

## **REGULAR MEETING – June 1, 2010**

The Common Council of the City of Michigan City, Indiana, met in regular session on Tuesday evening, June 1, 2010, 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 Marc Espar.

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, Angie Nelson, and Richard Murphy, (7).

**ABSENT:** Joe Doyle and Willie Milsap (2).

**A QUORUM WAS NOTED PRESENT.**

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

### **APPROVAL OF MINUTES**

President Espar inquired whether there were any corrections, deletions, or additions to the minutes of the Regular Meeting of May 18, 2010.

Councilwoman Boy made a motion to approve the minutes as printed, second by Councilman Meer. The minutes were approved as printed.

### **REPORTS OF STANDING COMMITTEES**

There were no reports of standing committees.

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

There were no reports of special or select committees.

### **REPORTS of OTHER CITY OFFICERS and DEPARTMENTS**

There were no reports of other city officers and departments.

**PETITIONS**

There were no petitions.

**COMMUNICATIONS**

Councilman McKee read the following letter received from the Family of Joe Doyle:

We are happy to report that Joe is recovering nicely and are very appreciative of the support and well wishes he has received from all of the Michigan City community. It is this same type of care and kindness that has made Joe so committed to serve. We expect we don't have to list all the various opportunities he has taken throughout the years in helping the people of Michigan City. We do however, expect it needs to be indicated just how much all of you mean to him. It is his love for this community and your continued support that will get him back on his feet. For this we are extremely grateful to you all. You can anticipate Joe to provide a more detailed report in the near future.

Thankfully,  
Family of Joseph Doyle

Council President Espar stated that the Council wishes Councilman Doyle a speedy recovery.

Attorney Meyer presented a copy of the letter he received from Attorney Phillips (Newby Lewis Kaminski Jones, LLP) to the Clerk to be filed, advising the Council Attorney Phillips' response to their request of copies of all documents from the investigation he did for the Sanitation District.

President Espar stated that he would address this matter under "Unfinished Business."

**RESOLUTIONS**

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

**MICHIGAN CITY COMMON COUNCIL****RESOLUTION NO. 4449****SUPPORTING AFTER-SCHOOL PROGRAMS AND REQUESTING INDIANA CONGRESSIONAL DELEGATION TO VOTE FOR FULL FUNDING**

**WHEREAS**, across our country on a daily basis, 15 million students are left unattended after-school hours; and

**WHEREAS**, 8 million students are served nationally by after-school programs; and

**WHEREAS**, 1.2 million students drop-out of school annually, said drop-outs resulting in \$300 billion in lost wages over their lifetime; and

**WHEREAS**, during the hours of 3 p.m. and 7 p.m. when children are most at risk for juvenile crime and experimentation with drugs, alcohol, cigarettes, and sex, and after-school programs have a proven record of keeping children safe; and

**WHEREAS**, Congress has previously authorized \$2.5 billion to fund after-school programs and activities, however, Congress has failed to apportion expenditures to that amount; and

**WHEREAS**, communities like ours rely on 21<sup>st</sup> Century Community Learning Centers (21<sup>ST</sup> CCLC) as an essential source of after school program funding, with said funding being leveraged with local, state, and private funds as well as partnerships involving faith based, not-for-profits, and businesses; and

**WHEREAS**, Michigan City's after-school program, Safe Harbor, serves 1200 students through its partnership with 17 youth serving agencies such as the Imagination Station and the Boys and Girls Club; and

**WHEREAS**, through Safe Harbor and the collaborative partnership with Ivy Tech, Michigan City Chamber of Commerce, and the Michigan City Economic Development Corporation, free computer aided design (CAD) classes were provided to students for dual credits (both high school and college); and

**WHEREAS**, the 2009 graduation rate was increased by 5.29% as a result of Safe Harbor's first year program at the high school that offered students an opportunity to make up academic credits.

**NOW, THEREFORE, be it resolved** by the Common Council of the City of Michigan City, Indiana that:

**Section 1.** The Michigan City Common Council supports congressional efforts to protect and expand after-school programming and urges Congress to consider after-school partners when designing school reform models.

**Section 2.** The Michigan City Common Council encourages members of the Indiana Congressional delegation to support the full funding of after-school programs.

**Section 3.** Upon adoption by the Michigan City Common Council and approval by the Mayor, this Resolution shall be sent to all members of the United States Congress who represent the State of Indiana.

