The Common Council of the City of Michigan City, Indiana, met in Regular session on Tuesday evening, October 15, 2019 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 Przybylinski.

President D. Przybylinski read “Duties of President or Presiding Officer”; from Muncode advising that from here on we will be following the rules and regulations that are stated in the Michigan City’s Municipal Code book at each and every Council meeting:

Sec. 2-55
(a) The presiding officer shall preserve order and decorum at council meetings, and shall decide all questions of order without debate, subject to an appeal to the council, as provided for in subsection (e) of this section. The presiding officer may submit to the council any question of order for decision. The presiding officer shall ensure that all required rules and procedures are followed.

Sec. 2-59
(8) The presiding officer may entertain comments from people in attendance regarding any ordinance or resolution under consideration after each reading and prior to council comments and debate. People in attendance must be allowed to comment on the topic of a legally required public hearing. The presiding officer may set reasonable limits on the length of time each person is allowed to speak on an item, but not less than three minutes. The presiding officer shall enforce order and rules of decorum during the period of public comment.

President D. Przybylinski advised three (3) minutes will be the time limit to speak during public comment and in case of any disturbance or disorderly conduct the presiding officer shall have the right to require the chamber to be cleared; proper form at meetings is to act professionally and respectfully to all city officials at the meeting or not at a meeting. Foul language/cussing will not be tolerated; advising that we are here to provide a service to the citizens of Michigan City by conducting business to run the city.

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

PRESENT: COUNCIL MEMBERS Tim Bietry, Sharon Carnes, Bryant Dabney, Sean Fitzpatrick, Ron Hamilton, Don Przybylinski, Paul Przybylinski, Gene Simmons and Johnny Stimley (9).

ABSENT: COUNCIL MEMBERS None (0)

A QUORUM WAS NOTED PRESENT

ALSO PRESENT: Jim Meyer – Council Attorney, Gale Neulieb City Clerk and Dawn Debald Asst. Deputy Clerk

APPROVAL OF MINUTES

President D. Przybylinski inquired whether there were any corrections, deletions, or additions to the minutes of the Regular Meeting of October 1, 2019.

Councilman D. Przybylinski made a motion to approve the Regular meeting minutes held on October 1, 2019; second by Councilman Dabney. The minutes were approved as printed 9 – 0.
REPORTS OF STANDING COMMITTEES

The Finance Committee meeting was called to order at 6:08 p.m. by Chairman Dabney to review claims filed since the last meeting. Committee members Fitzpatrick and Dabney as well as Council members Stimley, Simmons, Bietry, and Carnes were present. City Controller Rich Murphy was also in attendance. Claims reviewed totaled $102,608.87 from the Riverboat Fund and $15,792.65 from the Boyd Development Fund, for a total docket of $118,401.52. There were no other outstanding issues to discuss. Councilman Fitzpatrick moved to recommend approval of the docket, and with a second by Councilman Dabney, the motion to approve was unanimous. On a motion made by Councilman Fitzpatrick and second by Councilman Dabney, the meeting was adjourned at 6:10 p.m.

The summary of claims are as follows:

RIVERBOAT FUND
- Haas & Associates LL - $24,760.00
- Global Engineering & Land Surveying - $62,951.25
- Enterprise Rent-a-car $1,109.52
- SEH of Indiana LLC $13,788.87
TOTAL from Riverboat Fund $102,608.87

FROM BOYD PAYMENT
- Access LaPorte County Inc. - $75.00
- Corporate Payment Systems - $77.07
- News Dispatch - $1,038.00
- We Create Media - $14,602.58
TOTAL from Boyd Development: $15,792.65

TOTAL CLAIMS DOCKET $118,401.52

REPORTS OF SPECIAL OR SELECT COMMITTEES

President D. Przybylinski asked if there were any reports of special or select committees.

There were none.

REPORTS of OTHER CITY OFFICERS and DEPARTMENT

President D. Przybylinski asked if there were any reports of other City Officers and Departments; with Denise Conlin, NIPSCO’s Public Affair Manager for Michigan City, introducing Megan Henning, NIPSCO Project Communications & Public Affairs Manager and John Sabtnick, Major Project Manager who oversee the upgrade transmission tower lines in our area; addressing the Council regarding path of construction, service interruptions and cleanup/restoration regarding their upcoming project starting the end of October and finishing up in May 2020.

Discussion ensued between Ms. Henning and Council members Fitzpatrick, and P. Przybylinski regarding contacting residents being affected by this project and if NIPSCO was using American Steel.

Michael Kuss, General Manager of the Sanitary District did a presentation he had done in Indianapolis at the Annual Partners for Pollution Conference on September 18, 2019 “Partnering for Environmental Progress: What is your Story?” highlighting some of the exciting projects that are being implemented for the citizens of Michigan City.

President D. Przybylinski advised also under other reports of other city officers and departments Mark Swistek, MCPD Chief, and John Boyd, Sheriff of LaPorte County to present information regarding their digital forensic unit also referred to as computer
forensic unit (a grant the LaPorte County Prosecutor discontinued called ICAC Program) and the funding being proposed in our city budget for 2020; asking for the Council’s support.

President Przybylinski advised that Chief Swistek will be present to answer any questions when the City budget is presented this evening on third reading.

Councilman Bietry questioned where this sits within the 2020 budget.

President Przybylinski advised the monies are included in the budget we have this evening; the reason Chief Swistek and Sheriff Boyd are here is because when it was presented to the Finance Committee at the budget hearings; there were a lot of questions and the Council was not familiar with this program; asking Chief Swistek and Sherriff Boyd to address and explain the program to the entire Council.

Councilman Bietry agreed with what the Finance Committee did.

Chief Swistek addressed President D. Przybylinski questions asking how fast the results with this program are when confiscating a cellphone, computer or laptop; advising when the program is in house it maybe just a matter of minutes; when sending the device off to a lab you lose man power, travel time, and are waiting for results.

Councilman Dabney stated that this program has been passed down from the Prosecutors office, to the county, and now it is ending up with the City to fund this, questioning why they haven’t decided to continue along with this program.

Sherriff Boyd advised Councilman Dabney that the County never had anyone assigned to the unit; stating before the Indiana Criminal Justice Institute set the terms of the contract and Indiana Code, the equipment reverted to us (county); opting to keep it with the MCPD because they have someone trained and certified in that, which is very time consuming and very expensive; but is willing to do the downloads when needed for the county.

Sherriff Boyd agreed with Councilman Dabney stating John Espar was the prosecutor that applied and received the grant for the ICAC program; then when Prosecutor Lake was elected he did not support the idea of an ICAC unit; advising that he spoke with Prosecutor Lake prior to April 9th stating that he said he would support the unit in its concept (not financially) but as a digital forensic unit; not just as a unit that does investigations.

Chief Swistek stated that two or three employees’ salaries were included as part of the grant; one being Sgt. Barr’s salary and they have all the intentions when applying for this grant again to hopefully recoup some of these.

Councilman Fitzpatrick stated this equipment is valued at almost a quarter of a million dollars; asking if this equipment is in the possession of our city who is responsible for any damage and what happens when the equipment becomes obsolete; Sheriff Boyd advised that surroundings Chiefs and Marshals in Laporte County would have to meet and decide how to address these issues.

Sheriff Boyd and Chief Swistek couldn’t answer what the convicted annual rate was with having this program in place.

Chief Swistek advised the Council that there has been some cross training within the department.

Chief Swistek addressed Councilman Fitzpatrick’s question regarding if their grant isn’t successful is the MCPD going to want the City to pay for this program each year; stating that his recommendation would be to sit down with the LaPorte County Prosecutor along with each major chief throughout LaPorte County and brain storm how we can continue these services.
Councilman P. Przybylinski stated that he takes exception to the paragraph on page four that Sgt. Barr put in this report about the LaPorte County Prosecutor John Lake should not be in this report addressing accusation in this program; with Mr. Lake not being here to answer. Mr. P. Przybylinski stated that he felt there should have been an agreement/contract brought to the Council before hand in the form of a resolution, especially since Sgt. Barr has implemented this program since day one when it started; already adopting this program without coming to the City Council. Stating that there were also some emails put out that he took exception to; that as chief you need to control your staff regarding what they are putting out in emails and what they are saying.

Discussion ensued between Chief Swistek, Sherriff Boyd and Council members P. Przybylinski and Fitzpatrick regarding warrants being issued before confiscating any electric devise from a citizen and if this unit can enhance a home security system (inferred).

President Przybylinski thanked Chief Swistek and Sherriff Boyd for attending the meeting.

President D. Przybylinski stated there is no public comment at this time.

President D. Przybylinski commented on the cases the MCPD provided to the City Council that officer Barr worked on; stating that with all the cases where he was involved that were solved, counting 69, is great work for that unit.

President D. Przybylinski stated there are no other city officers and department reports.

CLAIM DOCKETS

President D. Przybylinski stated the Claims for Fund #2042 –Riverboat is $102,608.87 and Fund #2031 – Boyd Development – $15,792.65.

Councilman Biety made the motion to approve the claims; second by Councilman Dabney; asking if there were any opposed; there was no response.  **Motion carried 9-0.**

PETITIONS

Clerk Neulieb advised there were no petitions received.

