatement is complete and shall be due immediately upon accrual.

Sec. 46-199. Payment of fine or penalty.

Any payment of a fine or penalty pursuant to this Article does not relieve the responsible party of the duty to abate the graffiti nuisance. Any monetary fine or penalty constitutes a

personal obligation of the responsible party to whom the notice of violation and hearing is issued.

Sec. 46-200. Abatement by City; Payment of Costs by Owner; Imposition of Lien.

(a) If an owner fails to abate a graffiti nuisance during the time allowed for abatement or fails to respond to the notice of the nuisance, the city may abate the nuisance at the property owner's expense. This remedy shall be in addition to any other remedy available to the City. Persons authorized by the City to abate the nuisance may enter private property to examine a public nuisance, to obtain information to identify the nuisance, and to remove or direct the removal of the nuisance. Whenever the City shall abate a graffiti nuisance as provided by this Article, the City shall have the option of selecting a private contractor to abate the nuisance.

(b) The City shall charge the property owner for all work performed to abate the graffiti nuisance, and cause the expense thereof to be assessed on the property upon which such expense is incurred.

(c) A statement of the costs incurred by the city to abate the nuisance, which may include a statement for all fines and penalties under this Article, shall be mailed to the property owner, if the mailing address is known, and, if not known, may be published in a newspaper of general circulation in the city. The statement shall demand payment within thirty (30) days from the date of receipt or publication. If such statement has not been paid within such time, said cost shall become a lien upon the real estate affected. A city representative or agent shall report the costs to the City Controller, who shall certify the costs to the County Auditor. The Auditor shall place the same on the tax duplicate as a charge against the owner of the real estate, to be collected by the County Treasurer with the state, county and municipal taxes assessed against the owner's real estate at the regular time for paying the taxes. The city may foreclose such liens in a proceeding brought in accordance with applicable law. The remedy allowed in this subsection shall not be the city's sole remedy.

Sec. 46-201. Recovery of cost from person responsible for placing graffiti.

The exercise of the remedies provided in this Article by the City shall not prevent the property owner from recovery, through civil suit or otherwise, the cost of removal or other costs from the person responsible for placing the graffiti on his or her property.

This Ordinance shall take effect after the same has been passed by the Council, approved by the Mayor, and any necessary publication.

INTRODUCED BY: /s/Angie Nelson, Member
Michigan City Common Council

/s/Willie Milsap, Member
Michigan City Common Council

Councilwoman Nelson moved to adopt the Ordinance, second by Councilman Milsap.

Councilwoman Nelson addressed Councilwoman Boy's questions regarding the language in the ordinance.

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

UNFINISHED BUSINESS

There was no unfinished business.

NEW BUSINESS

There was no new business

COMMENTS FROM THE PUBLIC

There were no comments from the public.

COMMENTS FROM THE COUNCIL

Councilman Murphy reminded everyone they are invited to the presentation of the Economic Development visions of TND Planning in Baltimore, MD and Glenn Kellogg of Urban Advisor Ltd their findings of economic impact analysis of the location of the South Shore rails in Michigan City will be held on May 14, 2009 in the Council Chambers at City Hall.

Councilwoman Boy thanked everyone that came to the Arbor Day celebration, Saturday, April 29, 2009.

Councilman Meer thanked Mayor Oberlie, the Board of Public Works and Safety, and Bill Phelps for addressing the safety issues on the curve at Woodlawn and Hitchcock Street. Mr. Meer also thanked them for their help with drainage issues in the Knapp School area that have been addressed.

Councilman Meer announced the Third Coffee with the Council will be held on Saturday, May 16, 2009, at the VFW located at Earl Road and Ohio Street, from 9:00 a.m. to 11:00 am. Mr. Meer stated representation from the Fire and Police Departments would also be there to answer any questions or concerns.

Councilman Meer requested from the Utilities Chairperson, Phil Jankowski, to look into the situation in regards to the flushing of the Water Departments filters, along with surcharges in the zoo area.

Councilman Meer asked Parks and Recreation Chairperson, Joe Doyle to check on the status of the walkway that was never finished to the Joe Hawkin's monument.

Councilman Meer commented on the proposed Career Center and reminded everyone to vote on May 19, 2009.

ADJOURNMENT

A motion by Councilman Milsap, supported by Councilman Espar, and there being no further business to transact, President McKee declared the meeting ADJOURNED (approximately 8:15 p.m.).

Thomas F. Fedder, City Clerk