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

INTRODUCED BY: /s/ Angela Nelson, Member  
Michigan City Common Council  
CO-SPONSOR BY: /s/ Patricia Boy, Member  
Michigan City Common Council

Councilwoman Nelson read the following Sections of the proposed resolution;

**Section 1.** The Michigan City Common Council supports congressional efforts to protect and expand after-school programming and urges Congress to consider after-school partners when designing school reform models.

**Section 2.** The Michigan City Common Council encourages members of the Indiana Congressional delegation to support the full funding of after-school programs.

**Section 3.** Upon adoption by the Michigan City Common Council and approval by the Mayor, this Resolution shall be sent to all members of the United States Congress who represent the State of Indiana.

Councilwoman Nelson stated several reasons why to support the resolution.

Councilwoman Boy made a motion to adopt the resolution, second by Councilwoman Nelson.

Council President Espar asked if there were any other questions or comments by the general public or Council on the proposed resolution and hearing none, the resolution was adopted by the following vote: **AYES: Council Members Murphy, Nelson, Boy, Espar, Jankowski, McKee, and Meer (7). NAYS: None (0).**

## ORDINANCES

The Clerk read on first reading by title only, **DESIGNATING THE COMMON COUNCIL AS THE CITY AGENCY WITH THE SOLE AUTHORITY TO APPROVE ANY AND ALL CLAIMS AGAINST, AND ANY AND ALL CLAIMS AGAINST, AND ANY AND ALL EXPENDITURES AND TRANSFERS FROM, THE CITY'S RIVERBOAT FUND AND BOYD DEVELOPMENT FUND**

Introduced by: Phil Jankowski  
Marc Espar  
Robert McKee

Mayor Oberlie addressed the Council stating his concerns regarding language clarification about expenditures and purchase orders.

Council President Espar referred the proposed ordinance to the Finance Committee.

President Espar asked if there were any other questions or comments by the general public or Council on the proposed ordinance and hearing none, the ordinance was held over for second reading.

The Clerk read on first reading by title only, **DELETING THE APPROPRIATION FOR ANY FULL-TIME EMPLOYEE POSITION FUNDED THROUGH THE MICHIGAN CITY 2010 BUDGET FOR ANY AND ALL FULL TIME POSITIONS THAT BECOME VACANT DURING 2010 FOR ANY REASON AND REQUIRING THE MAYOR TO SEEK AN ADDITIONAL APPROPRIATION TO FILL THE POSITION DURING 2010**

**Introduced by:** Robert McKee  
Marc Espar

Mayor Oberlie addressed the Council requesting an explanation in terms of a definition of what positions if any that become vacant during 2010 will not have to seek an additional appropriation. Mayor Oberlie stated his concerns regarding the proposed ordinance in reference to the Police and Fire Department contracts.

Council President Espar referred the proposed ordinance to the Finance Committee for consideration.

President Espar asked if there were any other questions or comments by the general public or Council on the proposed ordinance and hearing none, the ordinance was laid over for second reading.

The Clerk read on first reading by title only, **APPROVING AN ADDITIONAL APPROPRIATION IN THE BUDGET OF THE RIVER BOAT FUND FOR GOVERNMENT AND PUBLIC ACCESS TELEVISION SERVICES**

**Introduced by:** Phillip Jankowski  
Marc Espar

**(DECREASE: Fund #9000, Riverboat Fund Unappropriated - \$105,000.00.  
INCREASE: Account #9000 0000 03 439.011 Contractual Services Appropriated \$105,000.00.)**

Council President Espar advised there would be a Formal Public Hearing at the next Council meeting (June 15, 2010).

Councilman Jankowski stated the proposed appropriation would provide funding for the balance of the year for the operation of the Public Access and Governmental Channel.

Council President Espar asked if there were any other questions or comments by the general public or Council on the proposed ordinance and hearing none, the ordinance was laid over for second reading.

The Clerk read on first reading by title only, **AMENDING ORDINANCE NO. 4072 SETTING SALARIES AND WAGES FOR APPOINTED OFFICIAL AND EMPLOYEES OF THE CITY OF MICHIGAN CITY FOR THE CALENDAR YEAR 2010**

**Introduced by :** Robert McKee  
Marc Espar

Council President Espar advised the proposed ordinance is funding the position that the

Council previously gave a recommendation through a resolution for the Facilities Manager's position.

President Espar stated that this ordinance would not be referred to committee.

Council President Espar asked if there were any other questions or comments by the general public or Council on the proposed ordinance and hearing none, the ordinance was laid over for second reading.