COMMUNICATIONS

City Clerk Neulieb read the following correspondence received in the Clerk’s office:

Correspondence received in the Clerk’s Office on September 30, 2019 and October 7, 2019, from DLZ – Weekly Activities Report – ESG Energy Project

Correspondence received in the Clerk’s Office on October 4, 2019 from John Kirk, DLZ – Field Observation Report on ESG’s Solar System Solar Installation testing at Patriot Park and at Senior Center

Correspondence received in the Clerk’s Office on October 9, 2019 from John Kirk, DLZ – Field Observation Report on ESG’s Solar System Inspection at Senior Center

Correspondence received in the Clerk’s Office on October 7, 2019 from Councilman Fitzpatrick regarding missing equipment from Central Services; with President D. Przybylinski reading the following: Michigan City Common Council,
In recent weeks I have been contacted multiple times by several different city employees in regard to missing equipment from central services. As you all know I contacted the superintendent with these concerns as I copied you and the mayor’s office in addition to MCPD. Since that time, I have been contacted again by concerned employees some who want to remain anonymous and others who are willing to come forward. I have attached a copy of the most recent inventory audit for your review, this is a compressive list compiled of serial number and internal control numbers. Of the nearly 200 equipment items listed about 40 are unaccounted for. As the Council you are charged with being the fiscal body of this city, if these items that are essential to the city employees’ daily job duties are missing from the city’s inventory who is responsible for replacing these items that are valued in the thousands of dollars?

I would like this to be read into the minutes for the record.

Correspondence received in the Clerk’s Office on October 9, 2019 from Robert Zonder, Superintendent of Central Services/Maintenance responding to Councilman Fitzpatrick’s letter dated October 7, 2019; with Councilwoman Carnes asking that this correspondence be read for the record.

President D. Przybylinski read the following correspondence from Mr. Robert Zonder:

Michigan City Common Council  
RE: Response to Councilman Fitzpatrick’s letter dated October 7, 2019

Dear Common Council,

Earlier this week, I received a copy of Councilman Fitzpatrick’s letter to you regarding missing equipment at Michigan City Central Services, which included a handwritten inventory list. First, please note that the handwritten inventory list was an old list from 2012. This was a list started by David Farmer and utilized as his own personal notes. I do not know how Councilman Fitzpatrick obtained these notes and why Councilman Fitzpatrick asserts that these notes reflect that there are 40 items of equipment, which are unaccounted. This is not accurate as there are many items on this list that had been disposed of years ago.

Second, toward the end September 2019, it was discovered that certain equipment was missing from Michigan City Central Services. I am in the process of doing my investigation into the missing equipment. In addition, I turned this matter over to the Michigan City Police Department immediately upon receipt of said information. It is my understanding that a detective has been assigned to further investigate and that the investigations are still open and pending.

Due to the pending investigations and possibility that this could become an employee personnel mater, at this time, I am limited on the nature and extent of what, if any, information I can release. Moving forward, I would appreciate Councilman Fitzpatrick or any other member of the Michigan City Common Council who may receive information relevant to this issue to please discuss the same with me and/or detective assigned to investigate.

RESOLUTION

There were no resolutions.
The Clerk read the following ordinance on 2nd reading by title only. **REQUIRING THE CITY CONTROLLER TO PROVIDE THE COMMON COUNCIL DOCUMENTATION REGARDING DAMAGE TO CITY PROPERTY AND PAYMENT OF LIABILITY CLAIMS AND CREATING SEC. 2-324 IN THE MICHIGAN CITY MUNICIPAL CODE**

Introduced by: Don Przybylinski  
Johnny Stimley  
Sean Fitzpatrick  
Ron Hamilton

Councilman P. Przybylinski requested to added as a sponsor.

President D. Przybylinski asked if any of the Authors had anything to add at this time; there was no response.

President D. Przybylinski made a motion to adopt the following proposed amendments as follows (shown in red):

**REQUIRING THE CITY CONTROLLER TO PROVIDE THE COMMON COUNCIL DOCUMENTATION REGARDING DAMAGE TO CITY PROPERTY AND PAYMENT OF LIABILITY CLAIMS AND CREATING SEC. 2-324 IN THE MICHIGAN CITY MUNICIPAL CODE**

WHEREAS, pursuant to IC 36-4-6-18, the Common Council has the responsibility and authority to pass ordinances for the control of the City's property and finances; and

WHEREAS, the Common Council finds that in fulfilling its responsibility to the citizens of Michigan City to monitor the City's finances and the condition of its properties, it is advisable for the Common Council to receive documentation from the City Controller describing any damage to any City owned real or personal property, and the cause of such damage, for which the City, including any of its departments or agencies, either directly or through insurance, pays $1,500 or more to repair the damage.

WHEREAS, the Common Council finds that in fulfilling its responsibility to the citizens of Michigan City to monitor the City's finances, it is advisable for the Common Council to receive documentation from the City Controller describing any liability claim against the City or theft of any City property or cash, including any of its departments or agencies, for any tort, breach of contract, or the violation of civil rights for which the City, including any of its departments or agencies, pays, directly or through insurance, $5,000 or more to resolve the claim, by either mutual agreement or judgment, or any theft of City non-cash property with a value of $100 or of $50 or more of cash.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Michigan City, Indiana that Sec. 2-324 is hereby created in Chapter 2 of the Michigan City Municipal Code and shall read as follows:

Sec. 2-324. **Controller Duty to Provide Council Documentation Regarding Property Damage and Liability Claims.**

(a). **Property Damage.** The City Controller shall provide the Common Council, either directly or by submitting it to the City Clerk for distribution to the Council, with a copy of any and all documentation, hard copy and digital, in the Controller’s possession or control regarding any damage to real or personal property owned by the City, including any of its department or agencies, for which the City, including any of its departments or agencies, pays, either directly or through insurance, $1,500 or more for repair of the damage.

(b). **Liability Claims.** The City Controller shall provide the Common Council, either directly or by submitting it to the City Clerk for distribution to the Council, with a copy of any and all
documentation, hard copy and digital, in the Controller’s possession or control regarding any claim of liability against the City, or any of its departments or agencies, for any tort, breach of contract, or the violation of civil rights, for which the City, including any of its departments or agencies, pays, either directly or through insurance, $2,500 or more to resolve the claim, by either mutual agreement or judgment.

(c) Theft. The City Controller shall provide the Common Council, either directly or by submitting it to the City Clerk for distribution to the Council, with a copy of any and all documentation, hard copy and digital, in the Controller’s possession or control regarding any theft of City non-cash property with a value of $100 or of $50 or more of cash.

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.

Councilman P. Przybylinski second the motion to adopt the proposed amendments.

President D. Przybylinski asked if anyone from the general public wish to speak on the proposed ordinance; there was no response.

President D. Przybylinski asked if there was any comments or questions from the Council regarding the proposed ordinance:

Councilman P. Przybylinski commended Councilman Fitzpatrick on his work regarding the inventory list that we received from him and that there needs to be accountability regarding inventory control in every city department.

Councilman Fitzpatrick requested a short break after this motion is voted on.

President D. Przybylinski stated that he proposed the amendments and lowered the amounts advising when serving on the Finance Committee and attending the budget hearings he realized the departments that come to the Council during budget time asking for monies every year to purchase equipment, lawn mowers, vehicles, etc. when there again is no accountability for what inventory each department has, how long they have had it or if it has been stolen, broken, maintained or just doesn’t work; asking that departments give reports and do inventory for the Council;

President D. Przybylinski asked if the Council wished to vote on these amendments individually or all together; they agreed to vote on all amendments at one time and was approved by the following vote:  **AYES:** Council members Stimley, Biety, Dabney, Carnes, Fitzpatrick, Hamilton, D. Przybylinski, P. Przybylinski, and Simmons (9 – 0)  **NAYS:** None (0)

**NOTE:** a five-minute recess was taken.

President D. Przybylinski asked if the Author had anything to add at this time, there was no response.

President D. Przybylinski asked if anyone from the general public wish to speak on the proposed ordinance; there was no response.

The Clerk read the following ordinance on 2nd reading by title only,  **AMENDING SECTION 2-459(b)(6) OF THE MICHIGAN CITY MUNICIPAL CODE TO PROVIDE FOR A TREASURER FOR THE COMMISSION FOR WOMEN**

**Introduced by:** Sean Fitzpatrick

President D. Przybylinski asked if the Author had anything to add at this time, there was no response.

President D. Przybylinski asked if anyone from the general public wish to speak on the proposed ordinance; there was no response.
President D. Przybylinski asked if there was any comments or questions from the Council regarding the proposed ordinance; there was no response.

President D. Przybylinski asked if there were any other comments from the Council regarding the proposed ordinance, hearing none; the ordinance will be held over on third reading at the November 6, 2019 Council meeting.

The Clerk read the following ordinance on 3rd reading by title only,

MICHIGAN CITY COMMON COUNCIL

ORDINANCE NO. 4529

REPEALING AND REPLACING ARTICLE VIII IN CHAPTER 46 IN THE MICHIGAN CITY MUNICIPAL CODE COMMONLY KNOWN AS THE “FLOODPLAINS”

WHEREAS, the Indiana Department of Natural Resources (DNR) has recently advised the City of Michigan City that it needs to revise the City’s Floodplain Ordinance to assure compliance with federal and state floodplain management standards and all rules and regulations of the Indiana DNR; and

WHEREAS, the Indiana DNR has provided the City with a model ordinance that complies with all federal and state floodplain management standards and rules and regulations of the Indiana Department of Natural Resources; and

WHEREAS, the Common Council desires to comply with the recommendations of the Indiana Department of Natural Resources and repeal the City’s existing Floodplain Ordinance, which is found in Article VII of Chapter 46 of the Michigan City Municipal Code and adopt the model ordinance provided by the Indiana DNR.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City that the following amendments and additions be made to the Michigan City Municipal Code:

SECTION 1: Article VIII (“Floodplains”) in Chapter 46 of the Michigan City Municipal Code shall be repealed in its entirety and shall be replaced by the follows:

Sec. 46-211. Statutory Authorization, Findings of Fact, Purpose, and Objectives.

(a). Statutory Authorization. The Indiana Legislature has in IC-36-7-4 granted the power to local government units to control land use within their jurisdictions. Therefore, the Common Council of Michigan City does hereby adopt the following floodplain management regulations.

(b). Findings of Fact.

(1) The flood hazard areas of Michigan City are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, inadequately flood-proofed, or otherwise unprotected from flood damages.

(c). Statement of Purpose. It is the purpose of this Article to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:
(1) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights or velocities.

(2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.

(3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters.

(4) Control filling, grading, dredging, and other development which may increase erosion or flood damage.

(5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(6) Make federal flood insurance available for structures and their contents in the Michigan City by fulfilling the requirements of the National Flood Insurance Program.

d). Objectives. The objectives of this Article are:

(1) To protect human life and health.

(2) To minimize expenditure of public money for costly flood control projects.

(3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.

(4) To minimize prolonged business interruptions.

(5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges located in floodplains.

(6) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas.

Sec. 46-212. Definitions. Unless specifically defined below, words or phrases used in this Article shall be interpreted so as to give them the meaning they have in common usage and to give this Article its most reasonable application.

A zone means portions of the SFHA in which the principal source of flooding is runoff from rainfall, snowmelt, or a combination of both. In A zones, floodwaters may move slowly or rapidly, but waves are usually not a significant threat to buildings. These areas are labeled as Zone A, Zone AE, Zones A1-A30, Zone AO, Zone AH, Zone AR and Zone A99 on a FIRM. The definitions are presented below:

Zone A: Areas subject to inundation by the one-percent annual chance flood event. Because detailed hydraulic analyses have not been performed, no base flood elevation or depths are shown.

Zone AE and A1-A30: Areas subject to inundation by the one-percent annual chance flood event determined by detailed methods. Base flood elevations are shown within these zones. (Zone AE is on new and revised maps in place of Zones A1-A30.)

Zone AO: Areas subject to inundation by one-percent annual chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone.

Zone AH: Areas subject to inundation by one-percent annual chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Average flood depths derived from detailed hydraulic analyses are shown within this zone.

Zone AR: Areas that result from the decertification of a previously accredited flood protection system that is determined to be in the process of being restored to provide base flood protection.

Zone A99: Areas subject to inundation by the one-percent annual chance flood event, but which will ultimately be protected upon completion of an under-construction Federal flood protection system. These are areas of special flood hazard where enough progress has been made on the construction of a protection system, such as dikes, dams, and levees, to consider it complete for insurance rating purposes. Zone A99 may only be used when the flood protection system has reached specified statutory progress toward completion. No base flood elevations or depths are shown.

Accessory structure (appurtenant structure) means a structure with a floor area 400 square feet or less that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal initial investment, may not be used for
human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are
detached garages, carports, storage sheds, pole barns, and hay sheds.

**Addition** (to an existing structure) means any walled and roofed expansion to the perimeter of a structure
in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and
roofed addition, which is connected by a firewall or is separated by independent perimeter load-bearing
walls, is new construction.

**Appeal** means a request for a review of the floodplain administrator’s interpretation of any provision of this
Article.

**Area of shallow flooding** means a designated AO or AH Zone on the community’s Flood Insurance Rate
Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist,
where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.
Such flooding is characterized by ponding or sheet flow.

**Base Flood** means the flood having a one percent chance of being equaled or exceeded in any given year.

**Base Flood Elevation (BFE)** means the elevation of the one-percent annual chance flood.

**Basement** means that portion of a structure having its floor sub-grade (below ground level) on all sides.

**Boundary River** means the part of the Ohio River that forms the boundary between Kentucky and Indiana.

**Boundary River Floodway** means the floodway of a boundary river.

**Building** - see "Structure."

**Community** means a political entity that has the authority to adopt and enforce floodplain ordinances for
the area under its jurisdiction.

**Community Rating System (CRS)** means a program developed by the Federal Insurance Administration
to provide incentives for those communities in the Regular Program that have gone beyond the minimum
floodplain management requirements to develop extra measures to provide protection from flooding.

**Critical facility** means a facility for which even a slight chance of flooding might be too great. Critical
facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire, and emergency
response installations, installations which produce, use or store hazardous materials or hazardous waste.

**D Zone** means unstudied areas where flood hazards are undetermined, but flooding is possible. Flood
insurance is available in participating communities but is not required by regulation in this zone.

**Development** means any man-made change to improved or unimproved real estate including but not
limited to:

1. construction, reconstruction, or placement of a structure or any addition to a structure;
2. installing a manufactured home on a site, preparing a site for a manufactured home or installing a
   recreational vehicle on a site for more than 180 days;
3. installing utilities, erection of walls and fences, construction of roads, or similar projects;
4. construction of flood control structures such as levees, dikes, dams, channel improvements, etc.;
5. mining, dredging, filling, grading, excavation, or drilling operations;
6. construction and/or reconstruction of bridges or culverts;
7. storage of materials; or
8. any other activity that might change the direction, height, or velocity of flood or surface waters.

"Development" does not include activities such as the maintenance of existing structures and facilities such as
painting, re-roofing; resurfacing roads; or gardening, plowing, and similar agricultural practices that do not
involve filling, grading, excavation, or the construction of permanent structures.

**Elevated structure** means a non-basement structure built to have the lowest floor elevated above the
ground level by means of fill, solid foundation perimeter walls, filled stem wall foundations (also called chain
walls), pilings, or columns (posts and piers).
Elevation Certificate is a certified statement that verifies a structure’s elevation information. This certification must be signed and sealed by a land surveyor, engineer, or architect authorized by law to certify elevation information.

Emergency Program means the first phase under which a community participates in the NFIP. It is intended to provide a first layer amount of insurance at subsidized rates on all insurable structures in that community before the effective date of the initial FIRM.

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the community’s first floodplain ordinance.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FEMA means the Federal Emergency Management Agency.

Flood means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow, the unusual and rapid accumulation, or the runoff of surface waters from any source.

Flood Boundary and Floodway Map (FBFM) means an official map on which the Federal Emergency Management Agency (FEMA) or Federal Insurance Administration (FIA) has delineated the areas of flood hazards and regulatory floodway.

Flood Insurance Rate Map (FIRM) means an official map of a community, on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) is the official hydraulic and hydrologic report provided by FEMA. The report contains flood profiles, as well as the FIRM, FBFM (where applicable), and the water surface elevation of the base flood.

Flood Prone Area means any land area acknowledged by a community as being susceptible to inundation by water from any source. (See “Flood”)

Flood Protection Grade (FPG) is the elevation of the regulatory flood plus two feet at any given location in the SFHA. (See “Freeboard”)

Floodplain means the channel proper and the areas adjoining any wetland, lake, or watercourse which have been or hereafter may be covered by the regulatory flood. The floodplain includes both the floodway and the fringe districts.

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain management regulations means this Article and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage. Floodplain management regulations are also referred to as floodplain regulations, floodplain ordinance, flood damage prevention ordinance, and floodplain management requirements.

Floodproofing (dry floodproofing) is a method of protecting a structure that ensures that the structure, together with attendant utilities and sanitary facilities, is watertight to the floodproofed design elevation with walls that are substantially impermeable to the passage of water. All structural components of these walls are capable of resisting hydrostatic and hydrodynamic flood forces, including the effects of buoyancy, and anticipated debris impact forces.

Floodproofing certificate is a form used to certify compliance for non-residential structures as an alternative to elevating structures to or above the FPG. This certification must be by a Registered Professional Engineer or Architect.

Floodway is the channel of a river or stream and those portions of the floodplains adjoining the channel which are reasonably required to efficiently carry and discharge the peak flood flow of the regulatory flood of any river or stream.

Freeboard means a factor of safety, usually expressed in feet above the BFE, which is applied for the purposes of floodplain management. It is used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the base flood.
Fringe is those portions of the floodplain lying outside the floodway.

Hardship (as related to variances of this Article) means the exceptional hardship that would result from a failure to grant the requested variance. The Michigan City Board of Zoning Appeals requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is NOT exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one’s neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

Historic structures means any structures individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures.

Increased Cost of Compliance (ICC) means the cost to repair a substantially damaged structure that exceeds the minimal repair cost and that is required to bring a substantially damaged structure into compliance with the local flood damage prevention ordinance. Acceptable mitigation measures are elevation, relocation, demolition, or any combination thereof. All renewal and new business flood insurance policies with effective dates on or after June 1, 1997, will include ICC coverage.

Letter of Final Determination (LFD) means a letter issued by FEMA during the mapping update process which establishes final elevations and provides the new flood map and flood study to the community. The LFD initiates the six-month adoption period. The community must adopt or amend its floodplain management regulations during this six-month period unless the community has previously incorporated an automatic adoption clause.

Letter of Map Change (LOMC) is a general term used to refer to the several types of revisions and amendments to FEMA maps that can be accomplished by letter. They include Letter of Map Amendment (LOMA), Letter of Map Revision (LOMR), and Letter of Map Revision based on Fill (LOMR-F). The definitions are presented below:

Letter of Map Amendment (LOMA) means an amendment by letter to the currently effective FEMA map that establishes that a property is not located in a SFHA through the submittal of property specific elevation data. A LOMA is only issued by FEMA.

Letter of Map Revision (LOMR) means an official revision to the currently effective FEMA map. It is issued by FEMA and changes flood zones, delineations, and elevations.

Letter of Map Revision Based on Fill (LOMR-F) means an official revision by letter to an effective NFIP map. A LOMR-F provides FEMA’s determination concerning whether a structure or parcel has been elevated on fill above the BFE and excluded from the SFHA.

Lowest adjacent grade means the lowest elevation, after completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

Lowest floor means the lowest elevation described among the following:

1. The top of the lowest level of the structure.
2. The top of the basement floor.
3. The top of the garage floor, if the garage is the lowest level of the structure.
4. The top of the first floor of a structure elevated on pilings or pillars.
5. The top of the floor level of any enclosure, other than a basement, below an elevated structure where the walls of the enclosure provide any resistance to the flow of flood waters unless:
   a. the walls are designed to automatically equalize the hydrostatic flood forces on the walls by allowing for the entry and exit of flood waters by providing a minimum of two openings (in addition to doorways and windows) in a minimum of two exterior walls; if a structure has more than one enclosed area, each shall have openings on exterior walls;
   b. the total net area of all openings shall be at least one (1) square inch for every one square foot of enclosed area; the bottom of all such openings shall be no higher than one (1) foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher; and,
   c. such enclosed space shall be usable solely for the parking of vehicles and building access.
Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value means the building value, excluding the land (as agreed to between a willing buyer and seller), as established by what the local real estate market will bear. Market value can be established by independent certified appraisal, replacement cost depreciated by age of building (actual cash value), or adjusted assessed values.