The Clerk read on third reading by title only,

**MICHIGAN CITY COMMON COUNCIL**

**ORDINANCE NO. 4094**

**AMENDING CHAPTER 2, ARTICLE VIII OF THE MUNICIPAL CODE  
OF THE CITY OF MICHIGAN CITY, INDIANA,  
COMMONLY KNOWN AS THE ETHICS ORDINANCE**

**WHEREAS**, the Common Council of the City of Michigan City adopted Ordinance No. 4043 which is now a part of the Municipal Code of the City; and

**WHEREAS**, the Ethics Advisory Commission has recommended various amendments to correct certain errors, lessen the administrative burden of compliance, and more accurately reflect the intent of the Common Council at the time it passed said Ordinance; and

**WHEREAS**, the Common Council has considered such amendments offered by the Ethics Advisory Commission, and has additionally considered its own amendments to said Municipal Code;

**NOW THEREFORE BE IT ORDAINED** by the Common Council of the City of Michigan City, Indiana that sections 2-482, 2-483, 2-484, 2-487, 2-488, 2-490, 2-491, 2-492, and 2-495 of Chapter 2, Article VIII of the Municipal Code of Michigan City shall be and are hereby amended as follows:

**Sec. 2-482. General provisions.**

- (a) All department heads, boards, commissions, and employees shall receive from the office of the city clerk a copy of this article within 45 days after its adoption.
- (b) An electronic copy of this article shall be available for review by all officials and employees. 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 article 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 B, of this article and direction as to where they may obtain a copy hereof.
- (c) 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 article.
- (d) In the event that any section of this article 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 article. 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.
- (e) This article 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.
- (f) 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.

- (g) Any employment, appointed position, or contractual relationship that exists prior to adoption of this article shall not be a violation of this article.
- (h) No official shall represent a person, entity, or petitioner in any matter before the city for a period of 180 days following termination of duties or responsibilities to the city.
- (i) 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.
- (j) This article 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.
- (k) This article 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.
- (l) Violations of this article may result in disciplinary actions up to and including termination.
- (m) The singular of any noun, when used in this article, includes the plural whenever appropriate and the masculine includes the feminine and vice versa.

### Sec. 2-483. Definitions.

For purposes of this article, 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 established by state statute or by municipal code, local article, resolution, or motion, 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) **(the) Commission** means the ethics advisory commission created by this article.
- (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 any agency of the city, but does not include an independent contractor.
- (i) **Employer** means any agency of the city.
- (j) **Ethics advisory commission** means the commission established by section 2-490 of this article, and is also an agency under the jurisdiction of this article.
- (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 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 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.
  - (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 percent or more of a business entity.
  - (r) **Mayor** means the mayor of the city.
  - (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 by municipal code, 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); those related by law (including adoption); 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. To be considered a resident, a person who has another home or other residence outside of the city must spend more than 60 percent of their time in the home within the city.

#### **Sec. 2-484. Application of policy.**

This article shall apply to all officials and employees of the city, as defined in section 2-483 of this article, and shall include all agencies of the city. The written acceptance of this policy shall be condition for initial and continuing service with the city by an appointed official.

#### **Sec. 2-487. 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, and is included in Appendix A of this article. 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 his own 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 who has a financial interest, personally or through his own relative, in any business entity doing or seeking to do business with any agency of the city, shall, in the discharge of his official duties, influence or attempt to influence the selection of or the conduct of business between such business entity and any agency of the city.
- (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 \$100.00 in any 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 his own relative to any position that:
    - a. Places the official or employee in the same agency or department as his own relative, 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 his own relative; or
    - c. Allows the official or employee to directly or indirectly influence salary adjustments, career progress, or other managerial activities involving his own relative; or
    - d. Requires the official or employee to audit or review the work of his own 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 180 days after his membership has ended.

**Sec. 2-488. Uniform conflict of interest disclosure statement.**

The commission shall require:

- (a) All administrative or executive officials of the city; and

- (b) All elected and appointed officials of the city; and
- (c) All members of boards and commissions for the 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;

to file a Uniform Conflict of Interest Disclosure Statement on or before the first day of May of each year and to update it as any new conflict may arise. Copies of this form shall be made available in the Personnel Office of the city, and is included as may be amended, as Appendix A of this article. The personnel director or designee or designees appointed by the mayor shall keep completed forms on file in the personnel office or the related department.

**Sec. 2-490. 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 21 years of age at appointment.
  - (1) Four appointed board members: Two appointed by the mayor and two 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, nonparty public office:
    - a. One mayoral appointment and one council appointment shall be for an initial period of one year; and
    - b. One mayoral appointment and one 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 of commissioners.* 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, and the ethics officer with the exception of his salary or wages as a member of the personnel department, 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.

No person shall serve on the ethics advisory commission who has been convicted of any felony of any kind, or any misdemeanor involving dishonesty or moral turpitude in the State of Indiana or in any other state.
- (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) *Resignation.* Any member may resign from the commission at any time. Any member who misses three (3) consecutive meetings for reasons unacceptable to the majority of the commission shall be deemed to have resigned.
- (g) *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 article 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.
  - (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) The above statutes are available on the State of Indiana website at [www.in.gov](http://www.in.gov).
  - (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 article. 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 article.
    - c. To ensure that all employees and officials are informed and aware of the provisions of this article as well as those in their respective city handbooks, and to gather, maintain, and annually review the filing of the most currently signed "Uniform Conflict of Interest Statement" 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 article and for such other legislation affecting the subject matter of this article 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 article, 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.

**Sec. 2-491. 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 of the four commission members shall constitute a quorum to conduct a hearing, or a regular or special meeting, and a majority of the appointed 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 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 2-490 of this article, the commission shall hold void any votes on any order of business of any member who caused such violation.
- (c) *Meetings.* The inaugural meeting will be held within one month of enactment of this article. The commission shall hold an annual meeting in 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 by 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 section 2-486 of this article.

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

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 subject to budgetary authority.

**Sec. 2-492. Questions, complaints, and investigations.**

- (a) *Questions.* Officials and employees, when in doubt about the applicability and interpretation of this article 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 article 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 and findings to the proper authority.* Complaints and findings filed with the personnel department regarding possible violations of this article shall be forwarded to the commission with the exception of complaints concerning members of the fire department and police department, which shall be forwarded to the commission of the respective department for appropriate action under the laws, articles, and rules pertaining to those departments and no further action shall be taken under this article concerning said complaints.
- (1) All complaints concerning employees or officials shall be submitted by the ethics officer to the commission and to the individual(s) being charged with the complaint within two (2) business days.
- (2) The individual charged with the complaint shall have thirty (30) days to respond in writing to the complaint. A thirty (30) day extension for the response may be requested provided that written evidence is furnished showing that response is not possible within the initial thirty (30) day period. This extension must be approved by a majority vote of the commission.
- (3) Upon receipt of a complaint, the ethics officer shall submit it 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.
- (4) Alternatively, the commission may:
- refer the complaint to the ethics officer who shall within ten (10) business days meet individually with all parties and make recommendations to the Mayor and the head of the department involved.
  - Upon a majority vote, reject, without further proceedings, a complaint that the commission considers frivolous, inconsequential, or outside the purview of this article;
  - 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
  - Upon a majority vote, determine that the complaint does not allege facts sufficient to constitute a violation of this article and dismiss the complaint.
  - 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 shall 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.
  - 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 article, it shall set a public hearing on the matter within 60 days after making that determination. The person who is the subject of the complaint shall be notified in writing within 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 48 hours before the meeting as specified in IC 5-14-1.5-5.
  - Either the subject of the complaint or the person filing the complaint may request a continuation of the hearing. The commission may grant such continuation, but it shall be scheduled no later than 30 days after the original hearing date. However, if the commission determines that the preliminary investigation must be completed in less than 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 article 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 article 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 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 article, the commission may recommend to the proper authority that the official or employee be subject to disciplinary action.

#### **Sec. 2-495. Enforcement.**

Any official or employee who fails to file a Uniform Conflict of Interest Statement when required by section 2-488 of this article shall be subject to a fine as established in Sec. 50-32 of this code for each 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.

Failure of any official or employee to file a Uniform Conflict of Interest Statement when required by section 2-488 of this article 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 article may be cause for a fine as established in Sec. 50-32 of this code; 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 articles 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 45 calendar days after receipt of the written recommendation. This section shall not derogate from employee rights under any collective bargaining agreement or personnel article, or rules promulgated thereunder. If the appropriate authority determines that the written response required in this section cannot be made within 45 calendar days after receipt of the recommendation, because of procedures prescribed under any collective bargaining agreement, personnel article, or rule promulgated thereunder, the appropriate authority shall so report to the commission within 45 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.

**THIS ORDINANCE** shall take effect after passage by the Common Council, signature of the Mayor, and any necessary publication.