Mitigation means sustained actions taken to reduce or eliminate long-term risk to people and property from hazards and their effects. The purpose of mitigation is twofold: to protect people and structures, and to minimize the cost of disaster response and recovery.

National Flood Insurance Program (NFIP) is the federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the Federal Government and the private insurance industry.

National Geodetic Vertical Datum (NGVD) of 1929 as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

New construction means any structure for which the “start of construction” commenced after the effective date of the community’s first floodplain ordinance.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the community’s first floodplain ordinance.

Non-boundary river floodway means the floodway of any river or stream other than a boundary river.

North American Vertical Datum of 1988 (NAVD 88) as adopted in 1993 is a vertical control datum used as a reference for establishing varying elevations within the floodplain.

Obstruction includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, canalization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation, or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water; or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

One-percent annual chance flood is the flood that has a one percent (1%) chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to the one-percent annual chance flood.

Physical Map Revision (PMR) is an official republication of a community’s FEMA map to affect changes to base (1-percent annual chance) flood elevations, floodplain boundary delineations, regulatory floodways, and planimetric features. These changes typically occur as a result of structural works or improvements, annexations resulting in additional flood hazard areas, or correction to base flood elevations or SFHAs.

Public safety and nuisance means anything which is injurious to the safety or health of an entire community, neighborhood or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

Recreational vehicle means a vehicle which is (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projections; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling, but as quarters for recreational camping, travel, or seasonal use.

Regular program means the phase of the community’s participation in the NFIP where more comprehensive floodplain management requirements are imposed and higher amounts of insurance are available based upon risk zones and elevations determined in a FIS.

Regulatory flood means the flood having a one percent (1%) chance of being equaled or exceeded in any given year, as calculated by a method and procedure that is acceptable to and approved by the Indiana Department of Natural Resources and the Federal Emergency Management Agency. The regulatory flood elevation at any location is as defined in Sec. 46-213(b) of this Article. The “Regulatory Flood” is also known by the term “Base Flood”, “One-Percent Annual Chance Flood”, and “100-Year Flood”.

Repetitive loss means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equaled or exceeded 25% of the market value of the structure before the damage occurred.
Section 1316 is that section of the National Flood Insurance Act of 1968, as amended, which states that no new flood insurance coverage shall be provided for any property that the Administrator finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

Special Flood Hazard Area (SFHA) means those lands within the jurisdiction of the City subject to inundation by the regulatory flood. The SFHAs of Michigan City are generally identified as such on the LaPorte County, Indiana and Incorporated Areas Flood Insurance Rate Map dated November 6, 2013 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date. (These areas are shown on a FIRM as Zone A, AE, A1- A30, AH, AR, A99, or AO).

Start of construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of a slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means a structure that is principally above ground and is enclosed by walls and a roof. The term includes a gas or liquid storage tank, a manufactured home, or a prefabricated building. The term also includes recreational vehicles to be installed on a site for more than 180 days.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures that have incurred “repetitive loss” or “substantial damage” regardless of the actual repair work performed. The term does not include improvements of structures to correct existing violations of state or local health, sanitary, or safety code requirements.

Suspension means the removal of a participating community from the NFIP because the community has not enacted and/or enforced the proper floodplain management regulations required for participation in the NFIP.

Variance is a grant of relief from the requirements of this Article, which permits construction in a manner otherwise prohibited by this Article where specific enforcement would result in unnecessary hardship.

Violation means the failure of a structure or other development to be fully compliant with this Article. A structure or other development without the elevation, other certification, or other evidence of compliance required in this Article is presumed to be in violation until such time as that documentation is provided.

Watercourse means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

X zone means the area where the flood hazard is less than that in the SFHA. Shaded X zones shown on recent FIRMs (B zones on older FIRMs) designate areas subject to inundation by the flood with a 0.2 percent chance of being equaled or exceeded (the 500-year flood). Unshaded X zones (C zones on older FIRMs) designate areas where the annual exceedance probability of flooding is less than 0.2 percent.

Zone means a geographical area shown on a FIRM that reflects the severity or type of flooding in the area.

Zone A (see definition for A zone)

Zone B, C, and X means areas identified in the community as areas of moderate or minimal hazard from the principal source of flood in the area. However, buildings in these zones could be flooded by severe, concentrated rainfall coupled with inadequate local drainage systems. Flood insurance is available in participating communities but is not required by regulation in these zones. (Zone X is used on new and revised maps in place of Zones B and C.)

Sec. 46-213. General Provisions.
(a). Lands to Which This Article Applies. This Article shall apply to all SFHAs and known flood prone areas within the jurisdiction of Michigan City.

(b) Basis for Establishing Regulatory Flood Data. This Article’s protection standard is the regulatory flood. The best available regulatory flood data is listed below.

1. The regulatory flood elevation, floodway, and fringe limits for the studied SFHAs within the jurisdiction of Michigan City shall be as delineated on the one-percent annual chance flood profiles in the Flood Insurance Study of LaPorte County, Indiana and Incorporated Areas and the corresponding Flood Insurance Rate Map dated November 6, 2013 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date.

2. The regulatory flood elevation, floodway, and fringe limits for each of the SFHAs within the jurisdiction of Michigan City, delineated as an "A Zone" on the LaPorte County, Indiana and Incorporated Areas Flood Insurance Rate Map dated November 6, 2013 as well as any future updates, amendments, or revisions, prepared by the Federal Emergency Management Agency with the most recent date, shall be according to the best data available as provided by the Indiana Department of Natural Resources, provided the upstream drainage area from the subject site is greater than one square mile. Whenever a party disagrees with the best available data, the party needs to replace existing data with better data that meets current engineering standards. To be considered, this data must be submitted to the Indiana Department of Natural Resources for review and subsequently approved.

3. In the absence of a published FEMA map, or absence of identification on a FEMA map, the regulatory flood elevation, floodway, and fringe limits of any watercourse in the community’s known flood prone areas shall be according to the best data available as provided by the Indiana Department of Natural Resources, provided the upstream drainage area from the subject site is greater than one square mile.

4. Upon issuance of a Letter of Final Determination (LFD), any more restrictive data in the new (not yet effective) mapping/study shall be utilized for permitting and construction (development) purposes, replacing all previously effective less restrictive flood hazard data provided by FEMA.

(c). Establishment of Floodplain Development Permit. A Floodplain Development Permit shall be required in conformance with the provisions of this Article prior to the commencement of any development activities in areas of special flood hazard.

(d). Compliance. No structure shall hereafter be located, extended, converted or structurally altered within the SFHA without full compliance with the terms of this Article and other applicable regulations. No land or stream within the SFHA shall hereafter be altered without full compliance with the terms of this Article and other applicable regulations.

(e). Abrogation and Greater Restrictions. This Article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Article and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(f). Discrepancy between Mapped Floodplain and Actual Ground Elevations.

1. In cases where there is a discrepancy between the mapped floodplain (SFHA) on the FIRM and the actual ground elevations, the elevation provided on the profiles shall govern.

2. If the elevation of the site in question is below the base flood elevation, that site shall be included in the SFHA and regulated accordingly.

3. If the elevation (natural grade) of the site in question is above the base flood elevation and not located within the floodway, that site shall be considered outside the SFHA and the floodplain regulations will not be applied. The property owner shall be advised to apply for a LOMA.

(g). Interpretation. In the interpretation and application of this Article all provisions shall be:

1. Considered as minimum requirements.

2. Liberally construed in favor of the governing body.

3. Deemed neither to limit nor repeal any other powers granted under state statutes.

(h). Warning and Disclaimer of Liability. The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on available information derived from engineering and scientific methods of study. Larger floods can and will occur on rare occasions. Therefore, this Article does not create any liability on the part of Michigan City, Indiana, the Indiana Department of Natural Resources, or the State of Indiana, for any flood damage that results from reliance on this Article or any administrative decision made lawfully thereunder.
(i). Penalties for Violation. Failure to obtain a Floodplain Development Permit in the SFHA or failure to comply with the requirements of a Floodplain Development Permit or conditions of a variance shall be deemed to be a violation of this Article. All violations shall be considered a common nuisance and be treated as such in accordance with the provisions of the Zoning Code for Michigan City. All violations shall be punishable by a fine not exceeding that established by Section 50-288.

1. A separate offense shall be deemed to occur for each day the violation continues to exist.

2. The Michigan City Plan Commission shall inform the owner that any such violation is considered a willful act to increase flood damages and therefore may cause coverage by a Standard Flood Insurance Policy to be suspended.

3. Nothing herein shall prevent the City of Michigan City from taking such other lawful action to prevent or remedy any violations. All costs connected therewith shall accrue to the person or persons responsible.

Sec. 46-214. Administration.

(a). Designation of Administrator. The Michigan City Common Council hereby appoints the Zoning Administrator to administer and implement the provisions of this Article and is herein referred to as the Floodplain Administrator.

(b). Permit Procedures. Application for a Floodplain Development Permit shall be made to the Floodplain Administrator on forms furnished by him or her prior to any development activities, and may include, but not be limited to, the following: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

1. Application Stage.
   a) A description of the proposed development.
   b) Location of the proposed development sufficient to accurately locate property and structure(s) in relation to existing roads and streams.
   c) A legal description of the property site.
   d) A site development plan showing existing and proposed development locations and existing and proposed land grades.
   e) Elevation of the top of the planned lowest floor (including basement) of all proposed buildings. Elevation should be in NAVD 88 or NGVD.
   f) Elevation (in NAVD 88 or NGVD) to which any non-residential structure will be floodproofed.
   g) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development. A hydrologic and hydraulic engineering study is required and any watercourse changes submitted to DNR for approval and then to FEMA as a Letter of Map Revision. (See Sec. 46-214(c)(6) for additional information.)

2. Construction Stage.
   Upon establishment of the lowest floor of an elevated structure or structure constructed on fill, it shall be the duty of the applicant to submit to the Floodplain Administrator a certification of the NAVD 88 or NGVD elevation of the lowest floor, as built. Said certification shall be prepared by or under the direct supervision of a registered land surveyor, professional engineer, or architect and certified by the same. The Floodplain Administrator shall review the lowest floor elevation survey data submitted. The applicant shall correct deficiencies detected by such review before any further work is allowed to proceed. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project. Any work undertaken prior to submission of the elevation certification shall be at the applicant’s risk.

   Upon establishment of the floodproofed elevation of a floodproofed structure, it shall be the duty of the applicant to submit to the Floodplain Administrator a floodproofing certificate. Certification shall be prepared by or under the direct supervision of a registered professional engineer or architect and certified by same. (The Floodplain Administrator shall review the floodproofing certification submitted.) The applicant shall correct any deficiencies detected by such review before any further work is allowed to proceed. Failure to submit the floodproofing certification or failure to make correction required shall be cause to issue a stop-work order for the project.

3. Finished Construction.
Upon completion of construction, an elevation certification (FEMA Elevation Certificate Form 086-0-33 or any future updates) which depicts the “as-built” lowest floor elevation is required to be submitted to the Floodplain Administrator. If the project includes a floodproofing measure, floodproofing certification (FEMA Floodproofing Certificate Form 81-65 or any future updates) is required to be submitted by the applicant to the Floodplain Administrator.

(c). **Duties and Responsibilities of the Floodplain Administrator.** The Floodplain Administrator and/or designated staff is hereby authorized and directed to enforce the provisions of this Article. The administrator is further authorized to render interpretations of this Article, which are consistent with its spirit and purpose.

Duties and Responsibilities of the Floodplain Administrator shall include, but are not limited to:

(1) Review all floodplain development permits to assure that the permit requirements of this Article have been satisfied.

(2) Inspect and inventory damaged structures in the SFHA and complete substantial damage determinations.

(3) Ensure that construction authorization has been granted by the Indiana Department of Natural Resources for all development projects subject to Sec. 46-215 (e) and Sec. 46-215(g)(1) of this Article, and maintain a record of such authorization (either copy of actual permit/authorization or floodplain analysis/regulatory assessment).

(4) Ensure that all necessary federal or state permits have been received prior to issuance of the local floodplain development permit. Copies of such permits/authorizations are to be maintained on file with the floodplain development permit.

(5) Maintain and track permit records involving additions and improvements to residences located in the floodway.

(6) Notify adjacent communities and the State Floodplain Coordinator prior to any alteration or relocation of a watercourse and submit copies of such notifications to FEMA.

(7) Maintain for public inspection and furnish upon request local permit documents, damaged structure inventories, substantial damage determinations, regulatory flood data, SFHA maps, Letters of Map Change (LOMC), copies of DNR permits, letters of authorization, and floodplain analysis and regulatory assessments (letters of recommendation), federal permit documents, and “as-built” elevation and floodproofing data for all buildings constructed subject to this Article.

(8) Utilize and enforce all Letters of Map Change (LOMC) or Physical Map Revisions (PMR) issued by FEMA for the currently effective SFHA maps of the community.

(9) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

(10) Review certified plans and specifications for compliance.

(11) Verify and record the actual elevation of the lowest floor (including basement) of all new or substantially improved structures, in accordance Section 46-214(b).

(12) Verify and record the actual elevation to which any new or substantially improved structures have been floodproofed in accordance with Section 46-214(b).

(13) Perform a minimum of three inspections to ensure that all applicable ordinance and floodplain development requirements have been satisfied. The first upon the establishment of the Flood Protection Grade reference mark at the development site; the second upon the establishment of the structure’s footprint/establishment of the lowest floor; and the final inspection upon completion and submission of the required finished construction elevation certificate. Authorized City officials shall have the right to enter and inspect properties located in the SFHA.

(14) **Stop Work Orders**

a) Upon notice from the floodplain administrator, work on any building, structure or premises that is being done contrary to the provisions of this Article shall immediately cease.

b) Such notice shall be in writing and shall be given to the owner of the property, or to his agent, or to the person doing the work, and shall state the conditions under which work may be resumed.

(15) **Revocation of Permits**

a) The floodplain administrator may revoke a permit or approval, issued under the provisions of the ordinance, in cases where there has been any false statement or
misrepresentation as to the material fact in the application or plans on which the permit or approval was based.

b) The floodplain administrator may revoke a permit upon determination by the floodplain administrator that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this Article.


(a) General Standards. In all SFHAs and known flood prone areas the following provisions are required:

(1) New construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

(2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.

(3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage below the FPG.

(4) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage.

(5) Electrical, heating, ventilation, plumbing, air conditioning equipment, utility meters, and other service facilities shall be located at/above the FPG or designed so as to prevent water from entering or accumulating within the components below the FPG. Water and sewer pipes, electrical and telephone lines, submersible pumps, and other waterproofed service facilities may be located below the FPG.

(6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

(7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

(8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(9) Any alteration, repair, reconstruction or improvements to a structure that is in compliance with the provisions of this Article shall meet the requirements of “new construction” as contained in this Article.

(10) Parking lots, driveways, and sidewalks within the SFHA shall be constructed with permeable materials.

(11) Whenever any portion of the SFHA is authorized for use, the volume of space which will be occupied by the authorized fill or structure below the BFE shall be compensated for and balanced by an equivalent volume of excavation taken below the BFE. The excavation volume shall be at least equal to the volume of storage lost (replacement ratio of 1 to 1) due to the fill or structure.

a) The excavation shall take place in the floodplain and in the same property in which the authorized fill or structure is located.

b) Under certain circumstances, the excavation may be allowed to take place outside of but adjacent to the floodplain provided that the excavated volume will be below the regulatory flood elevation, will be in the same property in which the authorized fill or structure is located, will be accessible to the regulatory flood water, will not be subject to ponding when not inundated by flood water, and that it shall not be refilled.

c) The excavation shall provide for true storage of floodwater but shall not be subject to ponding when not inundated by flood water.

d) The fill or structure shall not obstruct a drainage way leading to the floodplain.

e) The grading around the excavation shall be such that the excavated area is accessible to the regulatory flood water.

f) The fill or structure shall be of a material deemed stable enough to remain firm and in place during periods of flooding and shall include provisions to protect adjacent property owners against any increased runoff or drainage resulting from its placement.
g) Plans depicting the areas to be excavated and filled shall be submitted prior to the actual start of construction or any site work; once site work is complete, but before the actual start of construction, the applicant shall provide to the Floodplain Administrator a certified survey of the excavation and fill sites demonstrating the fill and excavation comply with this Article.

(b) Specific Standards. In all SFHAs, the following provisions are required:

(1) In addition to the requirements of Sec. 46-215(a), all structures to be located in the SFHA shall be protected from flood damage below the FPG. This building protection requirement applies to the following situations:

a) Construction or placement of any structure having a floor area greater than 400 square feet.

b) Addition or improvement made to any existing structure where the cost of the addition or improvement equals or exceeds 50% of the value of the existing structure (excluding the value of the land).

c) Reconstruction or repairs made to a damaged structure where the costs of restoring the structure to it's before damaged condition equals or exceeds 50% of the market value of the structure (excluding the value of the land) before damage occurred.

d) Installing a travel trailer or recreational vehicle on a site for more than 180 days.

e) Installing a manufactured home on a new site or a new manufactured home on an existing site. This Article does not apply to returning the existing manufactured home to the same site it lawfully occupied before it was removed to avoid flood damage.

f) Reconstruction or repairs made to a repetitive loss structure.

g) Addition or improvement made to any existing structure with a previous repair, addition or improvement constructed since the community's first floodplain ordinance.

(2) Residential Structures. New construction or substantial improvement of any residential structure (or manufactured home) shall have the lowest floor; including basement, at or above the FPG (two feet above the base flood elevation). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of Section 46-215(b)(4).

(3) Non-Residential Structures. New construction or substantial improvement of any commercial, industrial, or non-residential structure (or manufactured home) shall either have the lowest floor, including basement, elevated to or above the FPG (two feet above the base flood elevation) or be floodproofed to or above the FPG. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of 46-215(b)(4). Structures located in all “A Zones” may be floodproofed in lieu of being elevated if done in accordance with the following:

a) A Registered Professional Engineer or Architect shall certify that the structure has been designed so that below the FPG, the structure and attendant utility facilities are watertight and capable of resisting the effects of the regulatory flood. The structure design shall take into account flood velocities, duration, rate of rise, hydrostatic pressures, and impacts from debris or ice. Such certification shall be provided to the floodplain administrator as set forth in 46-214(c)(10).

b) Floodproofing measures shall be operable without human intervention and without an outside source of electricity.

(4) Elevated Structures. New construction or substantial improvements of elevated structures shall have the lowest floor at or above the FPG.