INTRODUCED BY: /s/ Patricia Boy, Member

CO-SPONSORED BY: Joe Doyle, Member

Councilwoman Boy made an Author's amendment to the first paragraph in Sec. 2-495 to read as follows;

Any official or employee who fails to file a Uniform Conflict of Interest Statement when required by section 2-488 of this article shall be subject to a fine as established in Sec. 50-32 of this code for each 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.

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

Council President Espar asked if there were any other questions or comments by the general public or Council on the proposed ordinance and hearing none, the ordinance was adopted by the following vote: **AYES: Council Members Murphy, Nelson, Boy, Espar, Jankowski, McKee, and Meer (7). NAYS: None (0).**

The Clerk read on second reading by title only,

**MICHIGAN CITY COMMON COUNCIL**

**ORDINANCE NO. 4095**

**ESTABLISHING SECTION 50-32, FINE FOR DELINQUENT FILING OF THE UNIFORM CONFLICT OF INTEREST DISCLOSURE STATEMENT, IN CHAPTER 50 OF THE MUNICIPAL CODE OF THE CITY OF MICHIGAN CITY, INDIANA**

**WHEREAS**, the Common Council of the City of Michigan City believes that all fees, fines, and permits should be located in Chapter 50 of the Municipal Code; and

**WHEREAS**, Section 2-495 of the Municipal Code refers to a fine for “Enforcement” and said fine should be established and added to Chapter 50 of the Municipal Code.

**NOW THEREFORE BE IT ORDAINED** by the Common Council of the City of Michigan City, Indiana that section 50-32 be added to Chapter 50 of the Municipal Code of the City of Michigan City, Indiana and shall read as follows:

**Sec. 50-32. Fine for delinquent filing of Uniform Conflict of Interest Disclosure Statement.** The fine established by section 2-495 is \$25.00 for each thirty (30) days such statement is delinquent. The maximum penalty under this subsection in any one-year time period is \$300.00.

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

**Secs. 50-33 – 50-50. Reserved.**

INTRODUCED BY: /s/Patricia Boy, Member  
Michigan City Common Council

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

Council President Espar asked if there were any other questions or comments by the general public or Council on the proposed ordinance and hearing none, the ordinance was adopted by the following vote: **AYES: Council Members Nelson, Boy, Espar, Jankowski, McKee, Meer, and Murphy (7). NAYS: None (0).**

## **UNFINISHED BUSINESS**

President Espar addressed the Council regarding the status of the documents Attorney Meyer requested from Attorney Nelson and Attorney Phillips.

Councilman Jankowski made a motion to subpoena the documents from Attorney Phillips and Attorney Nelson if not received by Friday, June 4, 2010 at 12:00 p.m., second by Council Members McKee and Boy.

Attorney Meyer addressed the Council regarding what documents need to be at the Clerk's Office to know to move forward or not in regards to filing a subpoena.

Discussion ensued among Attorney Meyer, Councilmen Jankowski and McKee.

Council President Espar asked if there were any other questions or comments by the general public or Council and hearing none, the motion was passed by the following vote: **AYES: Council Members Boy, Espar, Jankowski, McKee, Meer, Murphy, and Nelson (7). NAYS: None (0).**

## **NEW BUSINESS**

President Espar advised the Michigan City Social Status of African-American Males Commission incumbent Mrs. Gerry H. Jones term expires July 23, 2010. President Espar stated nominations would take place at the next Council meeting (June 15, 2010).

## **COMMENTS FROM THE PUBLIC**

There were no comments from the public.

## **COMMENTS FROM THE COUNCIL**

Councilman McKee presented the following to the Council:

### **June 1<sup>st</sup> Council Meeting Comments from the Council**

Mr. President, I could not help but take note of paragraph 2 in the letter written by Attorney Meyer requesting records from the sanitary district. In the interest of time, allow me to summarize this paragraph into 2 sentences. First, the sanitary district is an executive department of the City of Michigan City which makes the citizens of Michigan City the true owners. Second, therefore, the responsibility, duty and loyalty of this department and any of its management are to the taxpayers of Michigan City.

This is true of all city government. As owners, the taxpayers should expect and deserve transparency, accountability, and reason to believe that City management and administration will adhere to state law and city ordinances. It is my strong belief that in too many instances, the sanitary district and the city administration has not complied with this simple but fundamental expectation.