Elevated structures with fully enclosed areas formed by foundation and other exterior walls below the flood protection grade shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls. Designs must meet the following minimum criteria:

a) Provide a minimum of two openings located in a minimum of two exterior walls (having a total net area of not less than one square inch for every one square foot of enclosed area).

b) The bottom of all openings shall be no more than one foot above the exterior grade or the interior grade immediately beneath each opening, whichever is higher.

c) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
d) Access to the enclosed area shall be the minimum necessary to allow for parking for vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).

e) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.

f) The interior grade of such enclosed area shall be at an elevation at or higher than the exterior grade.

g) Openings are to be not less than 3 inches in any direction in the plane of the wall. This requirement applies to the hole in the wall, excluding any device that may be inserted such as typical foundation air vent device.

h) Property owners shall be required to execute a flood openings/venting affidavit acknowledging that all openings will be maintained as flood vents, and that the elimination or alteration of the openings in any way will violate the requirements of Section 46-215(b)(4). Periodic inspections will be conducted by the Floodplain Administrator to ensure compliance. The affidavit shall be recorded, along with the deed, in the office of the LaPorte County Recorder.

i) Property owners shall be required to execute and record with the structure’s deed a non-conversion agreement declaring that the area below the lowest floor (where the interior height of the enclosure exceeds 6 feet) shall not be improved, finished or otherwise converted; the community will have the right to inspect the enclosed area. The non-conversion agreement shall be recorded in the office of the LaPorte County Recorder.

(5) Structures Constructed on Fill. A residential or nonresidential structure may be constructed on a permanent land fill in accordance with the following:

a) The fill shall be placed in layers no greater than 1 foot deep before compacting to 95% of the maximum density obtainable with either the Standard or Modified Proctor Test method. The results of the test showing compliance shall be retained in the permit file.

b) The fill shall extend 10 feet beyond the foundation of the structure before sloping below the BFE.

c) The fill shall be protected against erosion and scour during flooding by vegetative cover, riprap, or bulkheading. If vegetative cover is used, the slopes shall be no steeper than 3 horizontal to 1 vertical.

d) The fill shall not adversely affect the flow of surface drainage from or onto neighboring properties.

e) The top of the lowest floor including basements shall be at or above the FPG.

f) Fill shall be composed of clean granular or earthen material.

(6) Standards for Manufactured Homes and Recreational Vehicles. Manufactured homes and recreational vehicles to be installed or substantially improved on a site for more than 180 days must meet one of the following requirements:

a) These requirements apply to all manufactured homes to be placed on a site outside a manufactured home park or subdivision; in a new manufactured home park or subdivision; in an expansion to an existing manufactured home park or subdivision; or in an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as a result of a flood:

(i) The manufactured home shall be elevated on a permanent foundation such that the lowest floor shall be at or above the FPG and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(ii) Fully enclosed areas formed by foundation and other exterior walls below the FPG shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Sec. 46-215(b)(4).

(iii) Flexible skirting and rigid skirting not attached to the frame or foundation of a manufactured home are not required to have openings.

b) These requirements apply to all manufactured homes to be placed on a site in an existing manufactured home park or subdivision that has not been substantially damaged by a flood:
(i) The manufactured home shall be elevated so that the lowest floor of the manufactured home chassis is supported by reinforced piers or other foundation elevations that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

(ii) Fully enclosed areas formed by foundation and other exterior walls below the FPG shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Sec. 46-215(b)(4).

(iii) Flexible skirting and rigid skirting not attached to the frame or foundation of a manufactured home are not required to have openings.

c) Recreational vehicles placed on a site shall either:

(i) be on site for less than 180 days and

(ii) be fully licensed and ready for highway use (defined as being on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or

(iii) meet the requirements for “manufactured homes” as stated earlier in this section.

(7) Accessory Structures. Relief to the elevation or dry floodproofing standards may be granted for accessory structures. Such structures must meet the following standards:

a) Shall not be used for human habitation.

b) Shall be constructed of flood resistant materials.

c) Shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters.

d) Shall be firmly anchored to prevent flotation.

e) Service facilities such as electrical and heating equipment shall be elevated or floodproofed to or above the FPG.

f) Shall be designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls as required for elevated structures in Sec. 46-215(b)(4).

(8) Above Ground Gas or Liquid Storage Tanks. All above ground gas or liquid storage tanks shall be anchored to prevent flotation or lateral movement.


(1) All subdivision proposals shall be consistent with the need to minimize flood damage.

(2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

(3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(4) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions), which is greater than the lesser of fifty (50) lots or five (5) acres.

(5) All subdivision proposals shall minimize development in the SFHA and/or limit density of development permitted in the SFHA.

(6) All subdivision proposals shall ensure safe access into/out of SFHA for pedestrians and vehicles (especially emergency responders).

d). Critical Facility. Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA. Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated to or above the FPG at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the FPG shall be provided to all critical facilities to the extent possible.

e). Standards for Identified Floodways. Located within SFHAs, established in Sec 46-213(b) are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of
floodwaters, which carry debris, potential projectiles, and has erosion potential. If the site is in an identified floodway, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources and apply for a permit for construction in a floodway. Under the provisions of IC 14-28-1 a permit for construction in a floodway from the Indiana Department of Natural Resources is required prior to the issuance of a local building permit for any excavation, deposit, construction, or obstruction activity located in the floodway. This includes land preparation activities such as filling, grading, clearing and paving etc. undertaken before the actual start of construction of the structure. However, it does exclude non-substantial additions/improvements to existing (lawful) residences in a non-boundary river floodway. (IC 14-28-1-26 allows construction of a non-substantial addition/improvement to a residence in a non-boundary river floodway without obtaining a permit for construction in the floodway from the Indiana Department of Natural Resources. Please note that if fill is needed to elevate an addition above the existing grade, prior approval for the fill is required from the Indiana Department of Natural Resources.)

No action shall be taken by the Floodplain Administrator until a permit or letter of authorization (when applicable) has been issued by the Indiana Department of Natural Resources granting approval for construction in the floodway. Once a permit for construction in a floodway or letter of authorization has been issued by the Indiana Department of Natural Resources, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in Sec. 46-215 of this Article have been met. The Floodplain Development Permit cannot be less restrictive than the permit for construction in a floodway issued by the Indiana Department of Natural Resources. However, a community’s more restrictive regulations (if any) shall take precedence.

No development shall be allowed, which acting alone or in combination with existing or future development, that will adversely affect the efficiency of, or unduly restrict the capacity of the floodway. This adverse affect is defined as an increase in the elevation of the regulatory flood of at least fifteen-hundredths (0.15) of a foot as determined by comparing the regulatory flood elevation under the project condition to that under the natural or pre-floodway condition as proven with hydraulic analyses.

For all projects involving channel modifications or fill (including levees) the City shall submit the data and request that the Federal Emergency Management Agency revise the regulatory flood data per mapping standard regulations found at 44 CFR § 65.12.

(f). Standards for Identified Fringe. If the site is located in an identified fringe, then the Floodplain Administrator may issue the local Floodplain Development Permit provided the provisions contained in Sec. 46-215 of this Article have been met. The key provision is that the top of the lowest floor of any new or substantially improved structure shall be at or above the FPG.

(g). Standards for SFHAs without Established Base Flood Elevation and/or Floodways/Fringes.

(1) Drainage area upstream of the site is greater than one square mile:

If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined, and the drainage area upstream of the site is greater than one square mile, the Floodplain Administrator shall require the applicant to forward the application, along with all pertinent plans and specifications, to the Indiana Department of Natural Resources for review and comment.

No action shall be taken by the Floodplain Administrator until either a permit for construction in a floodway (including letters of authorization) or a floodplain analysis/regulatory assessment citing the one-percent annual chance flood elevation and the recommended Flood Protection Grade has been received from the Indiana Department of Natural Resources.

Once the Floodplain Administrator has received the proper permit for construction in a floodway (including letters of authorization) or floodplain analysis/regulatory assessment approving the proposed development, a Floodplain Development Permit may be issued provided the conditions of the Floodplain Development Permit are not less restrictive than the conditions received from the Indiana Department of Natural Resources and the provisions contained in Sec. 46-215 of this Article have been met.

(2) Drainage area upstream of the site is less than one square mile:

If the site is in an identified floodplain where the limits of the floodway and fringe have not yet been determined and the drainage area upstream of the site is less than one square mile, the Floodplain Administrator shall require the applicant to provide an engineering analysis showing the limits of the floodplain and one-percent annual chance flood elevation for the site.

Upon receipt, the Floodplain Administrator may issue the local Floodplain Development Permit, provided the provisions contained in Sec. 46-215 of this Article have been met.

(3) The total cumulative effect of the proposed development, when combined with all other existing and anticipated development shall not adversely affect the efficiency of, or unduly restrict the capacity of the floodway. This adverse effect is defined as an increase in the elevation of the
regulatory flood of at least fifteen-hundredths (0.15) of a foot as determined by comparing the regulatory flood elevation under the project condition to that under the natural or pre-floodway condition as proven with hydraulic analyses.

(h). Standards for Flood Prone Areas. All development in known flood prone areas not identified on FEMA maps, or where no FEMA published map is available, shall meet applicable standards as required per Sec. 46-215.

Sec. 46-216. Variance Procedures.

(a). Designation of Variance and Appeals Board. The Michigan City Board of Zoning Appeals shall hear and decide appeals and requests for variances from requirements of this Article.

(b). Duties of Variance and Appeals Board. The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this Article. Any person aggrieved by the decision of the board may appeal such decision to the Circuit or Superior Court of LaPorte County, Indiana.

(c). Variance Procedures. In passing upon such applications, the board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this Article, and;

(1) The danger of life and property due to flooding or erosion damage.
(2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
(3) The importance of the services provided by the proposed facility to the community.
(4) The necessity of the facility to a waterfront location, where applicable.
(5) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.
(6) The compatibility of the proposed use with existing and anticipated development.
(7) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
(8) The safety of access to the property in times of flood for ordinary and emergency vehicles.
(9) The expected height, velocity, duration, rate of rise, and sediment of transport of the floodwaters at the site.
(10) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(d). Conditions for Variances.

(1) Variances shall only be issued when there is:
   a) A showing of good and sufficient cause.
   b) A determination that failure to grant the variance would result in exceptional hardship.
   c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing laws or ordinances.

(2) No variance for a residential use within a floodway subject to Section 46-215(e) or Section 46-215 (g)(1) of this Article may be granted.

(3) Any variance granted in a floodway subject to Section 46-215(e) or Section 46-215 (g)(1) of this Article will require a permit from the Indiana Department of Natural Resources.

(4) Variances to the Provisions for Flood Hazard Reduction of Section 46-215 (b) may be granted only when a new structure is to be located on a lot of one-half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the flood protection grade.

(5) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
(6) Variances may be granted for the reconstruction or restoration of any structure individually listed on the National Register of Historic Places or the Indiana State Register of Historic Sites and Structures. (Refer to Section 46-216(f))

(7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Flood Protection Grade and the elevation to which the lowest floor is to be built and stating that the cost of the flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation (See Section 46-216(e)).

(8) The Floodplain Administrator shall maintain the records of appeal actions and report any variances to the Federal Emergency Management Agency or the Indiana Department of Natural Resources upon request (See Section 46-216(e)).

(e). **Variance Notification.** Any applicant to whom a variance is granted that allows the lowest floor of a structure to be built below the flood protection grade shall be given written notice over the signature of a community official that:

(1) The issuance of a variance to construct a structure below the flood protection grade will result in increased premium rates for flood insurance up to amounts as high as $25 for $100 of insurance coverage; and;

(2) Such construction below the flood protection grade increases risks to life and property. A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

The Floodplain Administrator shall maintain a record of all variance actions, including justification for their issuance.

(f). **Historic Structure.** Variances may be issued for the repair or rehabilitation of “historic structures” upon a determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as an “historic structure” and the variance is the minimum to preserve the historic character and design of the structure.

(g). **Special Conditions.** Upon the consideration of the factors listed in Sec 46-216, and the purposes of this Article, the Michigan City Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Article.

**Sec. 46-217. Severability.** If any section, clause, sentence, or phrase of the Article is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Article.

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/ Sharon Carnes
Sharon Carnes, Member
Michigan City Common Council

Passed by the Common Council of the City of Michigan City, Indiana, this 15th day of October 2019 by a vote of 9 to 0.

/s/ Don Przybylinski, President
Michigan City Common Council

President D. Przybylinski asked if the Author had anything to add; with Councilwoman Carnes advising this ordinance brings federal and state regulations into our code.

President D. Przybylinski asked if the general public had any comments or questions regarding the proposed ordinance; there was no response.

President D. Przybylinski asked if there were any comments from the Council; with Councilwoman Carnes making a motion to adopt the proposed ordinance, second by Councilman Bietry.
President D. Przybylinski asked if there were any other comments from the Council regarding the proposed ordinance, hearing none; the ordinance was adopted by the following vote: **AYES:** Council Members Bietry, Dabney, Carnes, Fitzpatrick, Hamilton, D. Przybylinski, P. Przybylinski, Simmons, and Stimley (9 – 0) **NAYS:** None (0)

The Clerk read the following ordinance on 3rd reading by title only,

**MICHIGAN CITY COMMON COUNCIL**

**ORDINANCE NO. 4530**

**CREATING SECTION 22-54 IN CHAPTER 22 OF THE MICHIGAN CITY MUNICIPAL CODE TO BE KNOWN AS THE BUILDING PERMIT CONFLICT OF INTEREST**

WHEREAS, the Indiana General Assembly recently enacted I.C. 36-1-27-3 which states that “a building commissioner, building code official, or inspector of a unit may not issue a permit or oversee the issuance of a permit through a subordinate if the building commissioner, building code official, or inspector has a conflict of interest;” and

WHEREAS, I.C. 36-1-27-4 further provides as follows:

“IC 36-1-27-4 Ordinances; conflict of interest procedures
Sec. 4. (a) Except as provided in subsection (c), a unit shall adopt an ordinance to establish a procedure to address a conflict of interest that prevents a building commissioner, building code official, or inspector from issuing a permit under section 3 of this chapter.
(b) An ordinance adopted under this section must include the following:
(1) A procedure for the building commissioner, building code official, or inspector to report a conflict of interest.
(2) A procedure for appointing a qualified temporary replacement building commissioner, building code official, or inspector in the case of a conflict of interest.
(c) An ordinance adopted by a unit before July 1, 2019, satisfies the requirements of this section if the ordinance includes the procedures required by subsection (b);”

WHEREAS, pursuant to I.C. 36-1-27-4, the Common Council must adopt an ordinance to establish a procedure to address a potential conflict of interest regarding a building commissioner, building code official or inspector.

**NOW, THEREFORE, BE IT ORDAINED** by the Common Council of the City of Michigan City, Indiana, that Sec. 22-54 shall be created in Chapter 2 of the Michigan City Municipal Code and shall read as follows:

**Sec. 22-54. BUILDING PERMIT CONFLICT OF INTEREST.**

(a) Nothing in this Section shall be construed to restrict any City official or employee in the performance of their duties.

(b) Definitions. The following terms used in this Section shall have such meanings herein ascribed to them unless the context clearly indicates or requires a different meaning:

(1). **Conflict of Interest** means a direct or indirect financial interest in the issuance of a permit.
(2). **Permit** means any of the following:
   (a) An improvement location permit;
   (b) A building permit;
   (c) A certificate of occupancy;
   (d) Approval of a site-specific development plan;
   (e) Approval of a primary or secondary plat;
   (f) Approval of a contingent use, conditional use, special exception or special use; or
(g) Approval of a planned unit development.

(3) Report means a written identification of the affected permit application and disclosure of the conflict of interest involved, signed and dated by the author.

(c) Procedure for Conflicts of Interest in the Michigan City Planning Department.

(1) Building Commissioner. Except as provided in Subsection (4), whenever the Building Commissioner has a conflict of interest in the issuance of a permit:
   (a) The Building Commissioner shall recuse himself or herself from the permitting process;
   (b) The Building Commissioner shall file a report of the conflict of interest with the City Clerk;
   (c) The Building Commissioner shall deliver all related files to the Associate Planner, Assistant Planner, or Planning Director; and
   (d) The Associate Planner, Assistant Planner, or Planning Director shall take over the issuance of the permit.

(2) Associate Planner. Except as provided in Subsection (4), whenever the Associate Planner has a conflict of interest in the issuance of a permit:
   (a) The Associate Planner shall recuse himself or herself from the permitting process;
   (b) The Associate Planner shall file a report of the conflict of interest with the City Clerk;
   (c) The Associate Planner shall deliver all related files to the Building Commissioner, Assistant Planner, or Planning Director; and
   (d) The Building Commissioner, Assistant Planner, or Planning Director shall take over the issuance of the permit.

(3) Assistant Planner. Except as provided in Subsection (4), whenever the Assistant Planner has a conflict of interest in the issuance of a permit:
   (a) The Assistant Planner shall recuse himself or herself from the permitting process;
   (b) The Assistant Planner shall file a report of the conflict of interest with the City Clerk;
   (c) The Assistant Planner shall deliver all related files to the Planning Director, Associate Planner, or Building Commissioner; and
   (d) The Planning Director, Associate Planner, or Building Commissioner shall take over the issuance of the permit.

(4) Planning Director. Except as provided in Subsection (4), whenever the Planning Director has a conflict of interest in the issuance of a permit:
   (a) The Planning Director shall recuse himself or herself from the permitting process;
   (b) The Planning Director shall file a report of the conflict of interest with the City Clerk;
   (c) The Planning Director shall deliver all related files to the Assistant Planner, Associate Planner, or Building Commissioner; and
   (d) The Assistant Planner, Associate Planner, or Building Commissioner shall take over the issuance of the permit.

(5) Building Code Official or Inspector. Whenever a Building Code Official or Inspector, other than the Building Commissioner, Assistant Planner, Associate Planner, or Planning Director, has a conflict of interest in the issuance of a permit:
   (a) Such individual shall recuse himself or herself from the permitting process; and
   (b) Such individual shall notify his or her Department Head of the conflict of interest;
   (c) Said individual with a conflict of interest shall deliver all related files to the Building Commissioner, Associate Planner, Assistant Planner, or Planning Director;
(d) The Building Commissioner, Associate Planner, Assistant Planner, or Planning Director shall take over the issuance of the permit.

(d) Reports. The City Clerk shall place reports received pursuant to this Section in a designated file for conflicts of interest in the City Planning and Inspection Department and maintain them for at least five (5) years.

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/Bryant Dabney, Member
Michigan City Common Council

President D. Przybylinski asked if the Author had anything to add at this time; with Councilman Dabney stating he had nothing to add at this time.

President D. Przybylinski asked if there were anyone from the public that wished to speak on this ordinance (repeating three times); there was no response.

President D. Przybylinski asked the Council if they had any questions or comments regarding the proposed ordinance.

Councilman Simmons made a motion to adopt the proposed ordinance, second by Councilman Dabney.

President D. Przybylinski asked if there were any other comments from the Council regarding the proposed ordinance, hearing none; the ordinance was adopted by the following vote: **AYES:** Council members Bietry, Dabney, Carnes, Fitzpatrick, Hamilton, D. Przybylinski, P. Przybylinski, Simmons, and Stimley (9 – 0) **NAYS:** None (0).

The Clerk read the following ordinance on 3rd reading by title only, **ORDINANCE OR RESOLUTION FOR APPROPRIATIONS AND TAX RATES**

Introduced by: Bryant Dabney

President D. Przybylinski asked if the Author had anything to add at this time: Councilman Dabney stated that he looked over the proposed document we received from the Controllers office and all the amendments that were approved at the October 1, 2019 Council meeting have been changed and are correct.

President D. Przybylinski stated there was a Formal Public Hearing held at the October 1, 2019 Council meeting.

President D. Przybylinski asked if there were anyone from the general public that wish to speak on this ordinance; there was no response.