The sanitary district has become the poster child for "what can we do wrong next?" At the risk of oversimplifying, the management fired a 19 year veteran employee for reporting numerous safety violations. They took no action against the management officials who were either blindly unaware of these issues or chose to ignore them. An A to Z investigation of everything and everyone was promised and all we ended up with was an A to Z investigation of the single employee in question. The Mayor, in typical fashion, hid behind the board as if he had no ability to exert influence in the situation. He then entered the fray when it was too late to have any measurable impact by forwarding a call to action letter to the parties involved. The Mayor appears to complain about the people he appointed not doing what is right but makes no effort to impose any penalty or discipline. This passive inaction has aided the district in creating zero transparency, no accountability, and a disdain for following state law and local ordinances.

Sadly, the Sanitary District has not cornered the market on this behavior in our City government. It is far reaching and seemingly pervasive. After 2 ½ years on this council, I have lost my patience. I make these comments publicly because speaking privately with the administration on these matters has not worked. Concerns are greeted with lukewarm response, inaction, and a scramble to hide the facts. I have given this entire administration every opportunity to take corrective action behind the scenes. However, their protocol has been to take advantage of my public silence. And, in the end, nothing has been done to correct obvious wrongs and deficiencies.

Another example can be found within the Park Department. The Splash pad costs were completely misrepresented to this council. Then, to add insult to injury, the administration, without authorization, misspent \$46,000 out of an extremely over- budget and unfinished project for a concession trailer. Thereafter, they provided misleading information, hired a manager for the splash park almost a year early and then tried to pass all of the improper action

off as if it were a simple oversight or some kind of accounting misstep. Now, a year later, an attempt to correct this will take place by making certain bookkeeping entries as if it were the plan all along.

Our Central Maintenance department is another example. The inefficiency is appalling. The quality of work is so bad that one of our better run departments (the water department) refuses to take their vehicle and equipment to them for maintenance. There has been a steady drum beat from this council and finance committee on this issue. The Local Government and Efficiency Task Force that studied this matter came up with the same conclusions as the Finance Committee and our own Water Department. Yet, nothing has been done about it by this administration. Rather than correct the problem, more reports are generated, more excuses are delivered, and distorted facts are recited in an attempt to cover up the problem.

Within the Fire Department one only needs to look at the most recent State of Indiana audit. It was clear we had an employee that was cited for what would be considered ghost- payrolling; as you may or may not know, this is the practice of receiving compensation for a job without performing the job duties. When originally questioned and faced with the facts, there was simply no answer. However, given time, this administration, once again, applied the protocol of revisionist history and creative accounting. The attempt by the administration was to explain this wrongful act as a simple oversight in recordkeeping. However, the State Board of Accounts audit draws an inference to much more than that and clearly notates a violation of State law. Had there been no violation and the explanation satisfactory, the comments would have been removed from the final audit report.

The planning department has continually allowed and/or approved noncompliant buildings, structures, and construction that are in contradiction to the ordinances. This has led to legitimate taxpayer complaints in neighborhoods, costly lawsuits being filed, and questionable resolutions to self inflicted problems.

The administration in general has created a culture where ordinances are ignored and these questionable actions are taken on a routine basis. More effort is then spent, with broom in hand, sweeping things under the rug than the effort it would have taken to do things correctly from the beginning. Crisis management has become commonplace even though proper planning and proactive management would keep the crisis from occurring in the first place. The administration has acted like a union rep for favorite employees and a non-communicating blockade to any semblance of transparency. There appears to be a wonderful façade. But, when the surface is scratched, the ugly reality that we have many problems needing to be addressed becomes exposed. As my good friend and colleague, Joe Doyle, has said to me on numerous occasions “not all the actors are in Hollywood.”

I had similar but less direct comments a couple of months ago with some hope that I would see signs of positive change in attitude and action. Unfortunately for us all, this has not happened. So, tonight, I consciously raise the bar, with the hope, that at every point in the decision making process from now on, this administration will at least remember one thing: “that their responsibility, loyalty, and duty are to the taxpayers of Michigan City”.

Thank you Mr. President.

Councilman Meer thanked Councilman McKee regarding his comments, advising the Council what he observed on Memorial Day (May 31, 2010) at Washington Park's Zoo Complex entrance, picnic and the Splash Pad area. Councilman Meer stated that these issues need to be looked into further to resolve the problems, advising he had taken photo's and will forward copies to each department involved.

## **ADJOURNMENT**

A motion by Councilwoman Nelson, supported by Council Members Meer and Boy, and there being no further business to transact, President Espar declared the meeting ADJOURNED (approximately 7:16 p.m.).

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Thomas F. Fedder, City Clerk