President D. Przybylinski asked if there were anyone from the Council that had any questions or comments regarding the proposed amended ordinance.

Councilwoman Carnes stated there was $250,000 cut out of line 443.030 Capital Outlay for streets, paving, and sidewalks to replace playground equipment in Washington Park, yet according to Councilman Dabney who is the liaison to the Park Department, that the Park Department has a plan to replace playground equipment in 2021 and she doesn’t understand why the City Council is trying to micromanage the Park; they have a plan they prioritize their projects, they are experts; stating she feels we should let them work their plan; stating why the Council can’t put money in the Parks budget; Mr. Przybylinski stated our streets “don’t look that bad compared to other cities”; advising a women called her regarding no sidewalks in front of her house on Cleveland and children walking to school; also stating certain neighborhoods will still be addressed because
Redevelopment is going to fund projects in the TIF districts; making a motion to put the $250,000 back into fund 443,030 Capital Outlay for streets, paving and sidewalks increasing fund 0005 Casino Riverboat to 9,543,005;

President D. Przybylinski asked if there was a second motion (repeating three times) Councilman P. Przybylinski second the motion.

Councilman Fitzpatrick stated it is very fitting of a lame duck council person to take away a bargaining chip to get playground equipment repaired at our Washington Park which is a tourist destination and our crown jewel; that we don't know where this $250,000 is going; that there are many neighborhoods that have sidewalks that aren't completed and we have no say in where those go unless we take measures like this; what people fail to realize is the Mayor is only the administrator and can only appropriate and do what the Council allows them to do; the City Council is the power; with lame ducks like you and this bobble head mentality is the reason why the City is in the condition it is in: Councilwoman Carnes called a point of order regarding Councilman Fitzpatrick’s comments.

President D. Przybylinski addressed Councilman Fitzpatrick reminding him you do not use demeaning language towards another Council member.

Councilman Fitzpatrick retracted the word “lame duck” saying “leaving” council person.

Councilman Dabney stated he was looking at his notes from the budget hearing meetings advising the replacement of the playground equipment is in the Park’s 2021 plan and that the Finance committee was working on the 2020 budget; stating the sheet that Councilwoman Carnes handed out this evening with her amendment of $250,000 is from the Engineering budget line for paving and sidewalks; asking how this got mixed in with the park department; advising that during the budget hearings the Finance Committee members discussed this and came up with this recommendation; with their thought a proposed additional appropriation requested in 2020 would have to come to the Council for approval having more control of funds.

Councilman Bietry stated he has all the respect for Councilwoman Carnes, agreeing with her about almost every issue that has come before the Council, but not on this issue; stating several reasons why he wouldn't be supporting this amendment adding $250,000 back into the proposed budget; disagreeing with what Councilman Fitzpatrick said.

Councilman P. Przybylinski advised he attended the budget hearings and wasn’t on the Finance Committee to be able to vote; stating the reason he is supporting this amendment was after he was sworn in to represent the 2nd ward he had requested a list of paving projects that had been done in the second ward; asking the City Engineer for this list and being advised by him that he wouldn’t be getting the list; that Mayor Meer told the City Engineer not give him the list. Mr. P. Przybylinski asked the Clerk’s office if it was filed in their office, receiving this document from them; and when he did receive this list there was hardly nothing done in the 2nd ward.

Councilman Fitzpatrick called “point of order” regarding Councilman P. Przybylinski supporting giving the money back.

Discussion ensued between Councilmen Fitzpatrick and P. Przybylinski regarding paving not being done in the 2nd Ward; with Councilman P. Przybylinski supporting putting the $250,000 back into the 2020 budget.

Councilwoman Carnes stated in reference to the comments about the park department; it was brought up at the last Council meeting on October 1st, knowing that these monies can not be used for park department or repairing playgrounds. Ms. Carnes again stated that there is a plan the park department has and we should respect their schedule; I’m still the Council person for the Fifth Ward and will continue to be that person until the
new Council takes effect and will continue to advocate for the Fifth Ward and all of the City wards until that time.

President D. Przybylinski commented on the streets in our city; stating there are streets that do need repair and there are streets that are in very good condition and will stand by that; naming some of the areas that have gotten streets and sidewalks in the city this year, along with some of the areas that need to be addressed in 2020.

President D. Przybylinski commented about the playground equipment in Washington Park; advising with my colleagues on the Finance Committee along with the citizens that also attended these meeting would agree that this playground equipment needs to be replace and upgraded now; stating several reasons why the committee made the cuts they did. Mr. D. Przybylinski asked what was more important; blacktop and concrete or child safety; advising that he attended the last Redevelopment Commission meeting, addressed the Commission asking if they would be able to help get this project done and was told they can not pay for the replacement of the equipment; but they could look into what is called a “destination playground” they could pay for.

President D. Przybylinski stated that if the City Council knows that something is not right, they have to provide the leadership to make sure it gets done immediately and gets done properly; stating that is why he is taking a stand to get this playground equipment up to date and be done with it.

Councilman P. Przybylinski addressed President D. Przybylinski comments, stating he feels he is impeaching his stand on this particular item; that safety on streets is just as important as in any public park. Mr. P. Przybylinski asked if the Council has had a workshop with the Mayor to come up with a project list to address projects the Council would like to see done, or the leadership of the Council ask to have a workshop with the Mayor to go over the project list for roads.

Councilman Simmons stated he is grateful for the 2 million dollars of paving of streets and replacement of sidewalks in the Tall Timber area; respecting the Finance Committees recommendation.

President D. Przybylinski asked if there were any other Council comments.

President D. Przybylinski asked if there was anyone from the public that wish to speak on the amendment.

Kathy Stransky, 223 Barker Avenue, commented that less than a year ago the City put ADA ramps and sidewalks on the corners of Barker Avenue, advising the same construction company came back this fall took out the ones they did in the spring and redid them all again; commenting this money could of went to another area of town for other sidewalks.

Rodney McCormick, 617 Union Street, agreed with Ms. Stransky that Barker Avenue wasn’t the only area they were taking up ADA corners they placed in the spring and redoing them; asking who was paying for this to be done.

Mr. McCormick stated the 6th Ward was the most neglected ward in the City; addressing Councilman Simmons.

President D. Przybylinski asked if there was any other public comments or questions from the Council; hearing none, the amendment failed by the following vote: AYES: Council Members Carnes, P. Przybylinski (2) NAYS: Council Members Fitzpatrick, Hamilton, D. Przybylinski, Simmons, Stimley, Bietry, and Dabney (7).

President D. Przybylinski stated the amendment fails.

President D. Przybylinski advised at the Finance/budget hearings the Finance Committee TABLED the MCPD budget to bring the information to the entire Council to have knowledge on what the department was proposing.
President D. Przybylinski stated that the Council will have a vote to take MCPD off from being TABLED; Councilman Bietry called a “Point of Order” advising the MCPD budget was TABLED at the Finance Committee and doesn’t have to be voted on this evening.

Discussion ensued between Attorney Meyer, President D. Przybylinski, and Councilman Bietry.

Councilman Dabney made a motion to eliminate the ICAC program in the amount of $27,000 with Councilwoman Carnes calling a “point of order”; stating the amendment needs to be in writing.

President D. Przybylinski asked Chief Swistek to address the Council; with Chief Swistek advising the amount for the ICAC program that Councilman Dabney’s amendment to eliminate is $27,200.

Councilman Stimley questioned with the grant being part of Sgt. Barr’s salary, would this come in too with that being in the MCPD 2020 Budget.

Chief Swistek advised that Sgt. Barr is already in the MCPD 2020 operating budget; that the $27,200 is to support the digital forensic unit for the licensing and software; adding he can’t emphasize enough how important this is until we can get another grant.

Chief Swistek addressed Councilman Stimley’s that he was under the impression that Sgt Barr’s salary came out of the grant; advising that $65,000 annually was reimbursed to the City from this grant making the MCPD budget higher.

Discussion ensued between City Clerk Neulieb and Councilman Dabney advising there was a “0” amount in the contractual service line in the MCPD budget.

Councilman Dabney made a motion to cut the MCPD Budget from their contractual service line item in the amount of $27,200 from Account No. 445.050 and will verify if that number is correct.

President Przybylinski stated there is a motion to cut the MCPD Budget from their contractual service line item from the Riverboat for $27,200 by Councilman Dabney; second by Councilman Fitzpatrick.

President D. Przybylinski asked if there was anyone from the public that wish to speak on the proposed amendment.

Rodney McCormick, 617 Union Street, addressed the Council regarding how he has been mistreated by the MCPD; adding that the Council should have invited LaPorte County Prosecutor John Lake to this Council meeting; that he could have explained why he made this decision not to use this equipment. Mr. McCormick commented on other concerns and issues he had with the MCPD.

Mr. McCormick addressed Councilman Hamilton.

President D. Przybylinski told Mr. McCormick he was out of order; asking him to leave the Chamber.; repeating several times.

Councilman Fitzpatrick made a motion to adjourn the meeting; second by Councilman P. Przybylinski

Councilman Fitzpatrick stated we are adjourning until the Council can come back with more clarity on this matter.

Attorney Meyer stated the 2020 budget must be approved prior to the end of October.
Discussion ensued between President D. Przybylinski, Attorney Meyer, and Councilman Fitzpatrick stating they would reschedule for a "Special Meeting" to finish this agenda.

**ADJOURNMENT**

A verbal vote was taken; with Councilwoman Carnes asking for a poll: Clerk Neulieb took the vote and meeting was adjourned by the following vote: **AYES:** Council members Fitzpatrick, D. Przybylinski, P. Przybylinski, Simmons, Dabney (5) **NAYS:** Hamilton, Stimley, Bietry, and Carnes (4). It was announced that the meeting was continued for consideration and approval of the 2020 Budget and related Salary Ordinances until October 21, 2019 at 6:30 pm. **ADJOURNED** (approximately 9:20p.m.)